

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA (NORFOLK)**

UNITED STATES OF AMERICA,	§	Civil No.
	§	
Respondent-Plaintiff,	§	Crim. No. 2:16-CR-00006-HCM-DEM-1
	§	
v.	§	
	§	
ANTHONY BURFOOT,	§	
	§	
Petitioner-Defendant.	§	

**MOTION TO VACATE, CORRECT, OR SET ASIDE
SENTENCE PURSUANT TO 28 U.S.C. §2255**

COMES NOW, the Petitioner herein, ANTHONY BURFOOT, by and through the undersigned counsel, and moves this Honorable Court to vacate the conviction, and sentence heretofore imposed. Mr. Burfoot respectfully submits that the events which transpired in the instant case constituted a denial of Mr. Burfoot's constitutional right to effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution. Additionally, the Prosecution committed misconduct throughout the course of Mr. Burfoot's trial and appellate proceedings. Further, Mr. Burfoot contends that the trial court sentenced him to a sentence which was substantively and unreasonable and greater than necessary under 18 U.S.C. §3553.

These errors were not merely procedural, but substantially infringed upon Mr. Burfoot's constitutional rights. At a minimum, Mr. Burfoot requests a hearing be held on these issues.

In support hereof, Mr. Burfoot states the following:

1. A grand jury charged Mr. Burfoot in an eight-count indictment with (1) conspiracy to commit honest-services wire fraud, in violation of 18 U.S.C. §1349; (2) honest-services wire fraud, in violation of 18 U.S.C. §1343; (3) conspiracy to obtain property under color of official right ("Hobbs Act extortion"), in violation of 18 U.S.C. §1951; (4) Hobbs Act extortion, in violation of 18 U.S.C. §1951; and (5) four counts of perjury, in violation of 18 U.S.C. §1623. After a five-week trial, a jury found Mr. Burfoot guilty on six of the eight counts, while acquitting him on two of the perjury counts. The district court denied Mr. Burfoot's post-trial motions for a judgment of acquittal or a new trial and sentenced Mr. Burfoot to six years in prison.
2. After a five-week jury trial, Anthony L. Burfoot was convicted of wire fraud, extortion under color of official right, conspiracy to commit such offenses, and two counts of perjury. The wire fraud, extortion, and conspiracy charges stemmed from allegations of solicitation of bribes from local real estate developers while serving on the city council in Norfolk, Virginia. And he was charged with perjury following his testimony in another trial in which he denied soliciting or accepting bribes.
3. On appeal, in the United States Court of Appeals for the Fourth Circuit, Case No. 17-4266, Mr. Burfoot contended that the district court erred in denying his Federal Rule of Criminal Procedure 29 motions for a judgment of acquittal where he challenged the sufficiency of the evidence for all six counts of conviction and argued that the substantive Hobbs Act extortion count was defective. He also argues that the district court erred in denying his Federal Rule of Criminal Procedure 33 motions for a new trial on the basis of inadmissible testimony, newly discovered evidence, and the jury's failure to fully deliberate.

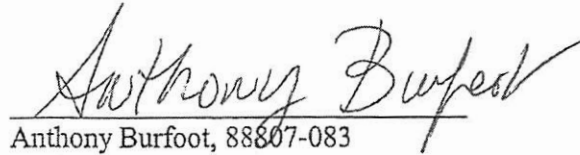
4. On May 8, 2018, Mr. Burfoot's case was argued in the Court of Appeals and on August 8, 2018, the case was decided. The Court of Appeals held that: The jury clearly found that defendant solicited bribes from local real estate developers while serving on city council, and there was sufficient evidence to show that defendant engaged in bribery; [2]-The district court properly denied defendant's motion to acquit him of honest-services wire fraud and conspiracy to commit wire fraud under 18 U.S.C.S. §1343, §1349 because it was reasonably foreseeable that an interstate wire transfer would be used to pay a company's delinquent taxes, and substantial evidence supported the jury's finding that the use of an interstate wire transfer to pay those delinquent taxes was part of the scheme to defraud; [3]-The Hobbs Act extortion charge was not duplicitous and did not encompass conduct outside the applicable limitations period, and the district court did not constructively amend the charge in its jury instructions.
5. Mr. Burfoot has taken no further legal action in this case.
6. During Mr. Burfoot's pre-trial, trial, sentencing, and appeal, Mr. Burfoot was represented by: Andrew M. Sacks, SACKS & SACKS, Town Point Center, Suite 501, 150 Boush Street, P.O. Box 3874, Norfolk, Virginia 23514.
7. Mr. Burfoot submits that his detention is unlawful, and argues that:
 - I. **Mr. Burfoot received ineffective assistance of counsel in violation of the Sixth Amendment to the United States Constitution Resulting in the Denial of Mr. Burfoot's Right to Due Process and a Fair Jury Trial.**
 - II. **The Prosecutor Engaged in Misconduct that Ultimately Led the Jury Astray and Resulted in an Improper Conviction and Sentence.**

III. Mr. Burfoot's Fifth Amendment Right to Due Process Under the United States Constitution was Denied when He Received a Sentence which was Substantively Unreasonable and Greater than Necessary to Achieve the Goals of Sentencing Under 18 U.S.C. §3553.

17. Mr. Burfoot is currently in the custody of USP Canaan, located in Waymart, Pennsylvania. Mr. Burfoot's inmate registration number is 88807-083.

WHEREFORE, in consideration of the foregoing, as well as, argument of law contained in the Memorandum of Law filed herewith, Mr. Burfoot respectfully prays that this Court issue an Order vacating the sentence imposed based upon constitutional violations in this matter.

Respectfully submitted,

A handwritten signature in cursive script, reading "Anthony Burfoot", written in black ink over a horizontal line.

Anthony Burfoot, 88807-083

Pro Se

USP Canaan

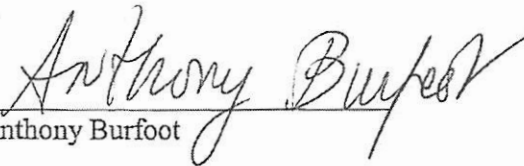
PO Box 200

Waymart, PA 18472

VERIFICATION

The Petitioner herein, Anthony Burfoot, hereby declares, verifies and states under penalty of perjury that the facts stated in the foregoing motion and memorandum of law are true and correct to the best of his knowledge and belief.

Executed on 11/4/2019, pursuant to 28 U.S.C. §1746.


Anthony Burfoot

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion and accompanying Memorandum of Law has been sent this 4 day of November, 2019, by the Court's ECF system, thereby insuring delivery to: the Office of the Assistant United States Attorney.

A handwritten signature in blue ink that reads "Anthony Burfoot". The signature is written in a cursive style with a checkmark at the end.

Anthony Burfoot, 88807-083

Pro Se

USP Canaan

PO Box 200

Waymart, PA 18472