

No. 19-1236

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

RONALD H. VAN DEN HEUVEL,
Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Wisconsin
Case No. 17-CR-160
The Honorable Judge William C. Griesbach

**BRIEF IN SUPPORT OF MOTION TO WITHDRAW AS DEFENDANT'S
APPOINTED APPELLATE COUNSEL PURSUANT TO *ANDERS V.
CALIFORNIA*, 386 U.S. 738 (1967) AND REQUIRED SHORT APPENDIX**

FEDERAL PUBLIC DEFENDER
CENTRAL DISTRICT OF ILLINOIS
401 Main Street, Suite 1500
Peoria, Illinois 61602
Telephone: (309) 671-7891
Fax: (309) 671-7898
Email: Johanna_Christiansen@fd.org

THOMAS W. PATTON
Federal Public Defender

JOHANNA M. CHRISTIANSEN
Assistant Federal Public Defender

Attorneys for Defendant-Appellant,
RONALD H. VAN DEN HEUVEL

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 19-1236
Short Caption: United States v. Van Den Heuvel

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement stating the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

- (1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Ronald H. Van Den Heuvel

- (2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Thomas W. Patton and Johanna M. Christiansen, Federal Public Defender's Office for the Central District of Illinois; and Robert G. LeBell.

- (3) If the party or amicus is a corporation: N/A

i) Identify all its parent corporations, if any; and
N/A

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:
N/A

Attorney's Signature: s/ Johanna M. Christiansen Date: September 9, 2019

Attorney's Printed Name: Johanna M. Christiansen

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). Yes ☒ No ☐

Address: 401 Main Street, Suite 1500

Peoria, Illinois 61602

Phone Number: (309) 671-7891

Fax Number: (309) 671-7898

E-Mail Address: Johanna_Christiansen@fd.org

TABLE OF CONTENTS

	PAGE
CIRCUIT RULE 26.1 DISCLOSURE STATEMENT	ii
TABLE OF AUTHORITIES	v
CASES.....	v
STATUTES	vi
OTHER AUTHORITIES.....	vi
PREFACE	1
JURISDICTIONAL STATEMENT	2
ISSUES PRESENTED FOR REVIEW	3
I. Whether any argument challenging Mr. Van Den Heuvel’s conviction would be frivolous where he entered into a knowing and voluntary plea of guilty and did not move to withdraw his guilty plea in the district court and does not seek to challenge his guilty plea on appeal?	3
II. Whether any argument challenging Mr. Van Den Heuvel’s sentence would be frivolous, given that he explicitly waived the right to appeal his sentence in his plea agreement?.....	3
STATEMENT OF THE CASE.....	4
I. Factual Background and Preliminary Proceedings	4
A. Dr. Marco Arajuo	5
B. Clifton Equities	6
C. Wisconsin Economic Development Council.....	8
D. David Williquette.....	11
E. EB-5 Investors.....	11
F. Indictment.....	13

II.	Pretrial Motions and Rulings	13
III.	Plea Agreement and Change of Plea Hearing	16
IV.	Presentence Investigation Report	18
V.	Objections and Sentencing Memoranda	20
VI.	Sentencing Hearing and Judgment in a Criminal Case	21
SUMMARY OF ARGUMENT		30
ARGUMENT		31
I.	Any argument challenging Mr. Van Den Heuvel’s conviction would be frivolous where he entered into a knowing and voluntary plea of guilty and does not seek to challenge his guilty plea on appeal	31
A.	Standard of Review	31
B.	Legal Argument	31
II.	Any argument challenging Mr. Van Den Heuvel’s sentence would be frivolous, given that he explicitly waived the right to appeal his sentence in his plea agreement.....	33
A.	Standard of review	33
B.	Relevant legal principles.....	33
CONCLUSION.....		37
CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)(7)(C)		38

TABLE OF AUTHORITIES

PAGE

CASES

<i>Anders v. California</i> , 386 U.S. 738 (1967)	1, 31
<i>Jones v. United States</i> , 167 F.3d 1142 (7th Cir. 1998)	35
<i>Nunez v. United States</i> , 546 F.3d 450 (7th Cir. 2008)	33
<i>Santobello v. New York</i> , 404 U.S. 257 (1971)	32
<i>United States v. Bownes</i> , 405 F.3d 634 (7th Cir. 2005)	34, 35
<i>United States v. Bryant</i> , 754 F.3d 443 (7th Cir. 2014)	31
<i>United States v. Knox</i> , 287 F.3d 667 (7th Cir. 2002)	31, 32
<i>United States v. Konczak</i> , 683 F.3d 348 (7th Cir. 2012)	31, 32
<i>United States v. Markling</i> , 7 F.3d 1309 (7th Cir. 1993)	31
<i>United States v. Mitchell</i> , 58 F.3d 1221 (7th Cir. 1995)	31
<i>United States v. Navarro</i> , 804 F.3d 872 (7th Cir. 2015)	35
<i>United States v. Quintero</i> , 618 F.3d 746 (7th Cir. 2010)	33
<i>United States v. Rachuy</i> , 743 F.3d 205 (7th Cir. 2014)	33
<i>United States v. Schuh</i> , 665 F.3d 827 (7th Cir. 2011)	33
<i>United States v. Starnes</i> , 636 Fed. Appx. 935 (7th Cir. 2016)	32
<i>United States v. Wenger</i> , 58 F.3d 280 (7th Cir. 1995)	34
<i>United States v. Woods</i> , 581 F.3d 531 (7th Cir. 2009)	33
<i>United States v. Woolley</i> , 123 F.3d 627 (7th Cir. 1997)	34

STATUTES

18 U.S.C. § 2	2, 13, 16
18 U.S.C. § 1343	2, 13, 16
18 U.S.C. §1349	2, 13, 16
18 U.S.C. § 1957	2, 13
18 U.S.C. § 3013(a)(2)(A)	35
18 U.S.C. § 3231	2
18 U.S.C. § 3583(b)(2)	35
18 U.S.C. § 3742	2
28 U.S.C. § 1291	2
28 U.S.C. § 2255	17, 32

OTHER AUTHORITIES

Federal Rule of Criminal Procedure 11	1, 30, 34
U.S.S.G. § 2B1.1(a)	16, 19
U.S.S.G. § 2B1.1(b)(1)	19
U.S.S.G. § 2B1.1(b)(1)(J)	16
U.S.S.G. § 2B1.1(b)(2)(A)	16
U.S.S.G. § 2B1.1(b)(2)(A)(i)	20
U.S.S.G. § 2B1.1(b)(10)(C)	16, 20
U.S.S.G. § 3B1.1	16
U.S.S.G. § 3B1.1(a)	20
U.S.S.G. § 5D1.2(a)(2)	35

PREFACE

After carefully examining the record on appeal and researching the relevant law, counsel has concluded that the appeal presents no legally non-frivolous questions. In reaching this conclusion, counsel has thoroughly scrutinized the record, including the information, the record documents, a transcript of the change of plea hearing, the presentence investigation report, and the sentencing hearing transcript for any arguable violation of the United States Constitution, the applicable federal statutes, the Federal Rule of Criminal Procedure, or the United States Sentencing Guidelines. Because counsel has concluded that no non-frivolous issues are presented by this appeal, she requests leave to withdraw as counsel and submits this brief in accordance with *Anders v. California*, 386 U.S. 738 (1967).

JURISDICTIONAL STATEMENT

1. The jurisdiction of the United States District Court for the Eastern District of Wisconsin, was founded upon 18 U.S.C. § 3231. A grand jury sitting in the aforementioned district charged RONALD H. VAN DEN HEUVEL by indictment with 10 counts of wire fraud in violation of 18 U.S.C. §§ 1343, 1349, and 2; and four counts of money laundering in violation of 18 U.S.C. §§ 1957 and 2.

2. The jurisdiction of the United States Court of Appeals for the Seventh Circuit is founded upon 28 U.S.C. § 1291 and 18 U.S.C. § 3742, and is based upon the following particulars:

- i. Date of entry sought to be reviewed: Sentence imposed on January 23, 2019; Judgment in a Criminal Case entered on January 25, 2019.
- ii. Filing date of motion for a new trial: n/a;
- iii. Disposition of motion and date of entry: n/a;
- iv. Filing date of notice of appeal: February 6, 2019.

ISSUES PRESENTED FOR REVIEW

I. Whether any argument challenging Mr. Van Den Heuvel's conviction would be frivolous where he entered into a knowing and voluntary plea of guilty and did not move to withdraw his guilty plea in the district court and does not seek to challenge his guilty plea on appeal?

II. Whether any argument challenging Mr. Van Den Heuvel's sentence would be frivolous, given that he explicitly waived the right to appeal his sentence in his plea agreement?

STATEMENT OF THE CASE¹

I. Factual Background and Preliminary Proceedings.

In early 2011, Defendant-Appellant Ronald Van Den Heuvel was working as a businessman in De Pere, Wisconsin and began promoting one of his business plans, Green Box. (R. at 103, p. 27.) The Green Box business plan involved purchasing equipment, facilities, and processes that could convert food-contaminated, post-consumer solid waste into various products and energy. (R. at 103, p. 27.) A key component of the plan was that the business would be able to produce products and energy with no wastewater discharge or landfilling of byproducts. (R. at 103, p. 27.) Mr. Van Den Heuvel created several business entities to carry out the Green Box plan, including Environmental Advanced Reclamation Technology HQ, LLC (“EARTH”); Green Box NA, LLC; Green Box NA Green Bay, LLC; and Green Box NA Detroit, LLC. (R. at 103, p. 27.)

To fund his Green Box plan, Mr. Van Den Heuvel sought and obtained funds from various lenders and investors. (R. at 103, p. 27.) He made materially false representations and promises to those lenders and investors, including that he would use the received funds to advance Green Box operations. (R. at 103, p.

¹ The following abbreviations are used herein: Record on appeal: “R. at __;” Appendix: “App. at __;” Change of Plea hearing transcript: “COP Tr. at __;” Sentencing Hearing Transcript: “Sent. Tr. at __;” all other transcripts: “[date] Tr. at __;” and Defendant’s Objections to the PSR: “Def. Obj. at __.”

27.) In several instances, he entered into agreements that dictated specific uses for the funds, such as the purchase of particular equipment or funding a particular portion of the plan. (R. at 103, p. 27.) After receiving the funds, Mr. Van Den Heuvel often diverted the money to personal expenses and other expenses that did not advance the Green Box businesses. (R. at 103, p. 27.) Mr. Van Den Heuvel took steps to conceal how he misused the funds. (R. at 103, p. 27.)

Mr. Van Den Heuvel opened multiple bank accounts at several banks in the names of his Green Box related companies. (R. at 103, p. 27.) He exercised control over the accounts personally. (R. at 103, p. 27.) In general, the bank accounts had low balances until lender or investor funds were transferred to the accounts. (R. at 103, p. 27.) In a relatively short period of time, Mr. Van Den Heuvel would transfer the funds to other accounts and spend them on unrelated expenses. (R. at 103, p. 27.) The specific charged investors are discussed below.

A. Dr. Marco Arajuo.

In April of 2011, Mr. Van Den Heuvel convinced a family friend, Dr. Marco Arajuo, to invest \$600,000 in Green Box Green Bay pursuant to an Agreement to Issue Stock and Provide Collateral. (R. at 103, p. 28.) Under the agreement, Arajuo received 600,000 “membership units,” a guaranteed annual return of 10% to be paid in quarterly installments, and security interests. (R. at 103, p. 28.) Mr.

Van Den Heuvel deposited Arajuo's investment but, within a few weeks, he spent the majority of the funds on unrelated expenses. (R. at 103, p. 28.)

Specifically, he purchased Green Bay Packers tickets for \$19,184; spent \$100,000 to settle an unrelated legal dispute; paid \$57,777 in court ordered support payments to his ex-wife; withdrew \$24,000 in cash; and paid \$6,409 towards the mortgage on a home in Florida. (R. at 103, p. 28.) Mr. Van Den Heuvel failed to make quarterly payments to Arajuo as promised and made several false statements promising payment in the near future. (R. at 103, p. 28.) These promises deterred Arajuo from filing a lawsuit until early 2013. (R. at 103, p. 28.)

B. Cliffton Equities.

In September of 2012, Mr. Van Den Heuvel persuaded a private investment firm from Montreal, Canada to invest in Green Box Green Bay. (R. at 103, p. 28.) He provided the firm with financial statements that falsely overstated the value of his companies to induce investment. (R. at 103, p. 29.) The firm, Cliffton Equities, transferred a total of \$2,000,000 by wire transfer from Toronto, Canada, through JPMorgan Chase Bank in New York, New York, to U.S. Bank in Manitowoc, Wisconsin. (R. at 103, p. 28.) Mr. Van Den Heuvel entered into a Loan and Investment Agreement with Cliffton promising to use the funds “solely for the purposes of purchasing and installing the sorting and liquefaction equipment . . . at Green Box’s facility” and for “working capital to operate

sorting, liquefaction and pulping equipment.” (R. at 103, p. 28.) Mr. Van Den Heuvel also promised to use the funds to purchase a liquefaction unit from RGEN Systems. (R. at 103, p. 28.)

Mr. Van Den Heuvel paid RGEN \$350,000 of Cliffton’s funds as an initial payment for a prototype of its liquefaction unit. (R. at 103, p. 29.) As a result, RGEN moved the prototype from Dallas, Texas to Green Box Green Bay in anticipation of receiving the balance of the purchase price. (R. at 103, p. 29.) The remainder of the purchase price was necessary to install the prototype and develop a larger capacity unit which would be able to perform full-time operations. (R. at 103, p. 29.) Mr. Van Den Heuvel never paid the remaining purchase price to RGEN and a larger unit was never constructed. (R. at 103, p. 29.)

Instead of paying RGEN, Mr. Van Den Heuvel used the remainder of Cliffton’s funds for impermissible purposes, including \$40,538 in court-ordered support payments to his ex-wife; \$25,000 to a friend as reimbursement for Packers tickets; \$33,000 for his current wife’s dental work; \$89,000 for a new Cadillac Escalade; \$16,570 to his children’s private school as tuition; \$52,235 in property taxes on his residence; and \$50,000 toward a settlement in a another unrelated legal dispute. (R. at 103, p. 29.) Despite this, Mr. Van Den Heuvel repeatedly emailed Cliffton and assured that the funds were being used to

purchase and install equipment for Green Box Green Bay. (R. at 103, p. 29.)

On June 19, 2014, Mr. Van Den Heuvel persuaded Clifton to enter into an Amended Loan and Investment Agreement to invest an additional \$300,000 to purchase two liquefaction units from a different manufacturer, Kool Manufacturing Company. (R. at 103, p. 29.) Like the first agreement, this agreement provided that the funds would be used solely to purchase and install the two Kool units and for restarting a facility and providing “working capital funds for such facility’s operation.” (R. at 103, p. 29.) In the fall of 2014, Mr. Van Den Heuvel requested additional funds, stating they were necessary to purchase and install the Kool units. (R. at 103, p. 30.) Clifton paid Green Box Green Bay and Green Box another \$849,940. (R. at 103, p. 30.) Mr. Van Den Heuvel used approximately half of these funds to purchase and install one Kool unit. (R. at 103, p. 30.) The remainder of the funds were used for his personal expenses and other unrelated purposes. (R. at 103, p. 30.)

C. Wisconsin Economic Development Council.

On March 8, 2011, Mr. Van Den Heuvel caused one of his employees to submit a proposal to the Wisconsin Department of Commerce, the predecessor to the Wisconsin Economic Development Council (“WEDC”). (R. at 103, p. 30.) The submission included false representations and inflated financial statements that portrayed Mr. Van Den Heuvel and his businesses as credit worthy. (R. at 103, p.

30.) The submissions represented that funding from WEDC would allow Green Box Green Bay to start full time operations and create 116 new jobs at the facility in De Pere. (R. at 103, p. 30.)

On September 14, 2011, Mr. Van Den Heuvel executed a loan agreement on behalf of Green Box Green Bay with the WEDC to obtain a loan of \$1,116,000. (R. at 103, p. 30.) The agreement provided that Green Box Green Bay would use the funds to purchase and install equipment to produce marketable pulp, fuel pellets, synthetic fuel, tissue, and cups. (R. at 103, p. 30.) The loan agreement further stated that, prior to the disbursement of any funds, Green Box Green Bay had to deliver to the WEDC: (1) documentation that Green Box Green Bay had acquired the EcoFibre facility; (2) a mortgage on the EcoFibre facility; (3) documentation that Green Box-Green Bay would purchase all the equipment necessary to produce marketable pulp, baled and sorted waste paper, fuel pellets, and synthetic fuel; and (4) documentation that VHC, Inc. (a company controlled by Mr. Van Den Heuvel's brothers) had made a capital contribution of \$5,500,000 to the project. (R. at 103, p. 30.)

On September 30, 2011, Mr. Van Den Heuvel submitted a draw request that caused the WEDC to disburse all of the funds. (R. at 103, p. 30.) In the draw request, Mr. Van Den Heuvel submitted documentation that gave the false impression that funds from Baylake Bank and VHC, Inc. had been used to allow

Green Box Green Bay to acquire the EcoFibre facility. (R. at 103, p. 30.) In truth, Green Box Green Bay had not acquired the EcoFibre facility. (R. at 103, p. 31.) Instead, the facility underwent foreclosure and was obtained by VHC, Inc., leaving WEDC with no security interest in the facility. (R. at 103, p. 31.)

Mr. Van Den Heuvel used WEDC funds to make some partial payments on some of the equipment identified in the draw request, but he diverted large portions of the funds to other purposes. (R. at 103, p. 31.) These included paying \$35,000 in court ordered payments to his ex-wife; \$45,000 to settle a lawsuit filed by his former nanny; and \$39,200 in cash. (R. at 103, p. 31.) Mr. Van Den Heuvel concealed the misuse of WEDC's funds by submitting annual reports that represented the project was on track, including submitting Schedules of Expenditures to the WEDC in which he falsely certified that Green Box Green Bay had expended all loan funds in accordance with the loan agreement's terms. (R. at 103, p. 31.)

On January 4, 2012, the WEDC also awarded Green Box Green Bay a grant of \$95,500 to reimburse the costs of training employees from 2012 to 2014 in waste sorting, fuel pellet production, and liquefaction manufacturing jobs that its loan was to help create. (R. at 103, p. 31.) Green Box Green Bay did not actually incur eligible training costs. (R. at 103, p. 31.) However, Mr. Van Den Heuvel directed two employees to create fraudulent records showing that the training

had occurred. (R. at 103, p. 31.) These false records caused the WEDC to pay the full grant amount of \$95,500. (R. at 103, p. 31.)

D. David Williquette.

In September and December of 2012, Mr. Van Den Heuvel persuaded a personal acquaintance, David Williquette, to invest \$40,000 in Green Box Green Bay in exchange for 200,000 membership units and a promise of repayment. (R. at 103, p. 31.) According to Williquette, Mr. Van Den Heuvel orally assured him that the funds would be used for patent and legal fees. (R. at 103, p. 31.) Bank records show that Mr. Van Den Heuvel immediately converted the funds to cash and never repaid Williquette. (R. at 103, p. 31.)

E. EB-5 Investors.

The EB-5 program provides a route for immigrant investors to become lawful permanent residents by investing at least \$500,000 in a project sponsored by a government-approved regional center. (R. at 103, p. 31.) The program requires that the entire \$500,000 investment be expended on job-creating activities. (R. at 103, p. 31.) Mr. Van Den Heuvel obtained funds from Chinese investors through agreements he made with S.A., a Georgia attorney. (R. at 103, p. 32.) S.A. controlled the government-approved Green Detroit Regional Center, LLC ("GDRC"), which sponsors individual projects that direct EB-5 investments to environmentally friendly, job-creating entities in Michigan. (R. at 103, p. 32.)

Mr. Van Den Heuvel persuaded GDRC to create an entity called SMS Investment Group VI ("SMS 6") to collect and transfer EB-5 investments to Green Box Detroit. (R. at 103, p. 32.) As part of the agreement, Mr. Van Den Heuvel represented to GDRC and SMS 6 that he would use the EB-5 investment funds solely to pursue the Green Box Detroit project. (R. at 103, p. 32.)

Mr. Van Den Heuvel provided information regarding the Green Box Detroit project to S.A. to use in promoting the project and seeking EB-5 investors. (R. at 103, p. 32.) In this information, Mr. Van Den Heuvel provided material misrepresentations, knowing that they would be used to induce investments, including (1) that the funds would be used for the Green Box Detroit project; (2) that EARTH and Green Box Detroit had agreements with Cargill, Inc. even though Cargill, Inc. had terminated the agreements; (3) that the Michigan Economic Development Corporation ("MEDC") had approved Green Box Michigan for a tax-exempt bond offering even after MEDC notified that it had discovered numerous liens and judgments against Mr. Van Den Heuvel's companies, which would preclude any bond offering; and (4) that Green Box Detroit had acquired certain equipment with investors' funds that had not been acquired. (R. at 103, p. 32.)

Nine EB-5 investors from China invested approximately \$4,475,000 in SMS 6 from September 2014 through August 2015. (R. at 103, p. 32.) Each EB-5

investor received 1,000 membership units in SMS 6 in exchange for his or her investment. (R. at 103, p. 32.) Pursuant to its agreement with Mr. Van Den Heuvel, SMS 6 wired those funds to Green Box Detroit. (R. at 103, p. 32.) SMS 6's investments in Green Box Detroit were documented by promissory notes with five-year terms and an interest rate of 4% per year. (R. at 103, p. 32.) Bank records show that Mr. Van Den Heuvel diverted large amounts of the EB-5 investments to purposes other than the Green Box Detroit business plan, including repaying old debt to investors in companies affiliated with Mr. Van Den Heuvel other than Green Box Detroit, court-ordered support for his ex-wife, and other personal expenses. (R. at 103, p. 32.)

F. Indictment.

As a result of Mr. Van Den Heuvel's actions, on September 19, 2017, he was charged by indictment with 10 counts of wire fraud in violation of 18 U.S.C. §§ 1343, 1349, and 2; and four counts of money laundering in violation of 18 U.S.C. §§ 1957 and 2. (R. at 1.)

II. Pretrial Motions and Rulings.

On August 10, 2018, Mr. Van Den Heuvel filed a motion to suppress the evidence taken during the execution of search warrants at his home and businesses on July 2, 2015. (R. at 62.) In his memorandum in support of the motion to suppress, he argued the search warrants were overbroad, did not state

with particularity which crimes the warrants would aid in prosecution, and the items seized were outside of the scope of the warrant. (R. at 63.) He filed a second motion to suppress on August 20, 2018, arguing he was entitled to a *Franks* hearing based on the false statements included in the search warrant and accompanying affidavit. (R. at 79, 80.) He also filed a *pro se* motion to suppress on August 22, 2018, arguing the search warrants used to secure indictments, interview witnesses, and defame him and his family. (R. at 85, 86.)

On August 20, 2018, Mr. Van Den Heuvel filed a motion to change venue requesting that the trial in this case be moved to Milwaukee rather than being held in Green Bay. (R. at 75.) In his memorandum in support of the motion, he relied on the evidence of significant pretrial publicity about Mr. Van Den Heuvel and the various prosecutions involving him. (R. at 76.)

The district court held an evidentiary hearing on the motions to suppress on September 4, 2018. (R. at 98.) The beginning of the hearing, Mr. Van Den Heuvel informed the court he wanted to represent himself. (9/4/18 Tr. at 3.) The district court conducted a *Faretta* hearing and determined that Mr. Van Den Heuvel was competent to represent himself. (9/4/18 Tr. at 32.) The court allowed defense counsel to be stand by counsel. (9/4/18 Tr. at 32.) The court then addressed the motion to change venue as follows:

Before we move to the evidentiary portion, let me just say I've

looked at the motion for change of venue based on pretrial publicity. I'm going to deny that motion, at least for now. Obviously, if we begin voir dire and it appears that we cannot get a fair and impartial jury, then I can certainly grant it at that point.

But I'm satisfied, first of all, the number of people that are reading newspapers these days and retaining what they read in newspapers is far less than it used to be. This is not a murder case. It is not a bodily injury or a - it's essentially what is - Mr. Van Den Heuvel is charged with white collar crimes. They're not inflammatory.

Certainly some of the - at least one blog coverage that was referred to has been, but doesn't appear to have much circulation. And I'm satisfied that I can cover it with voir dire and we can get a fair and impartial jury.

So unless things change, that motion for change of venue is denied. I've certainly considered the witnesses are here. This is Mr. Van Den Heuvel's, really his community. There's certainly a lot of support he has here. But the witnesses are either far beyond Green Bay or in the Green Bay area. Those that are far beyond have to fly in anyhow. And so there's just no reason at this point that I can think of that would warrant a change of venue. So that motion is denied.

(9/4/18 Tr. at 33-34.)

The district court then heard testimony on the motion to suppress.

(9/4/18 Tr. at 43-185.) The court indicated it would be making a ruling on the motion to suppress after receiving supplemental briefing. (9/4/18 Tr. at 197.) At this point, Mr. Van Den Heuvel decided he wanted to have defense counsel represent him rather than proceeding pro se. (9/4/18 Tr. at 199.) The court reappointed defense counsel. (9/4/18 Tr. at 199.) Both parties filed post-hearing memoranda on September 7, 2018. (R. at 101, 102.)

III. Plea Agreement and Change of Plea Hearing.

Before the district court could issue a ruling on the motion to suppress, Mr. Van Den Heuvel entered into a written plea agreement with the government on October 9, 2018. (R. at 103.) He agreed to plead guilty to Count 1 of the indictment, which charged him with committing wire fraud in violation of 18 U.S.C. §§ 1343, 1349, and 2. (R. at 103, p. 1.) The parties agreed to the factual basis as stated in the first section of this brief. (R. at 103, p. 14, 26-33.) The government agreed to move to dismiss the remaining counts of the indictment. (R. at 103, p. 15.)

The parties agreed to the following guidelines calculations: a base offense level of seven under § 2B1.1(a); an 18 level enhancement for amount of loss under § 2B1.1(b)(1)(J); and a two level enhancement for the number of victims under § 2B1.1(b)(2)(A). (R. at 103, p. 16-17.) The government reserved the right to argue that Mr. Van Den Heuvel should receive a two level enhancement for utilizing sophisticated means under § 2B1.1(b)(10)(C) and a four level enhancement for his role in the offense under § 3B1.1. (R. at 103, p. 17-18.) Mr. Van Den Heuvel reserved the right to contest these enhancements. (R. at 103, p. 17-18.) The government agreed to recommend a three level reduction for acceptance of responsibility. (R. at 103, p. 18.) The government also agreed to

recommend a sentence of no longer than 90 months to be served concurrently with Mr. Van Den Heuvel's previously imposed sentence in case number 16 CR 64. (R. at 103, p. 18.) Mr. Van Den Heuvel agreed to pay restitution of at least \$9,389,440. (R. at 103, p. 19.)

Mr. Van Den Heuvel also agreed to waive his right to appeal his conviction and sentence as follows:

Based on the government's concessions in this agreement, the defendant knowingly and voluntarily waives his right to appeal his sentence in this case and further waives his right to challenge his conviction or sentence in any post-conviction proceeding, including but not limited to a motion pursuant to 28 U.S.C. § 2255. As used in this paragraph, the term "sentence" means any term of imprisonment, term of supervised release, term of probation, supervised release condition, fine, forfeiture order, and restitution order. The defendant's waiver of appeal and post-conviction challenges includes the waiver of any claim that (1) the statutes or Sentencing Guidelines under which the defendant is convicted or sentenced are unconstitutional, and (2) the conduct to which the defendant has admitted does not fall within the scope of the statutes or Sentencing Guidelines. This waiver does not extend to an appeal or post-conviction motion based on (1) any punishment in excess of the statutory maximum, (2) the sentencing court's reliance on any constitutionally impermissible factor, such as race, religion, or sex, (3) ineffective assistance of counsel in connection with the negotiation of the plea agreement or sentencing, or (4) a claim that the plea agreement was entered involuntarily.

(R. at 103, p. 22.)

The district court held a change of plea hearing on October 12, 2018. (R. at 104.) The district court reviewed the rights Mr. Van Den Heuvel was giving up

by pleading guilty, including the right to appeal. (COP Tr. at 4, 19-25.) The court specifically determined Mr. Van Den Heuvel understood that by pleading guilty, he was waiving his right to appeal the suppression issues. (COP Tr. at 25.)

IV. Presentence Investigation Report.

The United States Probation Office prepared the Presentence Investigation Report (“PSR”) on December 20, 2018, and filed it on January 16, 2019. (R. at 112.) The probation officer included details of the offense in addition to the facts agreed to by the parties in the plea agreement. (R. at 112, p. 8.) Witnesses stated that Mr. Van Den Heuvel made all substantive decisions regarding the Green Box businesses and dictated or approved of all substantive communications. (R. at 112, p. 8.) Mr. Van Den Heuvel consulted with several individuals regarding the Green Box processes who all agreed the company’s purpose could be successful. (R. at 112, p. 8.)

However, Mr. Van Den Heuvel made the following false and misleading statements when promoting Green Box to investors and lenders. (R. at 112, p. 8.) He claimed Green Box would result in “zero waste water discharge,” which was theoretically possible, it was cost prohibitive. (R. at 112, p. 8.) He also claimed the Green Box equipment could make fuel pellets but the equipment was not capable of making the pellets. (R. at 112, p. 9.) In demonstrations, Mr. Van Den Heuvel showed fuel pellets obtained from another company. (R. at 112, p. 9.)

Mr. Van Den Heuvel also claimed the Green Box processes had been “proven” at large volumes when, in fact, it had only been tested on small volumes. (R. at 112, p. 9.)

He also claimed to own seven patents on the Green Box technology but, in reality, he had only applied for one patent (which was denied) and two of the other patents claimed were owed by Cargill, Inc. (R. at 112, p. 9.) He also stated his Green Box businesses had licensing agreements with Cargill, Inc. but, in truth, Cargill had terminated the relationship in October of 2013. (R. at 112, p. 9.) Mr. Van Den Heuvel claimed to have several Green Box locations up and running but none of them ever commenced regular operations. (R. at 112, p. 10.) Finally, he claimed Green Box had agreements with McDonald’s and Dunkin Donuts but it did not. (R. at 112, p. 10.)

The probation officer used the 2018 version of the sentencing guidelines to calculate the guidelines range. (R. at 112, p. 35.) The officer determined the base offense level was seven under § 2B1.1(a). (R. at 112, p. 35.) The officer also added an 18 level enhancement under § 2B1.1(b)(1) for the amount of loss based on the parties’ agreement that the loss was \$9,389,440. (R. at 112, p. 35.) The probation officer noted, however, that the probation office had received restitution requests for more than \$22,000,000 and believed the “claimed loss” should be \$16,778,944.93. (R. at 112, p. 35.) The officer added a two level

enhancement under § 2B1.1(b)(2)(A)(i) based on the number of victims; a two level enhancement under § 2B1.1(b)(10)(C) because the offense involved sophisticated means; and a four level enhancement under § 3B1.1(a) based on Mr. Van Den Heuvel's role in the offense. (R. at 112, p. 36.) The officer also assessed a three level reduction for acceptance of responsibility, resulting in a total offense level of 30. (R. at 112, p. 37.) Mr. Van Den Heuvel had a criminal history category of II and the applicable guidelines range was 108 to 135 months. (R. at 112, p. 38-39.)

V. Objections and Sentencing Memoranda.

Mr. Van Den Heuvel filed both a mitigation report and objections to the PSR on January 9, 2019. (R. at 111; Def. Obj.) He asserted that the Green Box plan was viable and the technology worked. (Def. Obj., p. 1-14.) He argued that the role in the offense enhancement should not apply because the offense did not involve five or more participants and the conduct was not otherwise extensive. (Def. Obj., p. 20.) He objected to two conditions of supervised release. (Def. Obj., p. 22.) He objected to the condition requiring him to work at lawful employment because he was presently 64 years old and would be retirement age by the time of his release. (Def. Obj., p. 22.) He also objected to the condition requiring him to pay restitution unless it was made subject to his ability to pay a certain amount. (Def. Obj., p. 22.)

The probation officer filed an addendum to the PSR on January 16, 2019. (R. at 112-1.) The officer took no position on the viability of the Green Box businesses. (R. at 112-1, p. 2.) The officer stated that there were more than five participants in the offense because a “participant” need not have been criminally charged to be considered a participant. (R. at 112-1, p. 4-5.) The officer noted that multiple individuals executed actions within the scheme at Mr. Van Den Heuvel’s direction. (R. at 112-1, p. 5.) The officer also believed the offense could be considered otherwise extensive. (R. at 112-1, p. 5.) Probation responded to the objections to the conditions of supervised release by stating that the conditions were adequate because the work condition allowed the officer to excuse Mr. Van Den Heuvel from work if he was unable and the restitution payment about could be modified as needed. (R. at 112-1, p. 6.)

VI. Sentencing Hearing and Judgment in a Criminal Case.

The district court held a sentencing hearing on January 23, 2019. (R. at 126.) Several witnesses gave statements to the court in mitigation and aggravation. (Sent. Tr. at 5-16.) Defense counsel indicated that the only remaining issue about the guidelines calculations was the role in the offense enhancement. (App. at 2.) The court overruled the objection, stating:

And I will overrule that objection. I've looked at the response to it and I'm convinced that given the application note this case qualifies for the four-level enhancement.

There were a number of people that participated in the fraud, some knowingly, but most unknowingly. But the fraud was so extensive that it meets the - the standard set forth by the court in U.S. vs. Diekemper, Miller, and then Frost. Specifically, I'm to consider the length of the scheme, the amount of money involved, and the level of orchestration to see if it was otherwise extensive.

And certainly the facts of this case, the extensive fraud recounted in the presentence report, is very extensive. There are two people who have now entered pleas of guilty to fraud in connection with this, two employees of Mr. Van Den Heuvel who he directed to send to the Wisconsin Economic Development Corporation falsified training reports. And that was - and other records in connection with the grant and the loans that were provided by WHEDA that resulted in significant monies coming in.

And then there were other employees, some of whom seem to have - could possibly have been charged but I'm not suggesting the government should charge them. They were acting at the direction of their employer, including preparing emails and PowerPoint demonstrations, all kinds of things. But it's not even required under the law, as I understand it, that all of the participants be aware of the fraud, they're simply acting pursuant to his direction.

So I'm satisfied the four-level enhancement does apply. I'm going to adopt that, overrule the objection.

(App. at 2-3.) The court then adopted the remaining guidelines calculations from the PSR. (App. at 4-5.)

The government argued in aggravation and defense counsel argued in mitigation. (Sent. Tr. at 25.) The government argued that Mr. Van Den Heuvel's offense warranted a "significant period of incarceration" because the scheme lasted four years, got his personal friends and acquaintances involved in the scheme, continued this scheme after he was indicted for a separate fraudulent scheme in federal court, and continued to seek investments even while in jail.

(Sent. Tr. at 25-26, 34.) The government called it a “pattern of unrelenting deception.” (Sent. Tr. at 26.) The government also noted the loss amount was significant as well, nearing \$9,500,000. (Sent. Tr. at 27.) The government stated that the victims and vendors suffered more than just financial losses as they dealt with suing Mr. Van Den Heuvel, counseling, and other emotional impacts. (Sent. Tr. at 27-32.)

The government continued that Mr. Van Den Heuvel had used the investors’ funds to pay support payments to his ex-wife and defrauded the Wisconsin Economic Development Corporation. (Sent. Tr. at 32-33.) It also noted that he had defrauded international investors as well. (Sent. Tr. at 35.) As a result, some of the EB-5 investors were unable to get citizenship through the program. (Sent. Tr. at 35-37.) Finally, the government disputed Mr. Van Den Heuvel’s claims that the Green Box process was viable. (Sent. Tr. at 37-42.) The government recommend a 90 month sentence. (Sent. Tr. at 45.)

Defense counsel objected to the government’s argument in aggravation by stating that “in some courts the government’s argument would be considered a breach of the plea agreement because the government was not presenting Mr. Van Den Heuvel in a fair way. (Sent. Tr. at 46-47.) Counsel continued that “if a prosecutor does that purposefully - and I’m not alleging that in this case - it constitutes a breach of the plea agreement.” (Sent. Tr. at 47.) Counsel stated that

the government could not “pay merely lip service” to the recommendation agreed to in the plea agreement but repeated he was not making that argument. (Sent. Tr. at 47.)

Defense counsel argued in mitigation and noted that Mr. Van Den Heuvel accepted responsibility for his offenses. (Sent. Tr. at 47.) Mr. Van Den Heuvel sincerely believed Green Box could get off the ground and was acting with good motive. (Sent. Tr. at 48-56.) Defense counsel admitted Mr. Van Den Heuvel made some “mistakes” after his guilty plea. (Sent. Tr. at 57.) He asked the court to consider that he has two minor children and is 64 years old. (Sent. Tr. at 61.) He also noted that there was the possibility of paying full restitution. (Sent. Tr. at 62.) Defense counsel asked for 60 months in prison. (Sent. Tr. at 63.)

The government replied by stating it was recommending 90 months in prison, consistent with its obligation in the plea agreement. (Sent. Tr. at 68.) The court noted this was a below-guidelines sentence and the government stated that Mr. Van Den Heuvel’s guilty plea saved significant resources and avoided the expense of going to trial. (Sent. Tr. at 68.) The government stated that it was anticipating a three week trial with a large number of witnesses, including witnesses that would have to travel to Green Bay internationally. (Sent. Tr. at 68-69.)

After giving Mr. Van Den Heuvel the opportunity speak, the district court

made the following findings on the appropriate sentence. The court considered the guidelines range as a starting point. (App. at 6.) The court noted that it was primarily considering two other factors - the nature and circumstances of the offense, and the second is the history and character of the defendant. (App. at 6.) The court noted the offense involved “an awful lot of money.” (App. at 7.) The court stated it was considering the goals of punishment, general deterrence, and the need to protect the public. (App. at 7.) The court considered the impact on the victims, both financially and personally. (App. at 8.) The court spoke regarding the viability of Green Box:

Frankly, and I recognize the big argument here is - isn't what was done so much, there's not an argument over the facts, there's really an argument over the motivation. And I think the argument over motive is somewhat misleading.

I do follow the money. I think that's a pretty good argument. If Mr. Van Den Heuvel really believed that he had the solution to pollution, to global warming, to waste, I don't believe he would have spent as much of this money on other things. I think these investors, as soon as they saw clear evidence of that, would have - would have been happy to invest in his project. I just don't see that.

And then the argument over - over this is really over the viability. But it's not the viability of the Green Box plant, it's the commercial viability of it. In order to support the objection and argument that the green plan - the Green Box plan is not only viable but on the verge of success, Mr. Van Den Heuvel has filled the record with numerous reports, lengthy reports. As the government points out in its response, however, those reports do not come close to demonstrating that the plan was commercially viable or even on the verge of commercial viability. Some of the reports are based on limited demonstrations using other kinds of inputs from what the plan called for. Others are based on unsupported statements from

the defendant himself which were assumed to be true for purposes of writing the report.

Although the government does not dispute that the process described by Mr. Van Den Heuvel was theoretically viable, none of the reports demonstrate the plan was commercially feasible, meaning that it could be profitably operated to generate pulp, pellets, fuel, tissue rolls, and consumer products for post-consumer - from post-consumer waste with no wastewater at the volumes and speed Van Den Heuvel promised his investors and friends.

These reports were essentially fundraising tools and they assisted in that, that Mr. Van Den Heuvel created to induce other investors to continue the stream of investment dollars he needed to maintain the appearance of a legitimate cutting-edge business while at the same time supporting an extravagant lifestyle.

(App. at 8-10.) The court discussed the effect on the victims and the actions of Mr. Van Den Heuvel in persuading the victims to invest. (App. at 10-11.) The court also discussed the vast resources necessary to prosecute and defend Mr. Van Den Heuvel. (App. at 11.) The court concluded:

Mr. Van Den Heuvel, you know, you could do a lot in this case by being honest. . . . And I've looked carefully at these documents. Believe me, I'm not a big fan of government. I don't want to see someone crushed who is innocent. Nobody does. This evidence is overwhelming. And you lied. You lied to get to betray people and defraud them. And it's a terrible thing to do. But it's even worse to put your children in the position of now believing that the country in which they live is corrupt. And that's essentially what you've put them in the position of believing.

This idea that you're motivated by love of your fellow man and this grandiose plan to make up for the death of your child, these are ruses. If you believe it, you have to get over it yourself. One doesn't defraud so many people in such a broad scheme lasting over four years because he has a good motive to cure the world of infectious diseases. This is absurd and I can't countenance this.

• • • •

This project - and the idea that this was - you were on the verge of breakout and then the search warrant happened and that's what stopped everything, that's absurd as well. What was the Brown County Sheriff to do, overmatched as they were with the complexity of your business arrangements?

Dr. Araujo was one - how many other people were they supposed to let lose their money before they took any steps? The complexity of this fraud made it so difficult for a local law enforcement agency to do anything. And yet their choice was either to stand by and watch more people lose money or to actually do something.

And they had people on the inside, your own accountants were telling them that you weren't legitimate. They warned you not to use money that you took from investors to pay your alimony, to buy cars and to use in cash, and you ignored those requests.

I think this offense is very serious. The government points out not only the scope of the fraud, the different statements. It wasn't a one-off It wasn't one representation that was mass-communicated to everyone. You customized each approach to each investor, to the friends that you met through the international school, Dr. Linn and Dr. Araujo. You had the personal touch. Even your honesty, your apparent honesty, your religious devotion, all of these things almost become a tool. And I'm not questioning your religious belief, but I think you need to take a careful look at your own behavior and consider it in light of that faith that you hold so dearly. You don't treat people this way if you honestly believe those things. You don't treat your employees the way you treated them, leave them unpaid.

. . . .

So I see it as a very significant and serious crime. The magnitude, the nature of the crime, the victims, all of these things are very - I must factor in and I must take in consideration and are aggravating factors.

. . . .

I'm going to adopt the government's recommendation. I'm going to impose the 90 months. And to me, that is showing leniency. When I look at the amount of money here and the scope of the fraud and the nature of it, I think a good argument could be made for at least the guidelines. And many people would say of

course.

But I'm giving you a lot of credit for frankly your acceptance of responsibility. I do think that this would have been a very difficult and expensive case for the government to have to continue to prosecute. I know you've waived your right to appeal. That also will save time to the extent it sticks, and I'm frankly giving you credit for that.

....

I've done my best to listen closely to you, to consider your arguments and your attorney's arguments, but I'm convinced this is a fraud of great magnitude, committed by a person who knew better and who even now tries to minimize the damage and the evil of what he did. You're not that old. 64 isn't as young, but these days people live a long time. This is certainly not the end of your life. The prison that you will go to is not like the Brown County Jail. That's the hard time. I expect you will be in a facility that's not anywhere near as austere as that.

....

But I don't see the restitution here as a real possibility. I just don't think that this system was financially viable or that money would have been spent on this system instead of for the other purposes. Maybe I'm wrong. I hope so. But it seems to me you have no assets even to hire an attorney and so nobody who, despite what you say about all the people that think this is great, no one will lend you money for it, at least at this point. And the vague lines of credit which once they look at the local liens in the county court across the street, that dries up. That goes away.

(App. at 12-21.) The district court imposed a total term of 90 months in prison, to be served concurrently with the sentence imposed in Mr. Van Den Heuvel's previous federal case. (App. at 28.) The court also imposed a three year term of supervised release, a \$100 special assessment, and restitution of \$9,428,618.81. (App. at 29, 32.)

Defense counsel noted there were two objections to the conditions of

supervised release. (App. at 22.) The district court read the conditions of supervised release and defense counsel indicated he “just wanted to see if the wording can be changed that restitution should be required subject to his ability to pay.” (App. at 24.) The court found that payments were always based on a defendant’s ability to pay and indicated Mr. Van Den Heuvel will not be violated if he cannot pay restitution payments. (App. at 24.) The district court dismissed the remaining counts of the indictment. (App. at 25.) Mr. Van Den Heuvel filed a timely notice of appeal on February 6, 2019. (R. at 129.)

SUMMARY OF ARGUMENT

Any argument challenging Mr. Van Den Heuvel's conviction would be frivolous. He did not seek to withdraw his guilty plea in the district court after entering a knowing and voluntary plea of guilty and he does not wish to withdraw his plea on appeal. The district court substantially complied with Rule 11 of the Federal Rules of Criminal Procedure in accepting the plea. Mr. Van Den Heuvel's unconditional plea of guilty further waived all non-jurisdictional defects to the determination of guilt.

Any argument challenging Mr. Van Den Heuvel's sentence would also be frivolous. As part of his plea agreement, he explicitly waived the right to challenge his sentence or the manner in which the sentence was determined on appeal. The government did not breach the plea agreement in any way. Because the sentence is lawful and not imposed for an improper reason, the appeal waiver is valid and precludes any challenge to the sentence on appeal.

ARGUMENT

I. Any argument challenging Mr. Van Den Heuvel's conviction would be frivolous where he entered into a knowing and voluntary plea of guilty and does not seek to challenge his guilty plea on appeal.

A. Standard of Review.

The standard of review applicable to whether a guilty plea is knowing and voluntary is “whether, looking at the totality of the circumstances surrounding the plea, the defendant was informed of his or her rights.” *United States v. Mitchell*, 58 F.3d 1221, 1224 (7th Cir. 1995).

B. Legal Argument.

A guilty plea generally waives all non-jurisdictional defects in the proceedings. *United States v. Markling*, 7 F.3d 1309, 1312 (7th Cir. 1993). Mr. Van Den Heuvel entered into an unconditional guilty plea. The only potential issue would be whether the plea was enforceable as knowing and voluntary. However, in *United States v. Knox*, this Court noted that where a defendant does not move to withdraw a guilty plea in the district court, counsel need not address the voluntariness of the plea in an *Anders* brief if, after consultation with the defendant and advisement of any risks associated with the withdrawal of the plea, the defendant indicates that she does not wish to challenge her plea on appeal. See *United States v. Knox*, 287 F.3d 667, 670-71 (7th Cir. 2002); see also *United States v. Bryant*, 754 F.3d 443, 447 (7th Cir. 2014); *United States v. Konczak*,

683 F.3d 348, 349 (7th Cir. 2012); *United States v. Starnes*, 636 Fed. Appx. 935 (7th Cir. 2016).

Following this court's direction, counsel consulted Mr. Van Den Heuvel as to whether he wished to seek a withdrawal of his guilty plea. He indicated to counsel that he did not wish to do so. Mr. Van Den Heuvel indicated he understands the appeal waiver in his plea agreement, he wanted to dismiss his appeal, and he wants to file a § 2255 petition to argue he received ineffective assistance of counsel. However, Mr. Van Den Heuvel has not signed and returned the voluntary dismissal forms set to him by counsel. Based on his repeated indications that he does not want to withdraw his plea and wants to dismiss his appeal, counsel has not considered whether his guilty plea was knowing and voluntary pursuant to *United States v. Knox*.

Counsel notes that defense counsel mentioned the government might have breached the plea agreement by casting Mr. Van Den Heuvel in a negative light at the sentencing hearing. This is not a potential issue for appeal. First, defense counsel specifically stated twice that he was not pursuing an argument that the government breached the plea agreement. Second, although the government argued in aggravation at sentencing, it did not undermine its agreed recommendation of a 90 month prison sentence. *See Santobello v. New York*, 404 U.S. 257, 262 (1971) (holding the government's recommendation is important and

should be made accordance to the plea agreement); *see also United States v. Rachuy*, 743 F.3d 205, 209 (7th Cir. 2014) (holding that simply because the government discussed aggravating circumstances does not mean the government breached the plea agreement to recommend a certain sentence.) Therefore, whether Mr. Van Den Heuvel's guilty plea was knowing and voluntary is not a potential issue for appeal or consideration in an *Anders* brief.

II. Any argument challenging Mr. Van Den Heuvel's sentence would be frivolous, given that he explicitly waived the right to appeal his sentence in his plea agreement.

A. Standard of review

The Court reviews the enforceability of a waiver of appeal rights *de novo*. *United States v. Woods*, 581 F.3d 531, 534 (7th Cir. 2009).

B. Relevant legal principles

The Court will enforce an appeal waiver only if the issues raised on appeal come within the ambit of the waiver. *United States v. Schuh*, 665 F.3d 827, 837 (7th Cir. 2011). Further, the Court will review the terms of the agreement according to the parties' reasonable expectations and construe any ambiguities in the light most favorable to the defendant. *United States v. Quintero*, 618 F.3d 746, 750 (7th Cir. 2010). A waiver of appeal stands or falls with the plea bargain of which it is a part. *Id.* at 752, *quoting Nunez v. United States*, 546 F.3d 450, 454 (7th Cir. 2008). In limited settings, the Court may disregard the appeal waiver, such as when the

sentence exceeds the statutory maximum penalty or the sentence is based upon constitutionally-impermissible criteria. *United States v. Bownes*, 405 F.3d 634, 637 (7th Cir. 2005).

The validity of an appeal waiver rests on whether it is “express and unambiguous” and whether the record clearly demonstrates that it was made “knowingly and voluntarily.” *United States v. Woolley*, 123 F.3d 627, 632 (7th Cir. 1997). When determining whether a written waiver of appeal contained in a plea agreement is “knowing and voluntary,” the waiver of appeal must stand or fall with the agreement of which it is a part. *United States v. Wenger*, 58 F.3d 280, 282 (7th Cir. 1995). “If the agreement is voluntary, and taken in compliance with Rule 11, then the waiver of appeal must be honored.” *Id.*

Given the discussion in the factual section of this brief, the knowing and voluntary nature of Mr. Van Den Heuvel’s guilty plea as a whole renders his waiver of appellate rights contained in his plea agreement knowing and voluntary as well. The guilty plea in the instant case was taken in compliance with Rule 11 and was knowing and voluntary. Moreover, the waiver of appellate rights was clear, unambiguous, and contained in a written plea agreement. Indeed, the district court very carefully determined that Mr. Van Den Heuvel knew and understood the provisions in his plea agreement which waived the right to appeal his sentence, including the fact that he would not be

able to appeal any issues related to his motions to suppress.

Accordingly, this Court will honor the waiver of Mr. Van Den Heuvel's right to appeal his sentence, unless the sentence he ultimately received was in excess of the statutory maximum sentence or the result of the district court's reliance on an unconstitutionally impermissible factor such as race. *Jones v. United States*, 167 F.3d 1142, 1144 (7th Cir. 1998). As the record in this case clearly shows, however, not only was Mr. Van Den Heuvel's 90 month sentence within the statutory maximum of 20 years, but was also not the result of a constitutionally impermissible factor. Accordingly, Mr. Van Den Heuvel's waiver of his right to appeal renders any arguments challenging his sentence frivolous.

There is no indication that the government in any way breached the plea agreement, as discussed above. *See United States v. Navarro*, 804 F.3d 872, 878 (7th Cir. 2015). The sentence was not imposed on the basis of a constitutionally-impermissible factor. *See Bownes*, 405 F.3d at 637. Further, the three term of supervised release was within the range allowed by statute and within the guidelines range. *See* 18 U.S.C. § 3583(b)(2); U.S.S.G. § 5D1.2(a)(2). The \$100 special assessment was mandated by 18 U.S.C. § 3013(a)(2)(A). The restitution amount reflects the district court's rulings in Mr. Van Den Heuvel's favor regarding the amount of restitution. The sentence was lawfully imposed.

Even if Mr. Van Den Heuvel could challenge his sentence, there are no non-frivolous issues to be raised on appeal. The parties specifically agreed the government would recommend a sentence of 90 months and Mr. Van Den Heuvel could ask for a lower sentence but the district court would make the ultimate decision as to the sentence. The district court imposed the 90 month sentence recommended by the government, which was below the guidelines range. Therefore, there is no available challenge to his sentence on appeal.

Finally, Mr. Van Den Heuvel agreed to all the conditions of supervised release with the exception of the two he asked for clarification. The district court gave the requested clarifications, noted the conditions could be modified and would be applied appropriately, and ultimately imposed the conditions with the appropriate explanations. Therefore, there is no non-frivolous argument challenging the sentence because Mr. Van Den Heuvel waived the right to appeal the sentence and the manner in which it was imposed.

CONCLUSION

For the reasons stated herein, undersigned counsel respectfully requests that this Court allow counsel to withdraw.

Respectfully submitted,
THOMAS W. PATTON
Federal Public Defender

s/ Johanna M. Christiansen
JOHANNA M. CHRISTIANSEN
Assistant Federal Public Defender

Attorneys for Defendant-Appellant,
RONALD H. VAN DEN HEUVEL

CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)(7)(C)

The undersigned certifies that this brief complies with the volume limitations of Federal Rule of Appellate Procedure 32(a)(7)(C) and Circuit Rule 32 in that it contains 8,897 words and 781 lines of text as shown by Microsoft Word 2010 used in preparing this brief.

s/ Johanna M. Christiansen
JOHANNA M. CHRISTIANSEN

Dated: September 9, 2019

No. 19-1236

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

VS.

RONALD H. VAN DEN HEUVEL,
Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Wisconsin
Case No. 17-CR-160
The Honorable Judge William C. Griesbach

REQUIRED SHORT APPENDIX OF
DEFENDANT-APPELLANT, RONALD H. VAN DEN HEUVEL

FEDERAL PUBLIC DEFENDER
CENTRAL DISTRICT OF ILLINOIS
401 Main Street, Suite 1500
Peoria, Illinois 61602
Telephone: (309) 671-7891
Fax: (309) 671-7898
Email: Johanna_Christiansen@fd.org

THOMAS W. PATTON
Federal Public Defender

JOHANNA M. CHRISTIANSEN
Assistant Federal Public Defender

Attorneys for Defendant-Appellant,
RONALD H. VAN DEN HEUVEL

CERTIFICATE OF COMPLIANCE WITH CIRCUIT RULE 30

The undersigned counsel for Defendant-Appellant, hereby states that all of the materials required by Circuit Rule 30(a) and 30(b) are included in the Appendix to this brief.

s/ Johanna M. Christiansen
JOHANNA M. CHRISTIANSEN
Assistant Federal Public Defender

Date: September 9, 2019

APPENDIX TABLE OF CONTENTS

Certification	ii
Excerpt of Sentencing Hearing Transcript	1
Judgment in a Criminal Case	27

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,) Case No. CR 17-160
) Green Bay, Wisconsin
vs.)
) January 23, 2019
ROBERT H. VAN DEN HEUVEL,) 1:02 p.m.
)
Defendant.)

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE WILLIAM C. GRIESBACH
UNITED STATES CHIEF DISTRICT JUDGE

APPEARANCES:

For the Government: U.S. Department of Justice (ED-WI)
By: MATTHEW DEAN KRUEGER
ADAM H. PTASHKIN
Office of the US Attorney
517 E Wisconsin Ave - Rm 530
Milwaukee, WI 53202
Ph: 414-297-1700
Fax: 414-297-1738
matthew.krueger@usdoj.gov
adam.ptashkin@usdoj.gov

United States Securities and
Exchange Commission
By: BELINDA I MATHIE
175 W Jackson Blvd - Ste 1450
Chicago, IL 60604
312-596-6048
Fax: 312-353-7398
mathieb@sec.gov

U.S. Official Transcriber: JOHN T. SCHINDHELM, RMR, CRR,
Transcript Orders: WWW.JOHNSCHINDHELM.COM

Proceedings recorded by electronic recording,
transcript produced by computer aided transcription.



1 with the exception of what was filed last night by the
2 government, and I gave Mr. Van Den Heuvel a copy of that so he's
3 looked at that. So, yes, he's had everything.

4 THE COURT: And what's the most recent filing?

5 MR. LE BELL: I think it was entitled, "Government's
6 Sentencing Memorandum."

7 THE COURT: Oh, sure.

8 MR. LE BELL: I think that's --

9 THE COURT: That was the 21st, yeah. Okay. It was
10 filed on the 21st. Okay.

11 And I know you've made a number of objections to the
12 factual statements in the presentence report. Do any of them
13 bear on the guideline range?

14 MR. LE BELL: No. I was going to differentiate
15 between things that do and things that don't. I think the only
16 issue is the request or the suggestion on the part of the
17 prosecution that he be given a four-level enhancement for role
18 in the offense. I think that's really the only thing that's in
19 contention.

20 THE COURT: Uh-huh. And I will overrule that
21 objection. I've looked at the response to it and I'm convinced
22 that given the application note this case qualifies for the
23 four-level enhancement.

24 There were a number of people that participated in the
25 fraud, some knowingly, but most unknowingly. But the fraud was

1 so extensive that it meets the -- the standard set forth by the
2 court in *U.S. vs. Diekemper, Miller, and then Frost*.

3 Specifically, I'm to consider the length of the scheme, the
4 amount of money involved, and the level of orchestration to see
5 if it was otherwise extensive.

6 And certainly the facts of this case, the extensive
7 fraud recounted in the presentence report, is very extensive.
8 There are two people who have now entered pleas of guilty to
9 fraud in connection with this, two employees of
10 Mr. Van Den Heuvel who he directed to send to the Wisconsin
11 Economic Development Corporation falsified training reports.
12 And that was -- and other records in connection with the grant
13 and the loans that were provided by WHEDA that resulted in
14 significant monies coming in.

15 And then there were other employees, some of whom seem
16 to have -- could possibly have been charged but I'm not
17 suggesting the government should charge them. They were acting
18 at the direction of their employer, including preparing emails
19 and PowerPoint demonstrations, all kinds of things. But it's
20 not even required under the law, as I understand it, that all of
21 the participants be aware of the fraud, they're simply acting
22 pursuant to his direction.

23 So I'm satisfied the four-level enhancement does
24 apply. I'm going to adopt that, overrule the objection. And so
25 the guideline range then is --

1 Is that the only one that applies to the guideline
2 range?

3 MR. LE BELL: Right. Let me just make sure. I'm
4 almost positive.

5 THE COURT: Yeah. Because I think the basic argument
6 really is over the viability of the plan.

7 MR. LE BELL: Yes.

8 THE COURT: And that was where -- and that deals with
9 the mitigating factors.

10 MR. LE BELL: Let me just make sure I'm correct.

11 (Brief pause.)

12 MR. LE BELL: I think the rest of the paragraphs just
13 take into account if the Court were to not adopt the
14 government's recommendation and either vary it down to a three,
15 two, or no. So that's --

16 THE COURT: Yeah. Okay. So, and this is -- the
17 amount of the loss here that the parties have stipulated to --
18 and even this is challengeable, but I think that it's a
19 reasonable agreement of the parties and I will adopt it.

20 The amount of the loss then is \$9,389,440. That
21 results in an 18-level increase over the base level. And that's
22 the driving -- really the driving impact, as well as the role.
23 So we're really looking at a -- at a -- an offense level then of
24 30 after reduction for acceptance of responsibility. The
25 criminal history category is II. The guideline sentence then

1 would be 108 months, which would be 9 years, to 135 months,
2 which would be 11 years and 2 months. That's the guideline
3 range.

4 And determination of the guideline range is the
5 starting point in federal sentencing. Obviously, it's not the
6 ending point and I'm free to impose a sentence either above or
7 below that guideline range as long as I give a good reason for
8 doing so. So I'm to apply the factors set forth in the statute.

9 And I'll hear first from the government. Then all we
10 have left then is argument; is that right?

11 MR. LE BELL: Yes, Judge. I just wanted to find out
12 from you if you want to have me incorporate my comments with
13 respect to the factual inconsistencies in my part of it, or do
14 you want to go back and forth?

15 THE COURT: Why don't you go ahead and if there are
16 factual inconsistencies that you believe you need to correct in
17 order to make a sentencing argument, I think Mr. Krueger should
18 be able to address those in his comments.

19 MR. LE BELL: This is going to end up being a little
20 hodgepodge because they both are sort of intertwined, the 3553
21 factors along with the other statements that the government
22 asserts supports their position so

23 THE COURT: If you prefer we could start with
24 Mr. Krueger's sentencing argument and go to you and come back to
25 him.

1 THE COURT: All right. Thank you, Mr. Van Den Heuvel.

2 I begin with the guideline range of, as I said, 108 to
3 135 months. That's 9 years to a little over 11 years. That's
4 the starting point in the sentencing determination.

5 And the guidelines are a systematic effort on the part
6 of the Sentencing Commission to bring and compare all of the
7 factors that should assist a court that are relevant to
8 determining a sentence. The goal of the guidelines was to avoid
9 what's called unwarranted sentence disparity. That means they
10 don't want people who commit similar crimes and have similar
11 records to receive vastly disparate sentences, because it seems
12 unfair; you want to have some consistency in sentencing.

13 But the guidelines are not infallible, they have
14 holes. They don't tell the whole story. And so current law is
15 that I'm free to depart from the guidelines, to go up or down
16 depending on the facts of the case, as long as, again, I give
17 good reasons for doing that.

18 The guidelines -- the statute requires that I not only
19 consider the guidelines, but I consider primarily two factors.
20 One is the nature and circumstances of the offense, and the
21 second is the history and character of the defendant. And then,
22 with those two factors, try to fashion a sentence that meets
23 those goals that both parties talked about.

24 But, first of all, the first of which is to impose
25 just punishment for the offense. Just punishment is defined as

1 punishment that's proportional to the crime. It reflects the
2 seriousness of the offense, promotes respect for the law. How
3 do you -- what's proportional to a 9 1/2 million dollar fraud?

4 Both attorneys recognize that we don't look in terms
5 of -- I mean, there's not like measurements. We don't have a
6 ruler that tells us. These are matters of judgment. It's
7 obviously, though, a fraud of a significant magnitude, because
8 when we measure a fraud we look at not only the conduct but the
9 magnitude of it. And 9 1/2 million dollars is an awful lot of
10 money, no matter where you are.

11 I not only look at the nature and section of the
12 offense, but also the history and character of the defendant.
13 And then, as I said, the first goal is punishment.

14 The second goal is deterrence. And as the government
15 points out, deterrence is important. It's especially important
16 in white collar crime, because people that commit white collar
17 crimes are motivated by typically money. And the message you
18 want to send is that crime doesn't pay, and what amount of
19 deterrence is necessary to convince someone that defrauding
20 someone and making 9 1/2 million dollars doesn't pay? That
21 would also seem to suggest a significant sentence.

22 Other goals are -- as counsel indicated, are the need
23 to protect the public. And certainly, Mr. Van Den Heuvel --
24 nobody suggests that he represents a danger to the physical
25 well-being of the public, at least in the sense that he's not a

1 violent person. Although it's also true that protection of the
2 public from financial crimes is important, too, and financial
3 crimes can be almost sometimes more debilitating than a slap in
4 the face or physical violence.

5 And I think Dr. Araujo's explanation of the effect of
6 the crime on him is perhaps an example of that. I've seen worse
7 cases where life savings are taken away by a fraudster who's --
8 who takes advantage of people. So protection of the public is a
9 factor too.

10 And then, lastly, is the need for rehabilitation. And
11 Mr. LeBell's right, we sentence people as individuals. We don't
12 just plug, you know, values into a computer and come up with
13 some sort of number. And it is a matter of judgment and
14 reasonable people can disagree over that judgment.

15 But turning first to the nature and circumstances of
16 the offense. Frankly, and I recognize the big argument here
17 is -- isn't what was done so much, there's not an argument over
18 the facts, there's really an argument over the motivation. And
19 I think the argument over motive is somewhat misleading.

20 I do follow the money. I think that's a pretty good
21 argument. If Mr. Van Den Heuvel really believed that he had the
22 solution to pollution, to global warming, to waste, I don't
23 believe he would have spent as much of this money on other
24 things. I think these investors, as soon as they saw clear
25 evidence of that, would have -- would have been happy to invest

1 in his project. I just don't see that.

2 And then the argument over -- over this is really over
3 the viability. But it's not the viability of the Green Box
4 plant, it's the commercial viability of it. In order to support
5 the objection and argument that the green plan -- the Green Box
6 plan is not only viable but on the verge of success,
7 Mr. Van Den Heuvel has filled the record with numerous reports,
8 lengthy reports. As the government points out in its response,
9 however, those reports do not come close to demonstrating that
10 the plan was commercially viable or even on the verge of
11 commercial viability. Some of the reports are based on limited
12 demonstrations using other kinds of inputs from what the plan
13 called for. Others are based on unsupported statements from the
14 defendant himself which were assumed to be true for purposes of
15 writing the report.

16 Although the government does not dispute that the
17 process described by Mr. Van Den Heuvel was theoretically
18 viable, none of the reports demonstrate the plan was
19 commercially feasible, meaning that it could be profitably
20 operated to generate pulp, pellets, fuel, tissue rolls, and
21 consumer products for post-consumer -- from post-consumer waste
22 with no wastewater at the volumes and speed Van Den Heuvel
23 promised his investors and friends.

24 These reports were essentially fundraising tools and
25 they assisted in that, that Mr. Van Den Heuvel created to induce

1 other investors to continue the stream of investment dollars he
2 needed to maintain the appearance of a legitimate cutting-edge
3 business while at the same time supporting an extravagant
4 lifestyle.

5 That's what I see in this case. And the letters from
6 financial institutions as well. They're conditioned on due
7 diligence. They're not assuring, but he uses them. What could
8 be more fraudulent than putting your own -- putting together a
9 phony letter from Schenck? What could be more fraudulent than
10 instructing your employees to submit phony training records to
11 the government, the state government, to get funding back?

12 This isn't an ends-justifies-the-means case. These
13 means are corrupt. And the end was so far -- it was such a
14 grandiose plan that I don't believe that a person with
15 Mr. Van Den Heuvel's acumen really believed it.

16 He's got great confidence. And he talks, as we've
17 just heard -- it's no mystery why Dr. Araujo and others believed
18 him. Not only did they deal with a very forceful and convincing
19 personality, but they had a friendship with him too. Their
20 wives got to know each other, their children.

21 Dr. Araujo, you shouldn't feel stupid. You're not a
22 -- you know, to be a victim is not to be dumb. Brighter people
23 than you with much more money spent much more on this project
24 than you did. I would say you're the hero of this case,
25 frankly, because your determination brought this to an end. Who

1 knows how many other people would have lost had you not
2 persisted. I wish I had the ability to give you restitution.
3 Our system of justice is limited, as you no doubt and
4 unfortunately know.

5 And, in fact, the government has compromised its case
6 because of the resources that are taken just to bring the case.
7 The complexity of this case, a person who set up some 50
8 different entities, LLCs and corporations that intertwine, bank
9 records that are almost impossible to decipher. You look at the
10 resources, and in this case the government's paying for the --
11 the taxpayers are paying for the resources on both sides.
12 They're paying the government to prosecute the case and
13 Mr. LeBell to defend Mr. Van Den Heuvel because he has no money,
14 although he lives in a \$2 million house until he found himself
15 in jail.

16 I recognize that this is hard for family and friends
17 and loved ones to hear. And I'm sorry for that. They know a
18 different side of Mr. Van Den Heuvel. They were not taken
19 advantage of like Dr. Araujo and the EB-5 victims and the
20 Cliffton Equities people and others; the other employees who
21 went unpaid, who bought his lies and continued to work for him;
22 the people that engaged in fraud for no benefit for themselves
23 but now have been convicted of federal crime, federal conspiracy
24 charges, because they did what Mr. Van Den Heuvel told them in
25 the belief that he was their employee.

1 Mr. Van Den Heuvel, you know, you could do a lot in
2 this case by being honest. You've put your family and your
3 friends in a horrible position. They must either believe that
4 you have lied to them as well or have not been completely
5 honest, or they must believe that the criminal justice system of
6 the country in which they live is corrupt. And you've made that
7 their choice.

8 And I've looked carefully at these documents. Believe
9 me, I'm not a big fan of government. I don't want to see
10 someone crushed who is innocent. Nobody does. This evidence is
11 overwhelming. And you lied. You lied to get to betray people
12 and defraud them. And it's a terrible thing to do. But it's
13 even worse to put your children in the position of now believing
14 that the country in which they live is corrupt. And that's
15 essentially what you've put them in the position of believing.

16 This idea that you're motivated by love of your fellow
17 man and this grandiose plan to make up for the death of your
18 child, these are ruses. If you believe it, you have to get over
19 it yourself. One doesn't defraud so many people in such a broad
20 scheme lasting over four years because he has a good motive to
21 cure the world of infectious diseases. This is absurd and I
22 can't countenance this.

23 I recognize Mr. LeBell makes the best argument he can.
24 He's a good advocate. But frankly, it makes no sense. It is
25 not credible. I've looked at these documents. They don't

1 support the idea -- and when you ramble on about everything
2 that's ever been done all around the world, what does it have to
3 do with you? Some of your companies may have had a part in it.
4 But this isn't Green Box, whatever you did in -- I mean, this is
5 a fraud.

6 Some of the very reports you rely on, as the
7 government points out, actually support the defense. The E3
8 consulting report that you provided, dated February of 2015,
9 assume that the project costs would have capital costs of
10 124, -- over \$124,000. In other words, instead of describing a
11 proven system, the report asserted that over a hundred million
12 dollars was needed to start the Green Box process in De Pere and
13 Cheboygan, Michigan. That was four years after you had
14 represented to Wisconsin -- the Wisconsin Economic Development
15 Corporation that its hundred-million-dollar loan would allow you
16 to begin operations immediately and three years after you
17 represented the same thing to Clifton Equities to get them to
18 give you \$2 million in 2012. And, of course, this was long
19 after you had told Dr. Araujo that, you know, open a -- keep a
20 date on your calendar, we're about to have a grand opening.

21 This project -- and the idea that this was -- you were
22 on the verge of breakout and then the search warrant happened
23 and that's what stopped everything, that's absurd as well. What
24 was the Brown County Sheriff to do, overmatched as they were
25 with the complexity of your business arrangements?

1 Dr. Araujo was one -- how many other people were they
2 supposed to let lose their money before they took any steps?
3 The complexity of this fraud made it so difficult for a local
4 law enforcement agency to do anything. And yet their choice was
5 either to stand by and watch more people lose money or to
6 actually do something.

7 And they had people on the inside, your own
8 accountants were telling them that you weren't legitimate. They
9 warned you not to use money that you took from investors to pay
10 your alimony, to buy cars and to use in cash, and you ignored
11 those requests.

12 Now, you're a smart person. You knew that was wrong,
13 you knew that was fraudulent, and you knew that you were doing
14 that to pay off debts that you had already incurred before. And
15 the sad thing is, you're such a bright person and you've given
16 so much to this community. And the community loves your family.
17 We all see "Van Den Heuvel" all over the place. And this is not
18 a reflection on your family. It's certainly not a reflection on
19 your brothers or your children, it's you. You have really
20 harmed them. And you've harmed your own immediate family.

21 As I said when you were here, what is it, two years
22 ago now? No judge wants to impose a sentence to prison,
23 especially for a man of your age and stature in this -- and who
24 has a family and a family that's so dependent on him. But that
25 doesn't immunize anybody from a prison sentence, otherwise it

1 would be a license to commit a crime.

2 I think this offense is very serious. The government
3 points out not only the scope of the fraud, the different
4 statements. It wasn't a one-off, like Mr. Krueger said. It
5 wasn't one representation that was mass-communicated to
6 everyone. You customized each approach to each investor, to the
7 friends that you met through the international school, Dr. Linn
8 and Dr. Araujo. You had the personal touch. Even your honesty,
9 your apparent honesty, your religious devotion, all of these
10 things almost become a tool. And I'm not questioning your
11 religious belief, but I think you need to take a careful look at
12 your own behavior and consider it in light of that faith that
13 you hold so dearly. You don't treat people this way if you
14 honestly believe those things. You don't treat your employees
15 the way you treated them, leave them unpaid.

16 Now, that's not the fraud. Mr. LeBell is right,
17 that's simply a breach of your contract, and we don't treat
18 breach of contract as a fraud. That's unfortunately true for
19 many of those people who have asked for restitution.
20 Unfortunately they believed you when you said things were gonna
21 turn around, they continued to work.

22 But for the people that you drew in with these
23 elaborate presentations, PowerPoint presentations that you
24 modified and customized and added and gave partial and
25 incomplete and incorrect information to get -- induce people to

1 invest in you, that was terrible. And the magnitude of it.

2 But the nature of the victims, the personal victims,
3 how can you do that to friends, people that know your wife and
4 whose daughters are friends with your kids? You ruined the
5 relationship between the families.

6 And then the E5 people and the Clifftons. Now, these
7 are foreign investors. And I think the government makes a good
8 point. People -- foreigners invest in this country because they
9 appreciate the rule of law and honesty and transparency, the
10 lack of corruption in this country. Well, you have given many a
11 lesson not to invest, at least around here, because you're gonna
12 come away with nothing, you're gonna lose everything. That's a
13 terrible message to send about the community in which you grow
14 up and which you contribute in and which you love. And yet
15 that's what you've communicated to some foreign investors.

16 The manner in which you conducted your business, not
17 drawing a salary, having much of this money go into different
18 accounts and then huge cash withdrawals that you've used for
19 your spending money because you knew it couldn't be landed in a
20 bank account in your name. All of these things tell me the
21 depth of your fraud.

22 So I see it as a very significant and serious crime.
23 The magnitude, the nature of the crime, the victims, all of
24 these things are very -- I must factor in and I must take in
25 consideration and are aggravating factors.

1 Your personal circumstances, I mean, again, as I said
2 last time, there isn't an excuse for this. You know, I have so
3 many people come before me that never had a thing in life. They
4 didn't even have a father or a mother, or at least a sober
5 mother or a nonaddicted -- a lot of them come from abuse. I
6 read presentences every day, and I wonder where in life would I
7 be if I had as little in life as this person who comes before
8 me.

9 Your presentence isn't like that. You had so many
10 gifts and blessings in your life. You had good families,
11 wonderful siblings who even no matter what will never turn on
12 you. I mean, they will not support lies and crimes, but they
13 will not -- their love is unconditional. And your family,
14 you're a good father in the sense that you have that sense of an
15 obligation, you recognize the importance, you've tried to give
16 them your faith, too. And obviously that's a great gift if you
17 have that to give. You have that blessing.

18 And, of course, your business acumen, as Mr. Barone
19 testified and Mr. Barrow, you know, obviously you could be --
20 you were very successful. So there wasn't a need to do this.
21 And that makes it aggravating too.

22 And then the fact that you would do it when you
23 have -- when you hold a position of such responsibility and
24 stature not only as a father and a husband, but as such an
25 important member of the community in which you grow up and a

1 contributor. Those very things that helped you defraud people
2 who had every reason to trust you because you are an
3 upstanding -- at least by the impression they had -- a person of
4 great stature, made it possible for you to commit this crime,
5 made it easier for you to convince people who didn't perhaps
6 take every step or dot every "I" or cross every "T" to check out
7 everything because, of course, you're Ron Van Den Heuvel, you're
8 a great philanthropist, you contribute to the community. And
9 those things allowed you to maintain a lifestyle and appearance
10 that helped you induce others to give you money.

11 So, you know, those are aggravating factors. On the
12 other hand, I certainly don't want to ignore the contributions
13 you have made to this community. And, of course, those aren't
14 what bring you to court, it's your crime, but I certainly don't
15 want to ignore those.

16 The request for leniency, boy, and forgiveness? It's
17 not my -- forgiveness is something that somebody who is wronged
18 does. I wasn't wronged, I can't forgive you. I can show some
19 leniency, but I can't -- in the sense of forgiveness, that would
20 be something you would have to ask Dr. Araujo to do because I'm
21 the judge, I'm not the victim here.

22 And that's not to say courts, you know, can't show
23 mercy in a sense and can't be lenient in appropriate cases, but
24 I think the government is right, I would send a terrible message
25 if I did not impose a sentence that was substantial.

1 I'm going to adopt the government's recommendation.
2 I'm going to impose the 90 months. And to me, that is showing
3 leniency. When I look at the amount of money here and the scope
4 of the fraud and the nature of it, I think a good argument could
5 be made for at least the guidelines. And many people would say
6 of course.

7 But I'm giving you a lot of credit for frankly your
8 acceptance of responsibility. I do think that this would have
9 been a very difficult and expensive case for the government to
10 have to continue to prosecute. I know you've waived your right
11 to appeal. That also will save time to the extent it sticks,
12 and I'm frankly giving you credit for that.

13 And I don't want to -- I also am giving you credit for
14 what I see in all of these people that care about you and see
15 the goodness in you, because I know it's there. They saw it.

16 At the same time, this is a terrible crime. And as I
17 said last time you were in front of me, I think you need to face
18 Ron Van Den Heuvel. I think you need to take a close look at
19 yourself. And I think you ought to -- you ought to try to give
20 your family a sense that you're not a victim of a corrupt
21 system, but you've made some terrible mistakes and you got what
22 you deserve and let them at least walk out of here thinking they
23 don't live in a corrupt world where the courts and the justice
24 system care nothing but scalps and putting people in prison who
25 don't deserve it.

1 I've done my best to listen closely to you, to
2 consider your arguments and your attorney's arguments, but I'm
3 convinced this is a fraud of great magnitude, committed by a
4 person who knew better and who even now tries to minimize the
5 damage and the evil of what he did. You're not that old. 64
6 isn't as young, but these days people live a long time. This is
7 certainly not the end of your life. The prison that you will go
8 to is not like the Brown County Jail. That's the hard time. I
9 expect you will be in a facility that's not anywhere near as
10 austere as that.

11 In a sense, you know, we look for punishment in this
12 world. Our prison, especially for people in your position, are
13 going to be humane. That's not to minimize the separation and
14 the pain of separation from family, but my sense is your
15 family's not gonna leave you and they're going to visit you and
16 you'll have contact with them.

17 But I don't see the restitution here as a real
18 possibility. I just don't think that this system was
19 financially viable or that money would have been spent on this
20 system instead of for the other purposes. Maybe I'm wrong. I
21 hope so. But it seems to me you have no assets even to hire an
22 attorney and so nobody who, despite what you say about all the
23 people that think this is great, no one will lend you money for
24 it, at least at this point. And the vague lines of credit which
25 once they look at the local liens in the county court across the

1 street, that dries up. That goes away.

2 Realistically, my hope is that, you know, you think
3 hard and long about what you've done, you explain to your family
4 so they don't feel so hurt and victimized by a system instead of
5 by what you've done because you're the one that put them and you
6 in this position. And that, it seems to me, is all we can do
7 here today.

8 90 months in the custody of the Bureau of Prisons.

9 \$100 fine -- or special assessment. I'm not going to
10 impose a fine.

11 I have to impose the restitution. And I do impose the
12 restitution in the amounts agreed to by the parties. That was
13 \$9,428,618.81 to the individuals listed in the presentence
14 report.

15 That is the right figure, is that right, Mr. Krueger?

16 MR. KRUEGER: Correct.

17 THE COURT: And then any fine on top of that would
18 be -- wouldn't be paid.

19 And I -- restitution. When you get out you'll be
20 ordered to pay restitution to the extent you're able.

21 And certainly if there's an avenue and resources
22 available, I think the civil remedies remain.

23 With respect to the conditions of your supervision, I
24 am going to impose those. And let me ask you, Mr. LeBell, have
25 you gone over those with your --

1 MR. LE BELL: I have, Judge. And if you look at the
2 objections, there is a couple of very minor modifications that I
3 requested.

4 THE COURT: Why don't we address them as I go through
5 them. Okay?

6 Three years of supervision. That's the limit. That's
7 the maximum I can impose.

8 These are the conditions:

9 That you report to probation --

10 Oh, by the way, this sentence is concurrent as
11 recommended with the sentence Mr. Van Den Heuvel is already
12 serving in the other case.

13 That he is to report to the probation office in the
14 district to which he's released within 72 hours of his release
15 from the custody of the Bureau of Prisons. And he's to report
16 to the probation officer in a manner and frequency as directed
17 by his -- by the court or his probation officer.

18 He's not to leave the state of Wisconsin without the
19 permission of the court or his probation officer.

20 He's to answer truthfully all inquiries put to him by
21 the probation officer subject to his Fifth Amendment right
22 against self-incrimination and follow the reasonable
23 instructions of the officer.

24 He's to use his best efforts to support his
25 dependents.

1 He's to use his best efforts to find and hold lawful
2 employment unless excused by his probation officer for
3 schooling, training and other acceptable reasons.

4 He's to notify the probation officer at least 10 days
5 prior to any change in your place of employment or residence.
6 When such notification is not possible, you're to notify your
7 agent within 72 hours after the change.

8 You're not to associate with any persons known by you
9 to be engaged in or planning to be engaged in criminal activity.
10 And "associate" as used here means you're not to reside with
11 them or to regularly socialize with such a person.

12 You're to permit your probation agent to visit you at
13 reasonable times at home and permit any confiscation of any
14 contraband observed in plain view by the officer.

15 You're to notify your agent within 72 hours of being
16 arrested or questioned by a law enforcement officer.

17 You're to pay the restitution at a rate of at least
18 \$200 per month or 10 percent of your net monthly income,
19 whichever is greater.

20 You're also to apply any tax returns or refunds toward
21 payment of the fine.

22 And you're not to change exemptions claimed for either
23 federal or state income tax purposes without prior notice to
24 your agent.

25 You're to provide access to all financial information

1 requested by your agent, including but not limited to copies of
2 your federal and state tax returns. Your tax returns must be
3 filed in a timely manner. And you're also to submit monthly
4 financial reports to the supervising probation agent.

5 You're not to open any new lines of credit which
6 includes the leasing of any vehicle or property, taking out a
7 loan from a bank, or using existing credit resources without the
8 prior approval of your probation officer. If your financial
9 obligations become satisfied, that condition will be dropped.

10 You may not hold employment --

11 This is the one Mr. --

12 -- hold employment with fiduciary obligations during
13 the term of -- without first notifying your employer of the
14 conviction. And you're not to hold self-employment having
15 fiduciary responsibilities or otherwise involved in initiating
16 or conducting financial transactions without the approval of
17 your agent.

18 What are the objections then?

19 MR. LE BELL: It's just on 10, Judge. I just wanted
20 to see if the wording can be changed that restitution should be
21 required subject to his ability to pay.

22 THE COURT: Oh, that's always the case. He is not
23 violating if he cannot pay. The assumption is only a willful
24 violation of a condition would result in concerns. Yeah, if
25 he's unable to pay \$200 a month, he will not be revoked. But he

1 has to use his best efforts. And I recognize that when he's out
2 he'll be in his late 60s, close to 70. Yeah, in his early 70s.
3 Yeah.

4 Okay. Anything -- other than appeal rights. I don't
5 have a problem recommending Oxford. And it seems to me that is
6 even -- the camp there is --

7 MR. LE BELL: Camp.

8 THE COURT: -- a likelihood I would -- I would think
9 that's a likelihood give his circumstances. He is incarcerated.
10 Were he voluntarily surrendering it would be more likely, but
11 given his history I'm gonna just continue the sentence.

12 MR. LE BELL: If you can indicate Oxford Camp as
13 opposed to Oxford.

14 THE COURT: I'll recommend Oxford Camp.

15 Other counts are dismissed.

16 And then appeal rights. Is that all that's left?

17 MR. LE BELL: Correct.

18 THE COURT: Mr. Van Den Heuvel, and I'm telling you,
19 you do have the right to appeal. Now, I recognize there's a
20 waiver in the plea agreement, so it's subject to that. But, in
21 any event, to the extent your appeal rights survive, you have
22 the right to appeal.

23 If you can't afford to appeal -- the cost of an
24 appeal, the clerk can assist you so you can file in forma
25 pauperis and not have to pay the costs. Your attorney will talk

1 to you about possible grounds to appeal. And if you choose to
2 appeal, though, you have to file a notice of appeal within 14
3 days of the entry of the judgment.

4 Do you understand those things?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Anything else?

7 MR. LE BELL: No, Your Honor.

8 MR. KRUEGER: Thank you.

9 THE COURT: All right, this matter is concluded.

10 (Hearing concluded at 3:58 p.m.)

11 * * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA

**AMENDED JUDGMENT
IN A CRIMINAL CASE**

v.

RONALD H. VAN DEN
HEUVEL

Case Number: 17-CR-160
USM Number: 15653-089

Robert G. LeBell
Defendant's Attorney

Matthew Krueger
Assistant United States Attorney

Reason for Amendment: Modification of Restitution Order (18 U.S.C. § 3664) to include specific restitution amounts owed to each of the nine EB5 investors.

THE DEFENDANT pled guilty to count one of the indictment and is adjudicated guilty of these offense(s):

Title & Section	Nature of Offense	Date Concluded	Count(s)
18 U.S.C. §§§ 1343, 1349 and 2	Wire Fraud	August, 2015	1

The defendant is sentenced as provided in this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

All remaining counts are dismissed upon motion of the United States.

IT IS ORDERED, that the defendant must 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 the United States Attorney of material changes in economic circumstances.

Date Sentence Imposed: January 23, 2019

s/ William C. Griesbach
Chief Judge, United States District Court

Date Judgment Entered: June 4, 2019

DEFENDANT: RONALD H. VAN DEN HEUVEL

CASE NUMBER: 17-CR-160

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of three (3) years.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess or use a controlled substance.
 - ☐ You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court. (check if applicable)
 - ☒ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (check if applicable)
3. ☒ You must not possess a firearm.
4. ☒ You must make restitution in accordance with 18 U.S.C. §§ 3363 and 3363A or any other statute authorizing a sentence of restitution. (check if applicable)
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. (check if applicable)
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. (check if applicable)
7. ☐ You must participate in an approved program for domestic violence. (check if applicable)

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached pages.

DEFENDANT: RONALD H. VAN DEN HEUVEL

CASE NUMBER: 17-CR-160

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You shall report to the probation office in the district to which you are released within 72 hours of your release from the custody of the Bureau of Prisons and shall report to the probation officer in a manner and frequency as reasonably directed by the Court or probation officer.
2. You shall not leave the State of Wisconsin without permission of the court or probation officer.
3. You shall answer truthfully all inquiries by the probation officer, subject to your Fifth Amendment right against self-incrimination, and follow the reasonable instructions of the probation officer.
4. You shall use your best efforts to support your dependents.
5. You shall use your best efforts to find and hold lawful employment, unless excused by the probation officer for schooling, training, or other acceptable reasons.
6. You shall notify the probation officer at least ten days prior to any change in your place of residence or employment. When such notification is not possible, you shall notify the probation officer within 72 hours of the change.
7. You shall not associate with any persons known by you to be engaged, or planning to be engaged in criminal activity. "Associate," as used here, means reside with or regularly socialize with such person.
8. You shall permit a probation officer to visit you at reasonable times at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer.
9. You shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer.

AO 245B (Rev. 02/18) Judgment in a Criminal Case

DEFENDANT: RONALD H. VAN DEN HEUVEL
CASE NUMBER: 17-CR-160

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant is to pay restitution at a rate of not less than \$200.00 per month or 10% of his or her net earnings, whichever is greater. The defendant will also apply 100 percent of his or her yearly federal and state tax refunds toward the payment of restitution. The defendant shall not change exemptions without prior notice of the supervising probation officer.
2. The defendant shall not open new lines of credit, which includes the leasing of any vehicle or other property, or use existing credit resources without the prior approval of the supervising probation officer. After the defendant's court-ordered financial obligations have been satisfied, this condition is no longer in effect.
3. The defendant is to provide access to all financial information requested by the supervising probation officer including, but not limited to, copies of all federal and state tax returns. All tax returns shall be filed in a timely manner. The defendant shall also submit monthly financial reports to the supervising probation officer. After the defendant's court-ordered financial obligations have been satisfied, this condition is no longer in effect.
4. The defendant shall not hold employment having fiduciary responsibilities during the supervision term without first notifying the employer of his or her conviction. The defendant shall not hold self-employment having fiduciary responsibilities without approval of the supervising probation officer.

DEFENDANT: RONALD H. VAN DEN HEUVEL

CASE NUMBER: 17-CR-160

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on the attached page.

Total Special Assessment**\$100.00****JVTA Assessment*****\$0.00****Total Fine****\$0.00****Total Restitution****\$9,428,618.81**

- ☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If a defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid.

*PAYEE	AMOUNT
Wisconsin Economic Development Council	\$1,211,500.00
Clifton Equities	\$3,149,940.00
Dr. Marco Arajuo	\$527,178.81
Xiaohong Wang	\$475,000
Meng Qiao	\$500,000
Honggui Xie	\$500,000
Qi Zhong	\$500,000
HongWu Li	\$500,000
Haitao Kang	\$500,000
Qian Qian Wang	\$500,000
Qiujuan Lin	\$500,000
Jianfeng Hu	\$500,000
David Williquette	\$40,000.00
Dr. Edward Linn	\$25,000.00
TOTAL:	<u>\$9,428,618.81</u>

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

DEFENDANT: RONALD H. VAN DEN HEUVEL

CASE NUMBER: 17-CR-160

SCHEDULE OF PAYMENTS

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

- A** ☒ Lump sum payment of \$100.00 due immediately
- B** ☒ Payment to begin immediately (may be combined with ☐ C, ☒ D, or ☐ F below); or
- C** ☐ Payment in equal monthly installments of not less than \$_____ or 10% of the defendant's net earnings, whichever is greater, until paid in full, to commence 30 days after the date of this judgment; or
- D** ☒ Payment in equal monthly installments of not less than \$200.00 or 10% of the defendant's net earnings, whichever is greater, until paid in full, to commence 30 days after release from imprisonment to a term of supervision; or
- E** ☐ Payment during the term of supervised release will commence within 30 days after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** ☐ Special instructions regarding the payment of criminal monetary penalties: _____

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of court.

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

- ☐ Joint and Several (Defendant and Co-Defendant Names, Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate): _____
- ☐ The defendant shall pay the cost of prosecution; or ☐ The defendant shall pay the following court costs:
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

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.

No. 19-1236

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

RONALD H. VAN DEN HEUVEL,

Defendant-Appellant.

Appeal from the United States
District Court for the Eastern
District of Wisconsin

Case No. 17-CR-160

Hon. William C. Griesbach,
United States District Judge,
Presiding.

NOTICE OF FILING AND PROOF OF SERVICE

TO: Mr. Gino Agnello, Clerk, United States Court of Appeals, 219 South
Dearborn Street, Chicago, Illinois 60604

Mr. Ronald H. Van Den Heuvel, Reg. No. 15653-089, FPC Duluth, P.O. Box
1000, Duluth, Minnesota 55814

Mr. Matthew D. Krueger, Office of the United States Attorney, 205 Doty
Street, Suite 301, Green Bay, Wisconsin 54301

PLEASE TAKE NOTICE that on September 9, 2019, the undersigned
attorney electronically filed the foregoing with the Clerk of Court for the United
States Court of Appeals for the Seventh Circuit by using the CM/ECF system.
Participants in the case who are registered CM/ECF users will be served by the
CM/ECF system. I further certify that some of the participants in the case are

not CM/ECF users. I have mailed the foregoing documents by First Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier within three calendar days, to the non-CM/ECF participants.

s/ Johanna M. Christiansen
JOHANNA M. CHRISTIANSEN
Assistant Federal Public Defender
Office of the Federal Public Defender
401 Main Street, Suite 1500
Peoria, Illinois 61602
Phone: (309) 671-7891