APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-7011

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

THEMBA BERNARD SANGANZA, a/k/a Bernard Themba Sanganza,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. Mark S. Davis, District Judge. (4:16-cr-00050-MSD-RJK-1)

Submitted: December 21, 2017 Decided: January 16, 2018

Before DUNCAN, AGEE, and KEENAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Themba Bernard Sanganza, Appellant Pro Se. Kevin Patrick Hudson, Brian James Samuels, Assistant United States Attorneys, OFFICE OF THE UNITED STATES ATTORNEY, Newport News, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Themba Bernard Sanganza seeks to appeal the district court's order denying his motion to dismiss the charges against him due to the Government's alleged violation of the plea agreement. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2012), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (2012); Fed. R. Civ. P. 54(b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46 (1949). The order Sanganza seeks to appeal was entered prior to the imposition of his sentence, and as such, it is neither a final order nor an appealable interlocutory or collateral order.* Accordingly, we grant the Government's motion to dismiss and dismiss this appeal for lack of jurisdiction. We deny leave to proceed in forma pauperis. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

* Sanganza may raise this claim in his appeal from final judgment, No. 17-4601 (filed Sept. 21, 2017).

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Newport News Division

UNITED STATES OF AMERICA

v.

THEMBA BERNARD SANGANZA
a/k/a "Bernard Themba Sanganza"
Defendant.

Case Number: 4:16cr50

USM Number: 90181-083
Defendant's Attorney: Pro Se Defendant

JUDGMENT IN A CRIMINAL CASE

The defendant pleaded guilty to Counts 2, 19, 22 of the Superseding Indictment.

Accordingly, the defendant is adjudged guilty of the following counts involving the indicated offenses.

Title and Section	Nature of Offense	Offense Class	Offense Ended	Count
T. 18, USC Section 1341	Mail Fraud	Felony	August 9, 2013	2
T. 18, USC Section 1344	Bank Fraud	Felony	September 22, 2015	19
T.18, USC Section 1028A	Aggravated identity Theft	Felony	May 13, 2013	22

On motion of the United States, the Court has dismissed the remaining counts in the superseding indictment as to defendant THEMBA BERNARD SANGANZA.

As pronounced on September 11, 2017, the defendant is sentenced as provided in pages 2 through 7 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

Signed this 13th day of September, 2017.

/s/ MSD

Mark S. Davis
United States District Judge

Case Number: 4:16cr50
Defendant's Name: SANGANZA, THEMBA BERNARD

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **ONE HUNDRED SIXTY-EIGHT (168) MONTHS**. This term of imprisonment consists of a term of ONE HUNDRED FORTY-FOUR (144) MONTHS on Count 2, a term of ONE HUNDRED FORTY-FOUR (144) MONTHS on Count 19, to be served concurrently to Count 2, and a term of TWENTY-FOUR (24) MONTHS on Count 22, to be served consecutively to Counts 2 and 19.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows: ______________________________

____

Defendant delivered on ____________________ to ______________________________
at ______________________________, with a certified copy of this Judgment.

____
UNITED STATES MARSHAL

By ______________________________
DEPUTY UNITED STATES MARSHAL

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Defendant's Name: SANGANZA, THEMBA BERNARD

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **FIVE (5) YEARS**. This term consists of a term of THREE (3) YEARS on Count 2, a term of FIVE (5) YEARS on Count 19, and a term of ONE (1) YEAR on Count 22, all to run concurrently.

The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of supervised release.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release on supervised release and at least two periodic drug tests thereafter, as directed by the probation officer.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution obligation, it is a condition of supervised release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

STANDARD CONDITIONS OF SUPERVISION

The defendant shall comply with the standard conditions that have been adopted by this court set forth below:

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance or any paraphernalia related to such substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer for a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

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Defendant's Name: SANGANZA, THEMBA BERNARD

SPECIAL CONDITIONS OF SUPERVISION

While on supervised release pursuant to this Judgment, the defendant shall also comply with the following additional special conditions:

1) As a condition of supervised release, upon completion of the term of imprisonment, the defendant is to be surrendered to a duly-authorized immigration official of the Department of Homeland Security Bureau of Immigration and Customs Enforcement for a deportation review in accordance with established procedures provided by the Immigration and Naturalization Act, 8 U.S.C. Section 1101, et seq. As a further condition of supervised release, if ordered deported, the defendant shall remain outside of the United States. The defendant is prohibited from engaging in any occupation where the defendant would have access to money without prior approval of the probation officer.

2) The defendant is prohibited from engaging in any occupation where he would have access to money, without prior approval of the probation officer.

3) The defendant shall apply monies received from income tax refunds, lottery winnings, inheritances, judgments, and any anticipated or unexpected financial gains to the outstanding court-ordered financial obligation; or in a lesser amount to be determined by the Court upon the recommendation of the probation officer.

4) The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer.

5) The defendant shall provide the probation officer access to any requested financial information.

6) The defendant shall participate in a program approved by the United States Probation Office for financial counseling. The cost of this program is to be paid by the defendant as directed by the probation officer.

7) The offender shall participate in the Treasury Offset Program (TOP) as directed by the probation officer.

8) If the defendant tests positive for alcohol or illicit substances during his period of supervised release, he shall participate in a program approved by the United States Probation Office for substance abuse, which program may include residential treatment and testing to determine whether the defendant has reverted to the use of drugs or alcohol, with partial costs to be paid by the defendant, all as directed by the probation officer.

9) The defendant shall participate in a program approved by the United States Probation Office for mental health treatment to include anger management. The cost of this program is to be paid by the defendant as directed by the Probation Officer.

10) The defendant shall waive all rights of confidentiality regarding substance abuse/mental health treatment in order to allow the release of information to the United States Probation Office and authorize communication between the probation officer and the treatment provider.

11) The defendant shall comply with the requirements of the computer monitoring program as administered by the Probation Office. The defendant shall consent to installation of computer monitoring software on any computer to which the defendant has access. Installation shall be performed by the probation officer. The software may restrict and/or record any and all activity on the computer, including the capture of keystrokes, application information, internet use history, email correspondence, and chat conversations. A notice will be placed on the computer at the time of installation to warn others of the existence of the monitoring software. The defendant

Case Number: 4:16cr50
Defendant's Name: SANGANZA, THEMBA BERNARD

shall also notify others of the existence of the monitoring software. The defendant shall not remove, tamper with, reverse engineer, or in any way circumvent the software. The costs of the monitoring shall be paid by the defendant.

12) The defendant is prohibited from being self-employed or engaging in any type of work related to the preparation of state or federal tax returns during his period of supervised release, without prior approval of the probation officer.

13) The defendant shall not engage in email spoofing.

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Defendant's Name: SANGANZA, THEMBA BERNARD

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

	Count	Assessment	Fine	Restitution
	2	$100.00	$0.00	$ 721,504.13
	19	$100.00	$0.00	$0.00
	22	$100.00	$0.00	$0.00
TOTALS:		**$300.00**	**$0.00**	**$721,504.13**

FINES

No fines have been imposed in this case.

RESTITUTION

SEE RESTITUTION ORDER ENTERED AND FILED IN OPEN COURT ON SEPTEMBER 11, 2017.

The Court determined that the defendant does not have the ability to pay interest and it is ordered that:
the interest requirement is waived for the restitution balance as long as the defendant makes timely payments in accordance with the payment schedule, or any modified payment schedule, established by the Court.

FORFEITURE

SEE ORDER OF FORFEITURE ENTERED AND FILED IN OPEN COURT ON SEPTEMBER 11, 2017.

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Defendant's Name: SANGANZA, THEMBA BERNARD

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

The special assessment shall be due in full immediately.

Any balance remaining unpaid on the special assessment at the inception of supervision, shall be paid by the defendant in installments of not less than $25 per month, until paid in full. Said payments shall commence 60 days after defendant's supervision begins.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Payments shall be applied in the following order: (1) assessment (2) restitution principal (3) restitution interest (4) fine principal (5) fine interest (6) community restitution (7) penalties and (8) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division

UNITED STATES OF AMERICA,

v. Criminal No. 4:16cr50

THEMBA BERNARD SANGANZA,

Defendant.

ORDER

This matter is before the Court on a motion to dismiss the indictment, and/or the entire criminal action, filed by pro se Defendant Themba Bernard Sanganza ("Defendant"). ECF No. 50. Also before the Court is Defendant's "Motion to Request Hazardous Bonding Insurance." ECF No. 49.[1] For the reasons set forth below, both motions are **DENIED**.[2]

Defendant's motion to dismiss asserts that the Government breached the immunity provision of Defendant's plea agreement because the Government's position on sentencing relies on offense conduct that was not expressly stipulated to in the written "Statement of Facts" that was entered at the time of

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[1] Defendant subsequently filed a "Motion to Make Court Records Public" and a "Motion to Request Court Records." ECF Nos. 53, 54. These motions will be addressed by separate Order.

[2] Defendant's motion to dismiss is fully briefed, and the Court has received and considered Defendant's reply brief. ECF No. 55. The Court has not received a reply brief in support of Defendant's motion seeking a copy of bonding insurance, and the time for filing a reply has expired.

Defendant's plea. As discussed on the record at the hearing on June 26, 2017, and as acknowledged in Defendant's motion to dismiss, the immunity provision in Defendant's plea agreement "prevents the prosecution from using [certain] evidence . . . in [a] subsequent prosecution." ECF No. 50, at 3 (emphasis added). Defendant's contention that such immunity provision also prevents the Government from seeking to prove facts not admitted at the time of the plea, to include "relevant conduct," within the context of the same prosecution is grossly incorrect.[3] To the contrary, the face of the Statement of Facts entered in this case acknowledges that such recitation of the facts "does not describe all of [Defendant's] conduct relating to the offenses charged in this case." ECF No. 29. Moreover, as highlighted in the Government's brief in opposition to dismissal, neither the Plea Agreement nor the Statement of Facts includes any specific sentencing agreement between the parties, nor do such documents contain a binding stipulation regarding either the amount of the attempted loss in this case or the number of fraudulent tax returns involved in Defendant's crime. ECF No. 52, at 3.

[3] Defendant's reply brief contends that the Government "charged" him with additional conduct subsequent to the entry of his guilty plea. Such contention, however, is inaccurate as the Government merely argued in support of sentencing that the Court should consider the full-range of Defendant's offense conduct and/or relevant conduct when determining the appropriate sentence for the crimes to which Defendant admitted his guilt. See Campbell v. United States, No. 1:11cr325, 2015 WL 12912384, at *3 (M.D.N.C. July 17, 2015) ("The use of relevant conduct to determine sentencing enhancements is neither improper nor unconstitutional. In fact, a sentencing judge must consider relevant conduct and cannot simply choose to ignore it.").

Defendant's motion, therefore plainly fails to establish any breach by the Government, and even if a breach had been proven, the appropriate remedy would not be dismissal of the case and/or the Indictment. For these reasons, and for those set forth in greater detail in the Government's brief in opposition, Defendant's motion to dismiss is **DENIED**.

Defendant's second motion consists of a single sentence requesting a "copy of hazardous bonding insurance" for the undersigned judge and for the Assistant United States Attorney ("AUSA") assigned to this case. As the Court explained to Defendant at the June hearing, the undersigned judge does not understand such request, and does not maintain "hazardous bonding insurance." The Government similarly asserts in its responsive brief that the AUSA assigned to this case does not maintain hazardous bonding insurance. Defendant's second motion, which is frivolous on its face, is therefore **DENIED**.

The Clerk is **DIRECTED** to forward a copy of this Order to the pro se Defendant and to the United States Attorney's Office in Newport News, Virginia.

IT IS SO ORDERED.

/s/MSD

Mark S. Davis
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
August 1, 2017

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Newport News Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 4:16CR50
	)	
THEMBA BERNARD SANGANZA	)	
	)	
Defendant.	)	

CONSENT SECOND ORDER OF FORFEITURE

BASED UPON the statement of facts into which the defendant has entered with the United States, and FINDING that the requisite nexus exists between the property listed below, in which the defendant has an interest, and the offense(s) to which the defendant has pled guilty, IT IS HEREBY ORDERED pursuant to Federal Rule of Criminal Procedure 32.2 that:

1. The following property is forfeited to the United States pursuant to 18 U.S.C. § 982(a)(2)(A) and 18 U.S.C. § 981(a)(1)(C) by 28 U.S.C. § 2461(c):

$200,000 located in Bank of America account number 4350-3486-7211.

2. The United States shall seize all forfeited property and shall take full and exclusive custody and control of same.

3. The United States shall, to the extent practicable, provide direct written notice to any persons known to have alleged an interest in the seized property, and shall publish notice of this order in accordance with Federal Rule of Criminal Procedure 32.2(b)(6).

4. Any person, other than the defendant, asserting any legal interest in the property may, within thirty days of the publication of notice or the receipt of notice, whichever is earlier, petition the Court for a hearing to adjudicate the validity of their alleged interest in the property.

5. Following the Court's disposition of all timely petitions filed, a final order of

forfeiture shall be entered. If no third party files a timely petition, this order shall become the final order of forfeiture, as provided by Federal Rule of Criminal Procedure 32.2(c)(2), and the United States shall have clear title to the property, and shall dispose of the property in accordance with law.

6. The parties stipulate and agree that the aforementioned asset represents property described in 18 U.S.C. § 982(a)(2)(A) and 18 U.S.C. § 981(a)(1)(C) by 28 U.S.C. § 2461(c) and, as such, is subject to forfeiture thereunder. The defendant hereby waives the requirements of Federal Rules of Criminal Procedure 11(b)(1)(J), 32.2, and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment, and consents to the entry of this order.

Dated this 11th day of Sept. 2017.

/s/ MSD

Mark S. Davis
United States District Judge

UNITED STATES DISTRICT JUDGE

I ask for this:
Dana J. Boente
United States Attorney

By: [signature]

Brian J. Samuels
Assistant United States Attorney
Attorney for the United States
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Facsimile Number: (757) 591-0866
Email Address: brian.samuels@usdoj.gov

Seen and Agreed
Themba Bernard Sanganza
Defendant

By: Refused to Sign, [signature]
Themba Bernard Sanganza