

DOCKET NO. 23-7404

BEFORE THE UNITED STATES SUPREME COURT

WILLIAM MAXWELL

Petitioner/Appellant/Defendant

VS.

UNITED STATES OF AMERICA

Respondent/Appellee/Plaintiff

On Petition for Certiorari to the United States
Court of Appeals for the Third Circuit

On Appeal from the United States District Court for the District of
New Jersey, Camden Vicinage, Honorable Robert Kugler, presiding.

**SECOND SUPPLEMENTAL BRIEF TO
PETITION FOR CERTIORARI**

Respectfully Submitted,

WILLIAM MAXWELL

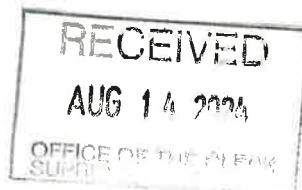
Fed. Reg. No.: 71944-279

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Beaumont, Texas 77720

Pro Se'



**Second Supplemental Brief to Petition
For Certiorari**

To the Honorable Supreme Court:

COMES NOW, William Maxwell ("Maxwell"), petitioner herein, and files his Second Supplemental Brief, noting an intervening ruling by this Honorable Court, and for just cause would show unto the Court as follows:

- 1) Maxwell filed his Opening Brief on or about February 9, 2024. The Brief was docketed on or about May 7, 2024.
- 2) Count 2 of Maxwell's indictment and conviction is a 18 U.S.C. §371 ~~ENI~~ securities fraud conspiracy based on the alleged failure to disclose that Pelullo, an independent consultant of First Plus Financial Group (FPFG), was the "de facto CEO" and that that status necessarily created related party transactions. (Generally)
- 3) Unbeknownst to Maxwell, on January 24, 2024, this Court issued Macquerie Infrastructure Corp., et al. v. Moab Partners, L.P., 601 U.S. 257, 144 S.Ct. 885, 218 L.Ed.2d 214 (2024). In that decision this Court held that "Pure omissions are not actionable under Rule 10b-5(b)."
- 4) Maxwell, confined at FCI-Beaumont-Low, now in his eleventh year while on direct appeal, must rely on the Lexis-Nexis System provided by the BOP to prepare his submissions. The Lexis-Nexis System is not an internet based system which would have instant access to this Court's rulings. Instead, some sort of update process takes place months later, and it is only then that inmates may be informed of the Supreme Court decisions.

5) Maxwell avers that the Macquerie Infrastructure Corp., et al. v. Moab Partners L.P. was not available to him at FCI-Beaumont-Low prior to February 9, 2024, Maxwell does not know the exact date it became available to FCI-Beaumont-Low, but Maxwell is certain the ruling was made available after February 9, 2024.

6) Pre-trial, the defendants' filed a motion to dismiss the security fraud conspiracy. See United States v. Scarfo, et al., 2013 U.S. Dist. LEXIS 22639, 3-6 (D.N.J., Feb. 19, 2013). The Trial Court summarized as follows (Generally):

The Government has charged [defendants in Count 2] with conspiring to violate 10(b). Section 10(b) provides in relevant part "it shall be unlawful for any person ... to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make statements made, in light of the circumstances under which they were made, not misleading. According to [defendants]^{EN2} the essence of the Government's Section 10(b) -- based contentions is that, with Mr. Adler's cooperation,^{EN3} FPFG failed to fully and accurately disclose in its applicable SEC filings..." that Pellulo was the "de facto CEO."

The Government argued that under 10(b) and the classification Rule 3(b) - 7, defining executors, Pelullo, who had no position with FPFG, but was rather an outside consultant, had to be disclosed as "de facto CEO." The Government used the Rule 3(b)-7 classification rule "to deem Pelullo the 'defacto Chief Executive Officer' and to consequently classify the information from public filings as related party transactions. Id. 2013 U.S. Dist LEXIS 22639, at *5.

The defendants further argued that because the definition and scope of 'policy making' functions as the term pertains to an 'executive officer' under Rule 3(b)-7 has never been defined by the SEC, the security fraud charges related to Section 10(b) should be dismissed. Id. at 5.

In opposition to the motion to dismiss the Government alleged that "the materiality of Pelullo's involvement with FPFG triggers [defendants'] conspiratorial liability." Id at 6. See jury instructions [JAC 12395-400]. See Maxwell's Opening Brief Appendix 1, pp. App.1.10-12.

7) Post Macquerie Infrastructure Corp. et al. v. Moab Partners, L.P., which held that "[l]ogically by its plain text, Rule 10(b)-5(b) therefore covers half-truths, not pure omissions, because it requires identifying affirmative assertions (i.e., "statements made") before determining if other facts needed to make those statements 'not misleading.'"

8) And while the Trial Court discussed Basic, Inc. v. Levinson, 485 U.S. 224, 231-32, 108 S.Ct. 978, 99 L.Ed.2d 194 (1988), See Scarfo, 2013 U.S. Dist. LEXIS 22639, at 10 and 13, it misapplied the law as explained in Macquerie Infrastructure Corp., et al. v. Moab Partners, L.P.

9) Due to the timing of the decision, post the July 22, 2022 Third Circuit judgment and prior to Maxwell's Petition for Certiorari, GVR is appropriate on Count 2 as well as the other grounds Maxwell asserted in his Opening Brief. As the Court will recall, each of the counts in this case involve an over-reach and over-expansion of the law as defined by this Court in a series of decisions post Third Circuit judgment and Maxwell's filing of certiorari now pending before this Court.

10) As the Court taught in Macquerie:

A duty to disclose, however, does not automatically render silence misleading under Rule 10b-5(b)... The United States suggest[s] that a plaintiff does not need to plead any statements rendered misleading by pure omission because reasonable investors know that the Exchange Act requires issuers to file periodic informational statements... EN4 But that reads the words "statements made" out of the Rule 10b-5(b) and shifts the focus of the Rule and §10(b) from fraud to disclosure. [citing] Chiarella v. United States, 445 U.S. 222, 234-235, 100 S.Ct. 1108, 63 L.Ed.2d 348 (1980) ("Section 10(b) is aptly described as a catchall provision, but what it catches must be fraud." 144 S.Ct. at 887-88. (Emphasis added)

11) Maxwell urges that under Macquerie, GVR is additionally appropriate. Alternatively, full briefing may be appropriate for certiorari consideration.

Respectfully Submitted,

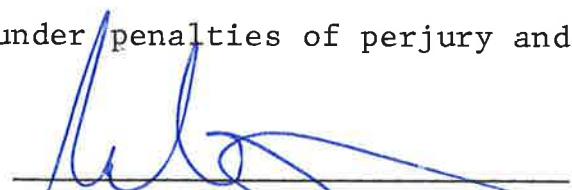


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VERIFICATION

I hereby verify that all material facts contained in the foregoing are true and correct to the best of my knowledge and belief. I make this verification under penalties of perjury and pursuant to 28 U.S.C. §1746



WILLIAM MAXWELL

ENDNOTES

EN1 17 C.F.R. §240.10b-5(b)

"It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange.

[]

(b) To make any untrue statement of a material fact or to omit to state a fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

EN2 All defendants joined each other's motions with consent of the Court, without the need to constantly paper the court over and over with motions to join.

EN3 Mr. Adler was outside SEC counsel who prepared all SEC filings. Mr. Adler was acquitted. Maxwell, also outside counsel, did not prepare, sign or authorize any SEC filings, is not a SEC counsel, but was nonetheless charged with conspiracy and convicted of securities fraud conspiracy, under §371, in Count 2 of the indictment and jury charge.

EN4 In the context of Item 303, SEC Regulation S-K context.