

APPENDIX

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**APPENDIX A — OPINION OF THE UNITED
STATES COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT, FILED JUNE 25, 2025**

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

No. 24-13067
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

THOMAS F. SPELLISSY,

Defendant-Appellant.

Filed: June 25, 2025

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:05-cr-00475-JDW-TGW-1

Before LUCK, KIDD, and MARCUS, Circuit Judges.

PER CURIAM:

Thomas Spellissy, a former federal prisoner who was convicted of conspiracy to commit bribery and wire fraud, in violation of 18 U.S.C. §§ 201(b)(1)(A)-(B), 1343, and 1346,

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appeals the district court's order denying his most recent *pro se* petition for a writ of error *coram nobis*. He argues that, based on *Percoco v. United States*, 598 U.S. 319, 143 S. Ct. 1130, 215 L. Ed. 2d 305 (2023), he is factually innocent because the evidence at trial did not show that he conspired to commit bribery or honest-services wire fraud. After thorough review, we affirm.

We review a district court's denial of a petition for writ of error *coram nobis* for abuse of discretion. *Alikhani v. United States*, 200 F.3d 732, 734 (11th Cir. 2000).

The All Writs Act, 28 U.S.C. § 1651, gives federal courts authority to issue writs of error *coram nobis*. *United States v. Mills*, 221 F.3d 1201, 1203 (11th Cir. 2000). A writ of error *coram nobis* offers a remedy “to vacate a conviction when the petitioner has served his sentence and is no longer in custody, as is required for post-conviction relief under 28 U.S.C. § 2255.” *United States v. Peter*, 310 F.3d 709, 712 (11th Cir. 2002). We’ve explained that it offers the remedy of vacating a conviction in these circumstances due to the lingering results of convictions, including implications for civil rights or heavier penalties for subsequent offenses. *Id.* The writ, however, may issue only when (1) no other relief is available, and (2) “the error involves a matter of fact of the most fundamental character *which has not been put in issue or passed upon* and which renders the proceeding itself irregular and invalid.” *Alikhani*, 200 F.3d at 734 (quotations omitted and emphasis added).

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Here, the district court did not abuse its discretion in denying Spellissy's instant petition for a writ of error *coram nobis*. As a brief background, Spellissy's conspiracy conviction arose out of a general services agreement between Spellissy, his company Strategic Defense International, Inc. ("SDI"), and William Burke, an employee of a private contractor assigned to a division of the U.S. Special Operations Command ("USSOCOM"). Spellissy and SDI represented various companies seeking to transact business with USSOCOM, and through the agreement, the parties conspired to provide preferential treatment to the companies Spellissy represented in exchange for payment. After a jury trial, Spellissy was convicted and the district court sentenced him to 15 months' imprisonment. On direct appeal, we affirmed, holding that the district court did not clearly err during sentencing by concluding that Burke was a public official and that there was sufficient evidence to support Spellissy's conspiracy conviction. *See United States v. Spellissy*, 243 F. App'x 550, 550-51 (11th Cir. 2007).

Spellissy was released from custody in January 2009, and, since then, he has filed numerous petitions for a writ of error *coram nobis*, all of which were denied by the district court, and, on appeal, affirmed by this Court. *See, e.g., United States v. Spellissy*, 842 F. App'x 516 (11th Cir. 2021); *United States v. Spellissy*, 710 F. App'x 392 (11th Cir. 2017); *United States v. Spellissy*, 513 F. App'x 915 (2013); *United States v. Spellissy*, 438 F. App'x 780 (11th Cir. 2011). Spellissy filed *another* petition for a writ of error *coram nobis* in 2023, based in part on *Percoco v. United States*, 598 U.S. 319, 143 S. Ct. 1130, 215 L. Ed. 2d 305 (2023),

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a case that invalidated on vagueness grounds a district court's jury instruction concerning the duty to provide honest services for purposes of the wire fraud statute. Again, the district court denied Spellissy's petition, and, again, we affirmed, reasoning that the jury instructions at Spellissy's trial did not involve the same flaws or legal theories as those at issue in *Percoco* and, therefore, did not establish a fundamental error warranting *coram nobis* relief. *United States v. Spellissy*, No. 23-13770, 2024 U.S. App. LEXIS 10718, 2024 WL 1928757, at *3 (11th Cir. May 2, 2024). In so holding, we said that "Spellissy's indictment alleged—and the district court correctly found—that William E. Burke, a private contractor employee to whom Spellissy made illegal payments . . . was a public official." *Id.*

The instant appeal involves Spellissy's 2024 request for leave to file still another petition for a writ of error *coram nobis*. In both his petition below and his briefs on appeal, Spellissy argues that *coram nobis* relief is warranted because the evidence at his trial established that he never bribed Burke; Burke was not a public official under *Percoco*; and our decision affirming the denial of his 2023 petition was, therefore, based on false information.

However, our case law makes clear that *coram nobis* relief is not available where, among other things, the alleged error has "been put in issue or passed upon." *Alikhani*, 200 F.3d at 734 (quotations omitted). As the record reflects, in previous appeals, we've already disposed of the errors he currently raises. Indeed, on direct appeal, we held that Spellissy's conspiracy

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conviction was supported by sufficient evidence. *See Spellissy*, 243 F. App'x at 551. Moreover, in affirming the denial of Spellissy's 2023 *coram nobis* petition, we expressly considered and rejected his argument that no bribe could have taken place under *Percoco* and that Burke was a private citizen. *See Spellissy*, 2024 U.S. App. LEXIS 10718, 2024 WL 1928757, at *3. Thus, to the extent Spellissy seeks to challenge the evidence supporting his conviction or otherwise raise claims based on *Percoco*, he cannot obtain *coram nobis* relief. *Alikhani*, 200 F.3d at 734. Accordingly, the district court did not abuse its discretion in denying his petition for writ of error *coram nobis*. *Id.* (quotations omitted).

AFFIRMED.

**APPENDIX B — ORDER OF THE UNITED
STATES DISTRICT COURT FOR THE MIDDLE
DISTRICT OF FLORIDA, TAMPA DIVISION,
FILED SEPTEMBER 6, 2024**

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 8:05-cr-475-JDW-TGW

UNITED STATES OF AMERICA

vs.

THOMAS SPELLISSY

Filed: September 6, 2024

ORDER

BEFORE THE COURT is Defendant's *pro se* Request for Leave to File a *ninth pro se* Petition for Writ of Error Coram Nobis (Dkt. 314), submitted in accordance with this court's Order (Dkt. 195). Upon consideration, the Request for Leave to File is **granted**. The Clerk is directed to docket Defendant's Petition for Writ of Error Coram Nobis (Dkt. 315). A response to the Petition for Writ of Error Coram Nobis is unnecessary as it plainly lacks merit and is accordingly **DENIED**.

Defendant's ninth petition for Writ of Error Coram Nobis is "based on an error of fact in the District Court

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that the 11th Circuit used to deny my previous petition based on the Supreme Court opinions in *Percoco v. United States*, 598 U.S. __ (2023) and *Ciminelli v. United States*, No. 21-1170 (2023).” Essentially, he contends the Eleventh Circuit’s affirmance of the denial of his eighth petition was based on a factual error. But the claimed factual error is nothing more than a variant of his repeated claims of factual innocence and his construction of the trial evidence. Specifically, Defendant contends the Eleventh Circuit’s affirmance is “. . . based on a falsehood in the record that Spellissy bribed Mr. William Burke who was a private contractor working for a private contractor at the United States Special Operations Command. The 11th Circuit based its affirmance on information that is not true.”

First, this court has no jurisdiction to address, let alone correct a claimed error in the appellate court’s opinion. Second, to the extent Defendant once again attempts to relitigate the evidence supporting his conviction, he may not do so in a coram nobis petition. And he raised similar if not identical claims under *Percoco* and *Ciminelli* in his last petition. Considering his prior writ history, Defendant’s repeated attempts to relitigate his claim of innocence borders on abuse of the Writ. *United States v. Swindall*, 107 F.3d 831, 836 n. 7 (11th Cir. 1997) (abuse of writ defense applies to Coram Nobis). But that will wait for another day if he continues to file meritless petitions.

The writ of coram nobis is an extraordinary remedy of last resort, “available only in compelling circumstances

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where necessary to achieve justice.” *United States v. Mills*, 221 F.3d 1201, 1203 (11th Cir. 2000). Fundamental error must be shown, such that the underlying criminal proceedings are deemed “irregular and invalid.” *United States v. Mayer*, 235 U.S. 55, 69 (1914). The writ is not available to relitigate criminal convictions. *United States v. Addonizio*, 442 U.S. 178, 186 (1979). And relief for claimed factual errors is warranted only where the errors are “of the most fundamental character; that is, such as rendered the proceeding itself irregular and invalid.” *United States v. Morgan*, 346 U.S. 502, 509 n. 15 (1954).

Defendant’s claimed factual error flies in the face of the record. In an earlier opinion, the Eleventh Circuit found his conspiracy conviction “arose out of a general services agreement between Spellissy, his company Strategic Defense International (“SDI”), and William Burke, a civilian contractor, to obtain preferential treatment for their clients.” *United States v. Spellissy*, 243 F.App’x 550 (11th Cir. 2007). In a later opinion, the Court held “he government focused its evidence and argument on Burke’s participation in the review and prioritization of a specific proposal pending before the Comparative Testing Office and his agreement to influence that process in exchange for bribes from Spellissy—in other words, conduct that involved the awarding of specific government contracts up for bid” *United States v. Spellissy*, 438 F. App’x 780, 783, 84 (11th Cir. 2011). And in rejecting a similar contention raised in another petition, the Eleventh Circuit held “the proscribed activity . . . involved a scheme by Spellissy . . . to pay Burke for preferential treatment in procuring contracts [] remains proscribed activity,

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even after *Skilling* narrowed 'honest services fraud' to include only bribe or kickback schemes." See *Spellissy*, 438 F.App'x at 783-84. As the Court noted, Burke was an employee of Centel Corporation who worked at SOCOM in its Management Directorate when he agreed to accept bribes from Spellissy.

Relevant to his instant contention describing Burke's status, Burke was not merely a private citizen with some domination and control over governmental business on whom others relied because of a special interest he had with the government. Indeed, the evidence established that he was, at all material times, an employee of Centel working at SOCOM with significant decision making authority in the procurement process when he agreed to accept bribes from Spellissy.

In sum, Defendant does not identify a fundamental factual error warranting extraordinary relief through Coram Nobis.

DONE AND ORDERED this 6th day of September 2024.

/s/ James D. Whittemore
JAMES D. WHITTEMORE
United States District Judge

**APPENDIX C — ORDER OF THE UNITED
STATES DISTRICT COURT FOR THE MIDDLE
DISTRICT OF FLORIDA, TAMPA DIVISION,
FILED JULY 11, 2006**

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 8:05-CR-475-T-27TGW

UNITED STATES OF AMERICA

vs.

THOMAS SPELLISSY AND STRATEGIC
DEFENSE INTERNATIONAL, INC.

Filed: July 11, 2006

ORDER

BEFORE THE COURT is Defendants Thomas Spellissy and Strategic Defense International, Inc.'s Joint Renewed Motion for Judgments of Acquittal and, in the alternative, Motion for New Trial (Dkt. 65) and the Government's response in opposition (Dkt. 67). A hearing was conducted on July 6, 2006. At the conclusion of the hearing, the Court granted *in part* Defendants' motion and announced its findings, reasons and conclusions, which are incorporated herein. A copy of the transcript of the Court's ruling, findings, reasons and conclusions is attached hereto and made a part hereof. Defendants' Joint

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Renewed Motion for Judgment of Acquittal pursuant to Rule 29(c) is DENIED as to Counts One, Four and Five. The motion is GRANTED as to Counts Two and Three. Defendants' alternative Motion for New Trial pursuant to Rule 33 is GRANTED as to Counts Four and Five and DENIED as to Count One.

Joint Renewed Motion for Judgment of Acquittal

The determination of whether a motion for judgment of acquittal should be granted turns on whether, viewing the evidence in the light most favorable to the government, a reasonable jury could find proof of guilt beyond a reasonable doubt. *United States v. Thomas*, 8 F.3d 1552, 1556-57 (11th Cir. 1993). On a motion for judgment of acquittal, the Court assumes the truth of the evidence offered by the prosecution and cannot weigh the evidence or consider the credibility of witnesses. *United States v. Martinez*, 763 F.2d 1297, 1312 (11th Cir. 1985).

As to Count One (Conspiracy), the evidence introduced, including but not limited to Government's Exhibits 10, 11 and 12, sufficiently established that these Defendants and William Burke, an unindicted co-conspirator, agreed to commit the offense of mail fraud, that is, deprive the United States of the intangible right of William Burke's honest services, that the Defendants knew of the conspiratorial goal and that the Defendants voluntarily participated in accomplishing that goal. As to Counts Four and Five (the Wire Fraud counts), there was likewise sufficient evidence to support the jury's verdicts of guilty. As to Counts Two and Three (the Bribery counts) however, no reasonable

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jury could find proof of guilty beyond a reasonable doubt, even considering the evidence in a light most favorable to the Government.

Simply put, the Government's primary witness, William Burke, testified unequivocally that he never conspired with Defendants to commit any type of fraud, never did anything illegal and was never bribed in return for preferential treatment of any of the Defendants' consulting clients. Notwithstanding that Burke entered a guilty plea pursuant to a written plea agreement in which he stipulated to facts in support of the charges, Burke essentially disavowed his guilty plea and those underlying facts, explaining to the jury that he pled guilty simply to avoid going to prison. With respect to the \$ 4500.00 the Government contends was a bribe paid by Defendants to Burke, Burke explained that he performed more than 45 hours of services for Defendants for which he invoiced Defendants at the rate of \$ 100.00 per hour. Burke invoiced Defendants for those services (Government's Exhibits 4B and 4C) and received IRS 1099 forms from Defendants. Burke adamantly maintained without any contradictory evidence presented by the Government that he actually performed those services and was paid only for those services. Applying Rule 29 standards, the Court "assumes the truth of the evidence offered by the prosecution," to wit, Burke's testimony that he performed legitimate services and was paid at the rate of \$ 100.00 per hour for 45 hours. *United States v. Martinez*, 763 F.2d at 1312. The Government offered no evidence to the contrary and accordingly, there was no evidence on which a reasonable jury could have concluded that the \$ 4500.00 represented a

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bribe paid to Burke in exchange for preferential treatment of Defendants' consulting clients.

In sum, the Government presented no evidence that Defendants "directly or indirectly gave or offered or promised something of value" to Burke and that the Defendants "did so knowingly and corruptly, with intent to influence an official act or to influence such public official (Burke) to allow or make opportunity with the commission of a fraud on the United States." (*See* Jury Instructions, Dkt. 58 at p. 14). Moreover, to the extent Burke's guilty plea and the facts he stipulated to in his plea agreement constituted a prior inconsistent statement supporting the bribery allegations, those prior inconsistent statements cannot suffice to support a conviction as to Defendants Spellissy and Strategic Defense International, Inc.

While Burke's plea agreement and guilty plea may have been appropriate impeachment material to assess Burke's credibility, it cannot and does not constitute substantial evidence as to each element of the bribery allegations against Spellissy and Strategic Defense International, Inc. from which a jury could find that those Defendants, as opposed to Burke, guilty beyond a reasonable doubt. *See United States v. Orrico*, 599 F.2d 113, 117-18 (6th Cir. 1979) (holding that only in the most unusual case can a prior inconsistent statement of a government witness alone suffice to support a conviction since it is unlikely that a reasonable juror could be convinced beyond a reasonable doubt by such evidence alone.)

*Appendix C***Alternative Motion for New Trial**

As to Defendants' alternative Motion for New Trial, "the Court need not view the evidence in the light most favorable to the verdict." *Martinez*, 763 F.2d at 1312. The Court may weigh the evidence and consider the credibility of the witnesses. *Id.*, citing *United States v. Lincoln*, 630 F.2d 1313, 1319 (8th Cir. 1980). The Court is mindful that motions for new trials based on the weight of the evidence are not favored and granted only sparingly, with caution. It is only the exceptional case which warrants a new trial and only where the credibility of the Government's witness has, as here, been impeached and the Government's case has, as here, been marked by uncertainties and discrepancies that a new trial is warranted. *United States v. Martinez, supra*; *United States v. Cox*, 995 F.2d 1041, 1043-1045, n.9 (11th Cir. 1993).

Here, the Government's key witness, William Burke, was impeached by the Government by virtue of his plea agreement and guilty plea. His credibility was shattered to the point that the Government argued to the jury during closing argument that it should completely disregard his testimony. As a result of Burke's testimony, in which he adamantly denied any criminal culpability and testified without contradiction that he performed legitimate services in exchange for payment by Defendants, the Government's case supporting Counts Four and Five (the Wire Fraud counts) as well as Counts Two and Three (the Bribery counts) is marked by uncertainties and discrepancies. Under these circumstances, the Court concludes as to all counts except Count One (Conspiracy),

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the evidence preponderates heavily against the guilty verdicts such that it would be a miscarriage of justice to let the guilty verdict stand. Where, as here, there is no direct proof of the Defendants' guilt as to Counts Two through Five and the Government's case depends on inference upon inference drawn from uncorroborated emails and invoices (no testimony) and the only Government witness with personal knowledge (Burke) denies any criminal culpability, a new trial is mandated as to the substantive counts charged in Counts Four and Five.¹

Finally, this Court is not permitted to and has not re-weighed the evidence and set aside the verdicts simply because it believes that some other result would have been more reasonable. Simply put, the Government's case in support of Counts Two through Five hinged on the anticipated favorable testimony of Burke. Through no fault of the Government, Burke's testimony contradicted the substantive allegations of the Indictment. To the extent the Government points to emails authored by the Defendants as proof of the substantive offenses, this Court finds and concludes that notwithstanding the abstract sufficiency of the evidence to sustain the guilty verdicts, given Burke's testimony, the evidence preponderates sufficiently heavily against the guilty verdicts such that a serious miscarriage of justice may have occurred. Under these circumstances, the guilty verdicts as to Counts Two through Five must be set aside and a new trial granted. (*See Martinez*, 763 F.2d at 1312) (despite abstract sufficiency of evidence to sustain

1. As discussed, the Conspiracy count stands supported by substantial evidence in the form of emails between the co-conspirators evidencing an agreement as charged in Count One.

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the verdict, where evidence preponderates sufficiently heavily against the verdict that a serious miscarriage of justice may have occurred, verdict must be set aside and a new trial granted), citing *United States v. Lincoln*, 630 F.2d 1313, 1319 (8th Cir. 1980).²

Accordingly, it is

ORDERED AND ADJUDGED:

1. Defendants' Joint Renewed Motion for Judgment of Acquittal pursuant to Rule 29(c) (Dkt. 65) is DENIED as to Counts One, Four and Five. The motion is GRANTED as to Counts Two and Three. The Verdict of guilt as to both Defendants on Counts Two and Three is set aside and a Judgment of Acquittal is entered as to both Defendants on Counts Two and Three.

2. Defendants' alternative Motion for New Trial pursuant to Rule 33 is GRANTED as to Counts Four and Five and DENIED as to Count One.

DONE AND ORDERED in chambers this 11th day of July, 2006.

/s/ James D. Whittemore
JAMES D. WHITTEMORE
United States District Judge

2. For these reasons, notwithstanding the grant of a judgment of acquittal as to Counts Two and Three, this Court conditionally determines that a new trial is warranted as to Counts Two and Three. *See* Rule 29(d)(1).