UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

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| UNITED STATES OF AMERICA, | ) | |
| | ) | |
| v. | ) | |
| | ) | CR No. 20-74-MSM |
| DAVID STAVELEY, | ) | |
| Defendant. | ) | |
| | ) | |

**UNITED STATES' RESPONSE IN OPPOSITION TO PETITIONER'S MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY**

Predicated on a claim that his trial attorney, Jason P. Knight, Esq., provided him with ineffective assistance of counsel in the course of negotiating and advising him to accept a plea bargain in the above-captioned matter, petitioner David Staveley ("defendant" or "Staveley") now seeks to vacate his convictions for bank fraud conspiracy and failing to appear in court as required. For the reasons set forth below, the United States of America (the "government") hereby opposes Staveley's motion to vacate and asks that the Court deny it.

**A. Factual Background**

In order to orient the Court to the context of defendant's § 2255 claims, the government sets forth the version of the facts contained in the Presentence Report prepared by Probation in this case (ECF No. 46, at ¶¶ 17-27):

> David Staveley ("Staveley") and his co-conspirator David Butziger ("Butziger") conspired to defraud BankNewport by submitting false and fraudulent loan applications under the federal Paycheck Protection Program ("PPP"). The PPP was enacted by Congress on March 29, 2020, as part of the Coronavirus Aid, Relief, and Economic Security ("CARES") Act designed to provide emergency financial assistance to the millions of Americans who are suffering the economic effects caused by the COVID-19 pandemic. The PPP program authorized billions of dollars in forgivable loans – that is loans that would be repaid to the banks by the government instead of the borrower -to small businesses for job retention and certain other expenses.
>
> Staveley and Butziger conspired to submit four fraudulent PPP loan applications to BankNewport in April 2020. In each of these applications, Staveley and Butziger falsely

represented those different businesses had significant numbers of employees and large monthly payrolls when they did not. First, on or about April 6, 2020, Staveley, in the name of his brother Gregg Sanborn, submitted a loan application under the PPP to BankNewport on behalf of Oakland Beach Restaurant Group LLC, d/b/a “Top of the Bay.” The loan application was in the amount of $185,750 and fraudulently represented that Oakland Beach Restaurant Group, LLC had 26 employees and an average monthly payroll of $53,000 at the Top of the Bay restaurant in Warwick, R.I. In truth and in fact, although Staveley had been in negotiations to purchase the Top of the Bay restaurant, he never did so and had no employees and no payroll whatsoever.

On or about April 14, 2020, Staveley submitted to BankNewport an IRS 941 Form in support of the PPP application of Oakland Beach Restaurant Group LLC, d/b/a “Top of the Bay.” The 941 Form fraudulently listed wages for Oakland Beach Restaurant Group, LLC, to be $158,723.52 for the first quarter of 2020 when, in truth and in fact, no wages were paid whatsoever in this period. Emails between Butziger and Staveley show that Butziger knowingly created the false and fraudulent 941 Form that Staveley submitted to BankNewport.

On or about April 6, 2020, Staveley, in the name of his brother Gregg Sanborn, submitted a loan application under the PPP to BankNewport on behalf of Apponaug Restaurant Group LLC, d/b/a “Remington House.” The loan application was in the amount of $144,050 and fraudulently represented that Apponaug Restaurant Group, LLC had 18 employees and an average monthly payroll of $46,000. In truth and in fact, the Remington House restaurant had been closed since November 2018 and Apponaug Restaurant Group, LLC had no employees whatsoever.

On or about April 10, 2020, Staveley submitted to BankNewport an IRS 941 Form in support of the PPP application of Apponaug Restaurant Group LLC, d/b/a “Remington House.” The 941 Form Staveley fraudulently listed wages for Apponaug Restaurant Group LLC to be $138,000 for the first quarter of 2020 when, in truth and in fact, no wages were paid whatsoever in this period. Emails between Butziger and Staveley show that Butziger knowingly created the false and fraudulent 941 Form that Staveley submitted to BankNewport.

On or about April 6, 2020, Butziger submitted a loan application under the PPP to BankNewport in his own name on behalf of an unincorporated entity that he called Dock Wireless. The loan application was in the amount of $105,381.50 and fraudulently represented that Dock Wireless had 7 employees and an average monthly payroll of $42,152.60. In truth and in fact, Dock Wireless had no employees whatsoever and no wages were ever paid by Dock Wireless.

On or about April 6, 2020, Staveley, in the name of his brother Gregg Sanborn, submitted a loan application under the PPP to BankNewport on behalf of New Flat Penny LLC, d/b/a “On The Trax,” a restaurant in Berlin, MA. The loan application was in the amount of $108,777.50 and fraudulently represented that New Flat Penny, LLC had 22 employees and an average monthly payroll of $36,000. In truth and in fact, although New

Flat Penny did own and operate the On the Trax restaurant in 2019 and the beginning of 2020, the On The Trax restaurant was closed permanently on about March 10, 2020 after its liquor license was revoked. New Flat Penny, LLC had no employees whatsoever when the PPP application was submitted.

On or about May 5, 2020, defendant David Staveley appeared before the Hon. Magistrate Judge Lincoln D. Almond, District of Rhode Island, on a Criminal Complaint charging Staveley with federal charges related to the PPP fraud. The Court released Staveley on a personal recognizance bond and set numerous conditions for Staveley's pretrial release. On or about May 11, 2020, the Court temporarily modified defendant's pretrial release conditions to include the conditions of home confinement with electronic monitoring.

On or about May 20, 2020, the Court scheduled a preliminary hearing and a hearing on the Government's motion to modify defendant's pretrial release conditions to take place on June 2, 2020.

On or about May 26, 2020, defendant Staveley removed the electronic monitoring device from his body and fled. In an effort to deceive law enforcement into believing that he had died, Staveley staged his suicide by, among other things, leaving suicide notes with associates and in his car, which he left unlocked and parked by the Atlantic Ocean. 27. From on or about May 26, 2020, to July 23, 2020, in an effort to avoid apprehension, defendant Staveley traveled to various States using false identities and stolen license plates. He was apprehended by the United States Marshals Service in Alpharetta, Georgia on July 23, 2020. Defendant Staveley did not appear as directed at the court hearing scheduled on June 2, 2020.

**B. Travel of the Case**

1. Preindictment. Based on the above conduct, the government sought an arrest warrant and complaint for the defendant and his codefendant. (ECF No. 3). The defendant was arrested on that warrant on May 5, 2020. Initially, the defendant was released (by Magistrate Judge Almond) on unsecured bond with conditions. The Court appointed attorney George J. West to represent the defendant. On May 29, 2020, the Court admitted attorney Mark Josephs *pro hac vice* to represent the defendant. Attorney West was allowed to withdraw.

On June 2, 2020, the defendant failed to appear for a preliminary hearing and fled the jurisdiction. An arrest warrant was again issued for the defendant.

On July 24, 2020, the defendant was arrested in Atlanta in the Northern District of Georgia. On August 5, 2020, the defendant appeared before Judge Almond via video, who ordered him detained.

On September 2, 2020, a federal grand jury indicted the defendant on seven counts: conspiracy to commit bank fraud; three counts of bank fraud; one count of making false statements to the SBA in reference to a loan application; aggravated identity theft; and failing to appear in court as required.

2. Postindictment. Attorney Josephs moved to withdraw from the matter on January 6, 2021. Shortly thereafter, Judge Almond granted that motion, and attorney West was reappointed as Mr. Staveley's attorney. On March 1, 2021, attorney Jason P. Knight entered his appearance for the defendant, and Mr. West was again allowed to withdraw.

*Change of Plea and Sentencing.* On May 17, 2021, pursuant to a plea agreement (ECF No. 42), Staveley pled guilty to counts 1 and 7 of the indictment. During that hearing, he agreed that the following facts, recited by the prosecutor, were true:

> This Defendant, David Staveley, and his co-conspirator, David Butziger, conspired to defraud Bank Newport by submitting false and fraudulent loan applications under the federal Paycheck Protection Program that was created by Congress in response to the coronavirus crisis.
>
> The PPP program or the Paycheck Protection Program authorized billions of dollars in forgivable loans, that is, loans that would be repaid to the banks by the Government instead of the borrower, the small businesses, for the purpose of job retention and certain other expenses. Mr. Staveley and Mr. Butziger conspired to submit four fraudulent PPP loan applications to Bank Newport in April of 2020. On each of these applications, Mr. Staveley and Mr. Butziger falsely represented that different businesses had significant numbers of employees and large monthly payrolls when they did not.
>
> First, on April 6th of 2020, Mr. Staveley, in the name of his brother, Greg Sanborn, submitted a loan application under the PPP to Bank Newport on behalf of an entity called Oakland Beach Restaurant Group LLC, doing business as Top of the Bay. The loan application was in the amount of $185,750 and fraudulently represented

that Oakland Beach Restaurant Group LLC had 26 employees and an average monthly payroll of $50,000 at the Top of the Bay restaurant in Warwick.
In truth, although Mr. Staveley had been in negotiations to purchase the Top of the Bay restaurant, he never did so and had no employees or payroll at all at this location. In furtherance of this application, Mr. Staveley submitted to Bank Newport an IRS 941 form. That form fraudulently listed wages for Oakland Beach Restaurant Group to be $158,723.52 for the first quarter of 2020 when, in fact, no wages were paid during this period. Co-Defendant David Butziger knowingly created this false and fraudulent 941 form that Mr. Staveley then submitted to Bank Newport.

Also, on or about October -- excuse me, on or about April 6th of 2020, Mr. Staveley, again in the name of his brother, Greg Sanborn, submitted a loan application under the PPP to Bank Newport on behalf of the entity Apponaug Restaurant Group LLC, doing business as Remington House. The loan application was in the amount of $144,050 and fraudulently represented that Apponaug Restaurant Group had 18 employees and an average monthly payroll of $46,000. In truth and in fact, the Remington House restaurant had been closed since November of 2018 and Apponaug Restaurant Group had no employees. In furtherance of his application, Mr. Staveley submitted to Bank Newport an IRS 941 form that fraudulently listed wages of that entity, Apponaug Restaurant Group, to be $138,000 for the first quarter of 2020 when, in fact, no wages had been paid. The Co-Defendant, David Butziger, knowingly created this false and fraudulent 941 form that Mr. Staveley then submitted to Bank Newport.

On or about April 6th of 2020, Mr. Butziger submitted a loan application under the PPP to Bank Newport in his own name on behalf of an unincorporated entity that he called Dock Wireless. That loan application was in the amount of $105,381.50 and fraudulently represented that Dock Wireless had seven employees and an average monthly payroll of $42,152 when, in fact, Dock Wireless had no employees at all.

Finally, on or about, again, April 6th of 2020, Mr. Staveley, in the name of his brother, Greg Sanborn, submitted a loan application under the PPP to Bank Newport on behalf of New Flat Penny LLC, doing business as On The Trax, a restaurant in Berlin, Massachusetts. The loan application was for $108,777.50 and fraudulently represented that New Flat Penny had 22 employees and an average monthly payroll of $36,000. In truth, although New Flat Penny did own and operate the On The Trax restaurant in 2019 and the beginning of 2020, the On The Trax restaurant was closed permanently on or about March 10th of 2020 after its liquor license was revoked.

On or about May 5th, 2020, Mr. Staveley appeared before Honorable Magistrate Lincoln D. Almond in this court on a criminal complaint charging him with offenses related to his PPP fraud. The Court set Mr. Staveley – released Mr. Staveley on personal recognizance bond and set numerous conditions for Mr. Staveley's pretrial release. On or about May 11th, 2020, on a motion – on motion from the Government, the Court modified Defendant's pretrial release conditions to include the conditions of home confinement with electronic monitoring. On May 20th of

> 2020, the Court scheduled a preliminary hearing and a hearing on the Government motion to modify the Defendant's pretrial release conditions and scheduled that hearing to take place on June 2nd of 2020.
>
> On May 26th of 2020, Mr. Staveley removed the electronic monitoring device from his body and fled. In an effort to deceive law enforcement into believing that he had died, Mr. Staveley staged his suicide by, among other things, leaving suicide notes with associates and family members and in his car, which he left unlocked and parked by the Atlantic Ocean.
>
> From on or about May 25th of 2020 to July 23rd of 2020, in an effort to avoid apprehension, Mr. Staveley traveled to various states in this country using false identities and stolen license plates. Mr. Staveley did not appear as directed at the court hearing that had been scheduled for June 2nd of 2020. An arrest warrant was issued for the defendant, who was apprehended by the United States Marshals Service in Alpharetta, Georgia, on July 23rd of 2020.

During the defendant's change of plea hearing, the defendant admitted that all of the above facts were true. See ECF No. 68, at pp. 25-26. The Court set sentencing for August 2, 2021, but due to continuances requested by the defendant and rescheduling done by the Court, sentencing ultimately took place on October 7, 2021. Following the Sentencing Guidelines, the Court sentenced the defendant to a total of 56 months incarceration, with three years of supervised release to follow.

3. <u>The 2255 and Attorney Knight's Response</u>. On August 29, 2022, the defendant filed the instant petition pursuant to 18 U.S.C. §2255. The defendant put forth four grounds in his petition, for the most part asserting ineffective assistance of counsel claims. His claims appear to argue that counsel was ineffective in advising the defendant to plead guilty, and in preparation for sentencing.

On November 4, 2022, at the request of the government, attorney Knight responded in writing (in a letter to the assigned AUSA in this case) as to the allegations being put forward by the defendant in his petition. That letter is attached as Exhibit 1 to this memorandum, and is summarized in the following paragraphs:

*Discovery Review.* Knight noted that he entered his appearance for the defendant on March 1, 2022. Given the nature of the allegations in the indictment (white collar PPP fraud), Knight reviewed an "enormous amount" of discovery, involving many hours of review. This review took place primarily in March and April of 2021. Knight visited the defendant (who was detained at Wyatt) on ?# occasions? During those visits, Knight discussed the strength of the evidence and the legal issues at length with the defendant. Knight also addressed issues of mitigation and the role of a previous attorney in his discussions with the defendant.

On April 20, 2022, and pursuant to Wyatt's rules for evidence distribution and viewing by defendants, Knight arranged for the delivery of all of the discovery in the case to Mr. Staveley. Under Wyatt's rules, it is the defendant's obligation to make arrangements with Wyatt to view the discovery. The defendant did not make these arrangements in a timely fashion.

*Plea Negotiations.* At one point, the prosecutor offered a plea arrangement to Knight – with a deadline to reply - but Knight responded that he needed more time to review the evidence. The prosecutor acceded to that request. Subsequently, the prosecutor made another plea offer to Knight that was more favorable to the defendant, including an extended deadline and the offer to dismiss five of the seven counts of the indictment. The offer Knight obtained included the dismissal of count 8, which charged the defendant with aggravated identity theft (18 U.S.C. §1028A), which carries a mandatory consecutive two-year prison sentence.

Knight visited the defendant on two occasions to discuss this plea offer, May 4 and 6, 2021. On the May 4th visit, Knight reviewed in detail several key pieces of evidence, including:

- A video recording of the cooperating codefendant's proffered testimony;
- Police reports;
- Emails; and

- Financial documents.

Mr. Knight informed the defendant of his opinion that the defendant would most likely be convicted of the fraud charges after trial, and that he would almost certainly be convicted of the failing to appear charge, which also carried a mandatory consecutive sentence. He also informed the defendant that if he accepted the plea offer, the aggravated identity theft charge would be dismissed, and that his sentence would be subject to the advisory sentencing guidelines. Finally, he noted that the sentencing judge was a former public defender, who might be open to the defendant's claims of experiencing trauma from alleged assaults by a correctional officer during a prior period of incarceration for a different charge.

Knight and the defendant made plans to meet again on May 6, 2022. On that date, the defendant told Knight he had decided to sign the plea agreement, which he did. Knight explained that, despite signing that document, the defendant was free to change his mind at any time prior to changing his plea. Thereafter, on May 17, 2022, the defendant appeared before the Court and, pursuant to the plea agreement negotiated by Mr. Knight, pled guilty to counts 1 (bank fraud conspiracy) and 7 (failing to appear in court) of the indictment.

*Sentencing and Appellate Court proceedings.* On October 7, 2021, Judge McElroy sentenced the defendant to 56 months in prison and 3 years of supervised release.

After being sentenced, the defendant appealed his conviction to the First Circuit Court of Appeals. Primarily, the defendant claimed that the appeal waiver agreed to in the plea agreement was not enforceable due to the ineffective assistance of his counsel. On August 2, 2022, the First Circuit dismissed the appeal without prejudice, holding that the defendant needed pursue a §2255 petition before the district court first prior to filing an appeal. *United States v. Staveley,* 43 F.4th 9 (1st Cir. 2022). Thereafter, on August 29, 2022, the defendant filed in this court his §2255 petition.

As to the defendant's waiver of appeal in this case, the First Circuit concluded that the defendant's plea was knowing and voluntary. "Here, the plea agreement and the transcript of the change-of-plea colloquy make manifest that the defendant's waiver of appellate rights is presumptively valid. The plea agreement contains a clear statement elucidating the waiver and delineating its scope…. The change-of-plea colloquy reflects that the district court's questioning anent the waiver was unimpugnable." *Staveley,* 43 F.4th at 14.

**C. <u>Defendant's § 2255 motion should be denied as meritless</u>.**

In his § 2255 motion (ECF No. 79),[1] Staveley raises four claims relating to Attorney Knight's performance. The claims overlap with each other to a great extent. Some are explicitly refuted by the existing record; others are easily rejected after applying a modicum of common sense. After setting forth the relevant legal standards, the government will summarize and discuss each claim as defined by its factual assertions, and will combine defendant's scattered claims involving the same allegation into a single assertion where it makes sense to do so.

1. <u>Legal standards</u>

At the outset it is useful to bear in mind some of the legal principles that form the framework for deciding Staveley's motion to vacate. Section 2255 of Title 28 acts as a "'surrogate for the historic writ of habeas corpus.'" *Rivera-Rivera v. United States*, 844 F.3d 367, 372 (1st Cir. 2016) (quoting *Ellis v. United States*, 313 F.3d 636, 641 (1st Cir. 2002)). "A petitioner in federal custody may seek post-conviction relief if, *inter alia*, "his sentence 'was imposed in violation of the Constitution or laws of the United States' or 'is otherwise subject to

[1] The government cites to the motion to vacate according to the pages assigned in the ECF system rather than the pages of the document itself.

collateral attack.'" *Wilder v. United States*, 806 F.3d 653, 658 (1st Cir. 2015) (quoting 28 U.S.C. § 2255(a)) (italics added).

As petitioner, Staveley bears the burden of proof. *Id.* (citing *David v. United States*, 134 F.3d 470, 474 (1st Cir. 1998)). In determining whether Staveley has met his burden, this Court does not have to assign any weight to "conclusory allegations, self-interested characterizations, discredited inventions, or opprobrious epithets." *United States v. McGill*, 11 F.3d 223, 225 (1st Cir. 1993). Moreover, having presided over prior proceedings in the case, the Court "is at liberty to employ the knowledge gleaned during [those] proceedings and make findings based thereon without convening an additional hearing." *Id.* It is thus appropriate for this Court to determine the merits of Staveley's motion on the papers without holding an evidentiary hearing. *Id.*

To prevail on his claims of ineffective assistance of counsel, Staveley must meet both parts of the two-prong test announced in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Under the first, or "performance," prong, Staveley has to prove that his defense attorney's representation fell below an objective standard of reasonableness, as judged by reference to prevailing professional norms, and as viewed as of the time of defense counsel's actions rather than through the lens of hindsight. *Id.* at 687-90. "Reviewing courts 'must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance' and represents sound trial strategy." *Jewett v. Brady*, 634 F.3d 67, 75 (1st Cir. 2011) (quoting *Strickland*, 466 U.S. at 689). To overcome the strong presumption that his defense counsel acted competently, Staveley must demonstrate that, given the facts he knew at the time, any strategic choices Attorney Knight made were "'so patently unreasonable that no competent attorney would have made [them].'" *United States v. Rodriguez*, 675 F.3d 48, 56 (1st Cir. 2012) (citation omitted).

The second, so-called "prejudice," prong requires Staveley to demonstrate that there is a reasonable probability that, but for his attorney's unprofessional errors, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 694. This Court does not have to address both of the *Strickland* prongs if the evidence supporting either one of them falls short. *Sleeper v. Spencer*, 510 F.3d 32, 39 (1st Cir. 2007) (citing *Strickland*, 466 U.S. at 697).

The *Strickland* standards apply in the context of a guilty plea as well as a trial. *United States v. Cobb*, 350 F. Supp. 3d 64, 70 (D.R.I. 2018) (citing *Hill v. Lockhart*, 474 U.S. 52, 57 (1985). The first prong of *Strickland* is "just a restatement of the standard of attorney competence" the government has already outlined. *Id.* (citing *Hill*, 474 U.S. at 58). The prejudice prong of *Strickland*'s analysis focuses in the guilty plea context on whether defense counsel's constitutionally ineffective performance created the reasonable probability that, but for the attorney's errors, defendant would have refused to plead guilty and would have insisted instead on going to trial. *Id.* at 70-71 (citing *Hill*, 474 U.S. at 59, and *Lafler v. Cooper*, 566 U.S. 156, 163 (2012)). Here, it should be noted, the defendant never states that he would have pursued the option of going to trial. Furthermore, because of the high value that the judicial system places on finality, the scope of a § 2255 motion based on the validity of a conviction under a guilty plea is "'ordinarily confined to whether the underlying plea was both counseled and voluntary.'" *Id.* at 71 (citations omitted).

2. Analysis of Staveley's § 2255 Claims

*(a) Did counsel provide unreasonable performance in obtaining discovery for the defendant in the case?*

Staveley first claims that Attorney Knight rendered ineffective assistance by having him plead guilty when he had not received or reviewed discovery. (ECF No. 79, at 4) (Ground One).

It is well established that this Court's scrutiny of defense counsel's performance must be "'highly deferential.'" *United States v. Valerio*, 676 F.3d 237, 246 (1st Cir. 2012) (quoting *Strickland*, 466 U.S. at 689). In that regard, this Court must presume that Attorney Knight's conduct "'f[e]ll[] within the wide range of reasonable professional assistance,'" unless Staveley can establish that, given the facts Knight knew at the time of sentencing, his actions were "'so patently unreasonable" that "'no competent attorney'" would have chosen those courses of action. *Id.* (quoting *Knight v. Spencer,* 447 F.3d 6, 15 (1st Cir.2006) (internal quotation marks omitted)). The government submits that Staveley's ill-informed, self-serving, and conclusory assertions about defense counsel's conduct fall far, far short of establishing that counsel's actions were "patently unreasonable." *See McGill*, 11 F.3d at 225.

In the main, Staveley's complaining that Mr. Knight did not provide discovery to him is patently untrue. Here, as his letter submission makes clear, attorney Knight obtained and reviewed all of the discovery in the case from the government. Following the Wyatt's procedures, he took all the steps he could to ensure that the defendant could access the discovery from Wyatt. He spent hours reviewing the discovery with the defendant. At this point, there was nothing further he could do to submit the materials to Mr. Staveley. Thus, nothing here fell short of Strickland's reasonableness standard.

*(b) Was counsel's performance in the scheduling of sentencing unreasonable?*

Defendant's second claim (Ground Two) is more difficult to understand. In general, the claim states that counsel engaged in a "Failure to seek a continuance at sentencing." The defendant never makes clear why a continuance should have been sought, or what benefit there would have been to give one. In any event, on July 14, 2021, Mr. Knight moved to continue the sentencing. ECF No. 44. That motion was granted on the following day, July 15, 2021. Sentencing was continued for nearly three months to October 7, 2021. Thus, there was no failure to seek a continuance.

The defendant further claims that comments made at the sentencing hearing by the AUSA were somehow untrue or prejudicial to him. During the proceedings, the defendant had raised issues relating to his allegations that, several years before the crimes in this case had even been committed, and while he was serving a sentence in a different case, the defendant had been sexually assaulted by a correctional officer. During the sentencing hearing in this case, that issue came up, and the AUSA said:

> I don't really think it's appropriate for me in this venue to talk about the allegations that the Defendant made in the past. All I would say on that point, your Honor, is reading through the presentence report, there's a lot of mixed information on that and it's very unclear. I'm not saying it didn't happen, I just don't know; and I don't think the Court can just accept this Defendant's word that that happened. It may have; if it did, you know, I'm deeply sorry and I can't imagine how horrible it is, but there's no factual basis one way or the other. The thing that's always kind of jumped out to me about this particular Defendant and, you know, and different than a lot of other defendants in certain ways, he seems to constantly be playing the victim and blaming other people for his conduct. I was really struck in the presentence report where he told the Probation Department that he committed this crime of submitting, immediately when the funds became available submitting these false loan applications because he was going through a bad, he was in a bad relationship and that led to trauma and that led him to make this decision. And I mean obviously there's no connection between the two. This crime was just pure greed.

Comments of AUSA Vilker at Sentencing Hearing, ECF No. 69, at 21-22.

The defendant complains that the prosecutor here was calling him a liar about his sexual assault allegations. That is a misreading of what the AUSA said, which was simply to focus the Court's attention on the defendant's failure to accept genuine responsibility for his crimes.

There is nothing unreasonable about these comments, and certainly nothing present in them that would establish that Mr. Knight's performance fell below the standard of reasonableness.

The defendant's final two grounds (three and four) can be resolved more quickly:

*(c) Was counsel's performance unreasonable when counsel did not file postconviction motions that the defendant wanted to pursue, despite counsel only provisionally representing him?*

This claim appears to be much ado about nothing. The defendant complains about Mr. Knight's conduct in not filing postconviction motions he wanted filed after sentencing. After the defendant pled guilty and was sentenced, the First Circuit directed Mr. Knight to continue to represent the defendant until he was relieved of such duty by the Court of Appeals. (ECF 79 at p. 89). Not long thereafter, the First Circuit appointed attorney Kara Hoopis Manosh, Esq. to represent him during the pendency of the appeal. During this time, Mr. Knight ensured that the defendant's rights were protected by the proper filing of a notice of appeal in the appellate case. As stated earlier in this memorandum, the defendant's appeal was pursued by attorney Manosh, until it was dismissed without prejudice by the First Circuit. Thus, not only did Mr. Knight behave reasonably regarding this ground, but there was absolutely no prejudice to the defendant's legal interests by anything counsel did.

*(d) Did counsel act unreasonably in his billing practices in this case?*

The defendant here complains in detail regarding the defendant's billing in this case. The payments in this matter seem to have been the simple result of a free bargain agreed to by the defendant (and his attorney), on terms that were communicated to him by counsel. What is missing from his complaint is any real allegation that there was any substantive fraud or deception. Regarding the signature affixed by Mr. Knight, his explanation that he had authorization to sign the document is reasonable, and in any event the defendant never suffered any prejudice by the date on their agreement being filled on a later date.

**3.** Prejudice. For similar reasons, Staveley cannot succeed on the prejudice prong of *Strickland*. To state the obvious, the defendant never points to any way in which Mr. Knight's representation was affected by his supposed errors. Noticeably absent from defendant's petition is any assertion of what the defendant would have done differently had Mr. Knight not committed the alleged errors. Defendant does not claim that he would not have pled guilty had Mr. Knight done anything differently. Nor does defendant now claim that he is innocent or would like to withdraw his plea of guilty. This is because the evidence against defendant was absolutely overwhelming, including emails with his co-conspirator discussing the creation of "bullshit" tax forms, the fact that defendant had no ownership interest at all in one of the businesses for which he sought a PPP loan and the absence of any defense to the charge that he fled the jurisdiction and failed to appear in court. None of the alleged errors by Mr. Knight, even assuming they occurred, caused any prejudice to defendant. Mr. Knight did the best he could for a defendant faced with insurmountable evidence by negotiating a favorable plea agreement on defendant's behalf.

The defendant here was offered and accepted a plea agreement that was much more lenient than the sentence he would have received after conviction, which would have included (at a minimum) a consecutive sentence on the §1028A *of two years*. Had the case gone to trial, he was looking at a maximum sentence of extreme length. The PSR calculated the defendant's guidelines to be a minimum of 70 months and a maximum of 87 months. Given his criminal history of similar fraudulent offenses, the defendant was extremely fortunate to only be sentenced to the 56 months he eventually received. Once again, Staveley has failed to overcome the strong presumption that, based upon what Knight knew at the time, his actions were "'so patently unreasonable" that "'no competent attorney'" would have chosen them. *Valerio*, 676 F.3d at 246.

### D. Conclusion

For these reasons, Staveley's § 2255 motion to vacate his conviction should be denied.

Respectfully submitted,

UNITED STATES OF AMERICA
By its Attorney,

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United States Attorney

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CERTIFICATION OF SERVICE

On this 1st day of December, 2022, I caused the within Response in Opposition to be filed electronically and it is available for viewing and downloading from the ECF system. A copy of the foregoing filing was mailed via First Class mail to the following inmate:

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