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AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

UNITED STATES DISTRICT COURT 2017 JUN 23 AM 10:15

for the  
Middle District of Florida

CLERK, US DISTRICT COURT  
MIDDLE DISTRICT OF FL  
ORLANDO, FLORIDA

Frank Louis Amodeo )

\_\_\_\_\_  
Petitioner )

v. )

Warden, Coleman (Low) )

\_\_\_\_\_  
Respondent )

(name of warden or authorized person having custody of petitioner)

Case No. 5:17-cv-284-De-10 PRL  
(Supplied by Clerk of Court)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: Frank Louis Amodeo
- (b) Other names you have used: Frank L. Amodeo, Frank Amodeo
2. Place of confinement:
  - (a) Name of institution: Federal Correctional Complex (Low)
  - (b) Address: Coleman, FL 33521
- (c) Your identification number: 48883-019
3. Are you currently being held on orders by:
 

Federal authorities     State authorities     Other - explain:
4. Are you currently:
 

A pretrial detainee (waiting for trial on criminal charges)

Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime

If you are currently serving a sentence, provide:

  - (a) Name and location of court that sentenced you: United States District Court for the Middle District of Florida, Orlando Division
  - (b) Docket number of criminal case: 6:08-cr-0176-Orl-JA-GJK
  - (c) Date of sentencing: 05/26/2009

Being held on an immigration charge

Other (explain): \_\_\_\_\_

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

**Decision or Action You Are Challenging**

5. What are you challenging in this petition:

- How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)
- Pretrial detention
- Immigration detention
- Detainer
- The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
- Disciplinary proceedings
- Other (explain): Any detention at all; factual innocence

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: U.S. District Court for the Middle District of Florida, Orlando Division

(b) Docket number, case number, or opinion number: 6:08-cr4-0176-Orl-JA-GJK

(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):  
Criminal Judgment

(d) Date of the decision or action: 05/26/2009

**Your Earlier Challenges of the Decision or Action**

7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

- Yes
- No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: United States Court of Appeals for the Eleventh Circuit, Atlanta, FA 30303

(2) Date of filing: \_\_\_\_\_

(3) Docket number, case number, or opinion number: \_\_\_\_\_

(4) Result: Affirmed

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

(b) If you answered "No," explain why you did not appeal: \_\_\_\_\_

**8. Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

Yes  No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Docket number, case number, or opinion number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

(b) If you answered "No," explain why you did not file a second appeal: I was too ill to file, and the court did not appoint counsel to assist me.

**9. Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

Yes  No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Docket number, case number, or opinion number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

(b) If you answered "No," explain why you did not file a third appeal: No further courts to appeal to.

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

Yes  No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

Yes  No

If "Yes," provide:

(1) Name of court: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Date of filing: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: 15 grounds were raised. See Appendix Volume 4, Appendix 4-\_\_.

Appendix 4 also contains the other §2255's which were filed.

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

Yes  No

If "Yes," provide:

(1) Name of court: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Date of filing: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

(c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: A claim of factual innocence is in-recognizable in §2255, instead it serves only to permit review of defaulted constitutional claims.

Pure sentencing error claims are in-cognizable under 28 W.S.C. §2255 unless the sentence exceeds a statutory maximum.

11. **Appeals of immigration proceedings**

Does this case concern immigration proceedings?

Yes  No

If "Yes," provide:

(a) Date you were taken into immigration custody: \_\_\_\_\_

(b) Date of the removal or reinstatement order: \_\_\_\_\_

(c) Did you file an appeal with the Board of Immigration Appeals?

Yes  No

If "Yes," provide:

(1) Date of filing: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Result: \_\_\_\_\_

(4) Date of result: \_\_\_\_\_

(5) Issues raised: \_\_\_\_\_

(d) Did you appeal the decision to the United States Court of Appeals?

Yes  No

If "Yes," provide:

(1) Name of court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Case number: \_\_\_\_\_

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

(4) Result: \_\_\_\_\_  
 (5) Date of result: \_\_\_\_\_  
 (6) Issues raised: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition? \_\_\_\_\_ These two grounds have not been raised in any other collateral motion although each was mentioned in the various §2255's. (Appendix 4)

Yes  No

If "Yes," provide:

(a) Kind of petition, motion, or application: \_\_\_\_\_

(b) Name of the authority, agency, or court: \_\_\_\_\_

(c) Date of filing: \_\_\_\_\_

(d) Docket number, case number, or opinion number: \_\_\_\_\_

(e) Result: \_\_\_\_\_

(f) Date of result: \_\_\_\_\_

(g) Issues raised: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Grounds for Your Challenge in This Petition**

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE:** Frank Amodeo is factually innocent of the five tax-related crimes for which he was convicted. The United States continued detention of a factually innocent person violates fundamental principles of American tradition. This court should order his immediate release and either vacate the criminal judgment or enjoin further enforcement of the judgment.

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

Frank Amodeo is afflicted with a rapid-cycling variant of Bipolar 1 Disorder that includes psychotic feature and chronic delusions. (Exhibit 1); (Appendices Vol. 1). Mr. Amodeo's disease manifests itself in a manner that negated his intent to commit the crimes and likely makes it impossible for him to form the intent (Appendices Vol. 1, Appendix 4).

I have provided an attachment with the heading Continuation Page: GROUND ONE. For ease of reading, GROUND ONE and the Supporting facts have been restated in its entirety on the attached Continuation Page.

(b) Did you present Ground One in all appeals that were available to you?

Yes  No

**GROUND TWO:** The sentencing court made significant errors in computing the advisory guideline range applicable to Mr. Amodeo's sentence. The sentencing court also erred in applying the 3553(a) calculus. These errors substantially increased Mr. Amodeo's sentence, thus Mr. Amodeo's sentence is excessive although within the statutory maximum.

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

At sentencing, the district court used a hypothetical guideline range that exceeded the statutory maximum sentence. Mr. Amodeo's maximum sentence was 300 months, his criminal history was Category II. A principled application of the Guidelines would have resulted in Mr. Amodeo base level being 39 or 38, both of the ranges comprise 300 months. Applying, Rule-of-Lenity principles (1) the level should start at 38.

I have provided an attachment with the heading Continuation Page: GROUND TWO. For ease of reading GROUND TWO and the Supporting facts have been restated in its entirety on the attached Continuation Page.

(b) Did you present Ground Two in all appeals that were available to you?

Yes  No

**GROUND THREE:** The indictment fails to identify a crime since the primary statute is divisible and the indictment does not allege the elemental facts for either variant of 26 U.S.C. §7202.

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

The core of Amodeo's convictions involves a corporation's (AEM, Inc.) non-payment of taxes that the corporation reported to the Internal Revenue Service. The government's indictment of Mr. Amodeo centers on a violation of 26 U.S.C. §7202, but does not set forth factual allegations that the statute was violated.

The tax statute (§7202) is a divisible statute, which means the text identifies two distinct crimes.

I have provided an attachment with the heading Continuation Page: GROUND THREE. For ease of reading, GROUND THREE and the Supporting facts have been restated in its entirety on the attached Continuation Page.

(b) Did you present Ground Three in all appeals that were available to you?

Yes  No

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

**GROUND FOUR:**

(a) Supporting facts *(Be brief. Do not cite cases or law.):*

(b) Did you present Ground Four in all appeals that were available to you?

Yes

No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not: Actual innocence is in-cognizable in other appeals and the sentencing errors were not raised on direct appeal as a results of counsel's deficient performance.

**Request for Relief**

15. State exactly what you want the court to do: Order immediate release, and either vacate the criminal judgment or enjoin its enforcement beyond the revised guideline range.



AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

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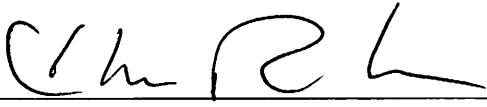
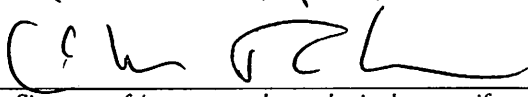
**Declaration Under Penalty Of Perjury**

If you are incarcerated, on what date did you place this petition in the prison mail system:

---

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: 6-22-17

  
*Signature of Petitioner*  
For Frank Amodeo  
  
*Signature of Attorney or other authorized person, if any*

**Continuation Page: GROUND ONE**

**GROUND ONE:** Frank L. Amodeo is factually innocent of the five tax-related crimes for which he was convicted. The United States continued detention of a factually innocent person violates fundamental principles of American tradition. This court should order his immediate release and either vacate the criminal judgment or enjoin further enforcement of the judgment.

**(a) Supporting facts:**

Frank Amodeo is afflicted with a rapid-cycling variant of Bipolar 1 Disorder that includes psychotic features and chronic delusions. (Exhibit "1"); (Appendices Vol. 1) Mr. Amodeo's disease manifests itself in a manner that negated his intent to commit the crimes and likely makes it impossible for Mr. Amodeo to form the intent (e.g., Appendices Vol. 1, Appx \_\_\_ and \_\_\_). An April 2017, psychological evaluation of Mr. Amodeo further supports this conclusion. (Exhibit "1")(Appendices Vol. 1, Appx. 1.4). Under the auspices of the Bureau of Prison and with input from Mr. Amodeo's treating doctor at the prison. (Id.), a member of the State of Florida psychiatric evaluation committee, Dr. Darlene Antonio conduct the second post-incarceration evaluation of Mr. Amodeo. The evaluation identifies that the prison conditions at Coleman helped stabilize Mr. Amodeo's condition, which in turn helped Mr. Amodeo recognize the pervasiveness of Mr. Amodeo's illness and helped the doctors in determining how the disease impairs Mr. Amodeo's perception of reality both now and before. Importantly, for the current proceeding, Mr. Amodeo's illness, effectively, manifests itself in a manner that forecloses his capacity to form the subjective specific intent to willfully violate a known legal or moral duty.

A conclusion supported by various eyewitnesses accounts (affidavits) and by security camera recordings that reveal a host of intent-negating events, as well as conduct or behavior the antithesis of guilt or deception. These events constitute absolute defenses to the particular crimes, that is, the events establish that an essential elements of each crime (mens rea) is missing. Without the mens rea, Mr. Amodeo is factually innocent not only of the crimes of conviction but also of any crime.

The extended incarceration of a factually innocent person is viscerally repulsive to an American citizen or to an adherent to the Rule of Law. This court should order Mr. Amodeo's immediate release, vacate, the criminal judgment, and enjoin the United States (or its agents and nominees) from any further restraint on Mr. Amodeo's liberty.

Mr. Amodeo recognizes as a ward of the State of Florida that he remains under the custody and jurisdiction of his state guardian and guardianship.

**Continuation Page: GROUND TWO**

**GROUND TWO:** The sentencing court made significant errors in computing the advisory guideline range applicable to Mr. Amodeo's sentence. The sentencing court also erred in applying the §3553(a) calculus. These errors substantially increased Mr. Amodeo's sentence, thus Mr. Amodeo's sentence is excessive although within the statutory maximum.

**(a) Supporting facts:**

At sentencing, the district court used a hypothetical guideline range that exceeded the statutory maximum sentence. Mr. Amodeo's maximum sentence was 300 months, his criminal history was Category II. A principled application of the Guidelines would have resulted in Mr. Amodeo base level being 39 or 38, both of the ranges comprise 300 months. Applying, Rule-of-Lenity principles (1) the level should start at 38. That is, the guideline becomes the statutory maximum. From that level of 38, the district court should have removed 3 levels for acceptance of responsibility and 4 levels for Mr. Amodeo's substantial assistance, which saved the United States more than 5 million dollars in investigative costs, and prevented the prosecution of more than three dozen innocent individuals. Furthermore, the district court incorrectly enhanced Mr. Amodeo both for the number of victims and the violation of a fiduciary duty.

Compensating for the 2 or 3 extra levels originally imposed, Mr. Amodeo correct sentencing range would have been level 30 Criminal History II. [Level 41 - 11 including the odd above maximum hypothetical] [proper maximum of 38 - 8] This translates to a (38-8) sentencing range of 108 months to 135 months. At sentencing, the district court reduced the sentence by 10% because of Mr. Amodeo's diminished capacity. Once more the district court misperceived how the guidelines advise a district court to inculcate mental illness into the sentencing calculus. Under the commentary, the district court should have reduced the sentence by a greater percentage at least 25%. Accordingly, Mr. Amodeo's sentence should be between 77 months and 103 months.

This court should reform Mr. Amodeo's sentence to the correct guidelines ranges, and direct his release in order that Mr. Amodeo may pursue his factual innocence challenge either in an extended habeas action or via coram nobis or another extraordinary procedure.

**Continuation Page: GROUND THREE**

**Ground Three:** The indictment fails to identify a crime since the primary statute is divisible and the indictment does not allege the elemental facts for either variant of 26 U.S.C. §7202.

(a) Supporting facts:

The core of Amodeo's convictions involves a corporation's (AEM, Inc) non-payment of taxes that the corporation reported to the Internal Revenue Service. The government's indictment of Mr. Amodeo centers on a violation of 26 U.S.C. §7202, but does not set forth factual allegations that the statute was violated.

The tax statute (§7202) is a divisible statute, which means the text identifies two distinct crimes. One means to violate the statute is to refuse to collect the taxes. The other variant requires a failure to report and a failure to pay over. 26 U.S.C. §7202.

The indictment does not allege that AEM, Inc. (or Amodeo) failed to collect the tax, hence that option for validating the indictment fails. Also, the indictment does not allege that AEM, Inc. (or Amodeo) failed to report the tax, thus the second variant of §7202 also is not identified. Stated otherwise, the indictment alleges only non-payment (deferred) payment, not nonreporting.

On the existing record, including the indictment and the plea's factual basis, no crime has occurred. This court should order to Mr. Amodeo's release.

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