

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA	:	
	:	
Appellee	:	
	:	
v.	:	
	:	
IAN RESNICK and	:	Docket No. 16-2220
ADAM LACERDA	:	Docket No. 15-2812
GENEVIEVE MANZONI	:	Docket No. 15-4023
Appellants	:	
	:	

**APPELLANT ADAM LACERDA’S MOTION FOR RELIEF
FROM CONSOLIDATION ORDER DATED AUGUST 30, 2016 AND
FOR GUIDANCE CONCERNING HOW TO PROCEED**

Appellant Adam Lacerda, by and through his undersigned counsel, hereby moves for relief from this Court’s consolidation Order dated August 30, 2016 and otherwise seek guidance from this Court concerning how to proceed, and in support hereof states the following:

I. INTRODUCTION

Unsure how to proceed, it is with some trepidation that Mr. Lacerda seeks the relief requested herein. Although this Court to some extent has consolidated Mr. Lacerda’s appeal with the appeals of Genevieve Manzoni (No. 15-4023) and Ian Resnick (No. 16-2220) (collectively hereinafter referred to as “co-appellants”), Mr. Lacerda files this admittedly unconventional Motion seeking relief separate and distinct from his co-appellants.

These cases have a history of continuances/briefing extensions. As described below, initially, Mr. Lacerda secured extensions of briefing deadlines until his co-appellants’ cases were resolved before the district court. Once the cases “caught up” to one another, the parties sought consolidation. Once the Court consolidated the cases on August 30, 2016, the parties began to

discuss responsibility for briefing common issues and assembling the required joint appendix. In the end, Mr. Lacerda agreed to pull the laboring oar in compiling what is expected to be a very voluminous appendix. This agreement nonetheless requires collaboration between the parties.

After seeking and obtaining several additional extensions, Mr. Lacerda and his co-appellants currently face a January 15, 2018 deadline by which to file their briefs and joint appendix. Over the past several months, Mr. Lacerda and, more precisely, his counsel have worked to complete his brief and secure his co-appellants' contribution to the contemplated joint appendix so the parties could file within the deadline set by this Court. However, to date, Mr. Lacerda has not received the necessary contribution from his co-appellants concerning the joint appendix.

Mr. Lacerda, who is serving a substantial prison sentence, has been anxiously waiting to proceed. Without the involvement of co-appellants, it is not possible for Mr. Lacerda to file a brief, if doing so requires submission of a joint appendix. Mr. Lacerda therefore moves for relief from the Court's August 30, 2016 Consolidation Order to allow Mr. Lacerda to file a brief and appendix independent of his co-appellants. Additionally, Mr. Lacerda requests this Court provide guidance concerning how he should proceed.

II. PROCEDURAL HISTORY¹

A. District Court

1. On or about January 23, 2013, a grand jury sitting within the United States District Court for the District of New Jersey returned a Superseding Indictment charging Appellant Adam Lacerda with conspiracy to commit mail and wire fraud in violation of 18 U.S.C. § 1349, multiple

¹ To best understand Mr. Lacerda's request for relief, Mr. Lacerda feels compelled to outline in detail the extensive procedural history of these cases.

counts of mail and wire fraud in violation of 18 U.S.C. §§ 1341 and 1343; conspiracy to commit money laundering in violation of 18 U.S. C. § 1956(h); and several counts of money laundering in violation of 18 U.S.C. §1956(a).²

2. In the same Superseding Indictment, the grand jury charged both co-appellants Ian Resnick and Genevieve Manzoni with conspiracy to commit mail and wire fraud in violation of 18 U.S.C. § 1349, and multiple counts of mail and wire fraud in violation of 18 U.S.C. §§ 1341 and 1343.

3. Beginning on or about July 23, 2013, Mr. Lacerda, co-appellants Manzoni and Resnick, and two (2) other co-defendants proceeded to trial, which lasted approximately seven (7) weeks.

4. On September 5, 2013, the jury returned adverse verdicts against Mr. Lacerda, co-appellants Manzoni and Resnick, and one other not implicated in these appeals.

5. On or about June 23, 2015, the district court sentenced Mr. Lacerda to 27 years in prison, a period of supervised release, and a special assessment.

6. On July 1, 2015, Appellant timely filed his Notice of Appeal with the district court.

7. On December 16, 2015, the district court sentenced co-appellant Genevieve Manzoni to 42 months (or 3.5 years) in prison, a period of supervised release, and a special assessment.

8. On December 21, 2015, Ms. Manzoni timely filed a Notice of Appeal with the district court.

² The matter was captioned before the district court at *United States v. Adam Lacerda*, et al., Criminal Docket No. 12-cr-303 (D.C.N.J.).

9. On or about April 27, 2016, the district court sentenced co-appellant Ian Resnick to 18 years in prison.

10. On or about May 2, 2016, Mr. Resnick timely filed a Notice of Appeal with the district court.

B. Court of Appeals

11. Upon Mr. Lacerda's filing of a Notice of Appeal, this Court docketed his case at Docket No. 15-2812.

12. On or about October 14, 2015, before the district court sentenced either co-appellant, this Court issued a briefing notice for Mr. Lacerda, setting a brief filing deadline of November 13, 2015.

13. On or about November 12, 2015, Mr. Lacerda filed Appellant's consent Motion to Vacate Briefing Schedule or, Alternatively, for a Ninety (90) Day Extension of the Current Briefing Deadline ("Motion to Vacate"). *See* Lacerda Third Circuit Docket Entry Document No. Document: 003112127940. Appellant filed the Motion to Vacate to allow his co-appellants' cases then pending before the district court to be resolved before that court so that the anticipated appeals of those cases could be consolidated with Appellant's case.

14. On December 4, 2015, the Court granted Appellant's Motion to Vacate Briefing Schedule. Attached hereto as Exhibit "A" is a copy of the Court's Order dated December 4, 2015.

15. Through its December 4, 2015 Order (Exhibit "A"), the Court directed undersigned counsel to confer with counsel for Appellant's co-defendants and counsel for Appellee to determine the necessity of a further stay. Additionally, in its December 4, 2015 Order, the Court directed Appellant to seek a further stay of the briefing schedule if the two related cases remained in a posture where they could not yet be consolidated with Appellant's case.

16. On or about February 2, 2016, Appellant filed an unopposed Motion to Extend the Stay of the Briefing Schedule (*see* Lacerda Third Circuit docket entry Document No. 003112195460), which the Court granted on or about February 4, 2016. Attached hereto as Exhibit “B” is a copy of the Court’s February 4, 2016 Order granting Appellant’s Motion to Extend Stay. In its February 4, 2016 Order granting Appellant’s Motion to Extend Stay (Exhibit “B”), the Court again directed Appellant to seek a further stay if the related cases remained in a procedural posture where they could not yet be consolidated with Mr. Lacerda’s case.

17. Of the two related cases initially pending before the district court at the time Appellant filed the Motion to Extend the Stay, one defendant, Genevieve Manzoni, was sentenced and, as expected, appealed her conviction. On December 23, 2015, Ms. Manzoni’s case was docketed before this Court at *United States v. Manzoni*, Docket No. 15-4023 (3d Cir.). A copy of this Court’s docket from Ms. Manzoni’s case is attached hereto as Exhibit “C.” Review of Exhibit “C” reveals that on March 10, 2016, the Court issued a briefing schedule directing Ms. Manzoni to file her brief on or before April 11, 2016.

18. On or about March 18, 2016, Ms. Manzoni requested the Court vacate the briefing schedule issued in her case or, alternatively, to extend the brief filing deadline by ninety (90) days. *See* Exhibit “D,” Document No. 003112237663. Review of Ms. Manzoni’s March 18, 2016 Motion reveals as the basis for her request to vacate the briefing schedule the very same reasons Mr. Lacerda earlier requested the briefing schedule be stayed, namely, to allow a case still pending before the district court to proceed to the point where it can be consolidated with Mr. Lacerda and Ms. Manzoni’s cases.

19. On April 1, 2016, Mr. Lacerda filed an unopposed motion to stay the briefing schedule, so as to allow Mr. Resnick’s case, then pending before the district court, to be resolved

before that court so that the anticipated appeal of Mr. Resnick's case could be consolidated with Mr. Lacerda and Ms. Manzoni's. *See* Lacerda Third Circuit Docket Entry No. 003112251475.

20. Through an Order dated April 6, 2016 (a copy of which is attached hereto as Exhibit "E"), the Court granted Ms. Manzoni's March 18, 2016 Consent Motion to Vacate Briefing Schedule or, Alternatively, for Ninety Day Extension of the Current Briefing Schedule and Mr. Lacerda's April 1, 2016 Unopposed Motion to Stay the Briefing Schedule. Additionally, through its April 6, 2016 Order (Exhibit "E"), the Court stayed the briefing schedules for 60 days and directed Appellants to file a motion to consolidate if and when all parties' cases resolve within the district court.

21. On May 10, 2016, Mr. Resnick's case was docketed before this Court at *United States v. Resnick*, Docket No. 16-2220 (3d Cir.). A copy of this Court's docket from Mr. Resnick's case is attached hereto as Exhibit "F." Review of Exhibit "F" reveals that on May 10, 2016, the Court issued an Order staying the briefing schedule until June 6, 2016, as it previously did for Mr. Lacerda and Ms. Manzoni's cases.

22. On June 6, 2016, Mr. Lacerda filed an Unopposed Motion to Further Stay the Briefing Schedule to allow Appellant Resnick's attorney to formally enter an appearance before moving to consolidate the three cases. *See* Lacerda Third Circuit Docket Entry No. 003112317608. The Court granted the Motion on June 24, 2016. A copy of this Court's Order dated June 24, 2016 is attached hereto as Exhibit "G".

23. After requesting to stay the briefing schedule several times, now that all three appellants' cases were docketed before this Court, on August 8, 2016, Mr. Lacerda filed a motion to consolidate his appeal with Ms. Manzoni's (No. 15-4023) and Mr. Resnick's (No. 16-2220) for

purposes of scheduling, appendix, appellee's brief, and disposition. *See* Lacerda Third Circuit Docket Entry No. 003112374239.

24. On August 30, 2016, this Court granted Mr. Lacerda's motion and issued a Consolidation Order, consolidating the cases for scheduling, joint appendix, appellee's brief, and disposition. A copy of this Court's August 30, 2016 consolidation Order is attached hereto as Exhibit "H."

25. Since the Court consolidated the cases on August 30, 2016, the Court has on several occasions – and for good reason – extended the brief and appendix deadline.

26. On or about August 1, 2017, Appellants jointly requested an extension of the then-established brief filing date of August 1, 2017. *See* Lacerda Third Circuit Docket Entry No. 003112690147.

27. On August 2, 2017, the Clerk issued an Order extending the filing deadline to October 2, 2017, and stated that "no further extensions of time will be granted." A copy of the Clerk's Order dated August 2, 2017 is attached hereto as Exhibit "I."

28. On or about September 29, 2017, contemplating that the joint consolidated appendix would be voluminous, Appellants jointly filed a motion seeking to file a portion of the record electronically (*see* Lacerda Third Circuit Docket Entry No. 003112740513), which the Court granted on October 10, 2017. A copy of the Court's October 10, 2017 Order is attached hereto as Exhibit "J."

29. On October 2, 2017, Appellants jointly, and with the consent of Appellee, filed a Motion for Review of the Clerk's Order dated August 2, 2017 and for a Final 45-day Extension of Time.

30. On October 10, 2017, the Court granted Appellants' October 2, 2017 motion and extended the filing deadline to November 16, 2017. A copy of the Court's October 12, 2017 Order is attached hereto as Exhibit "K."

31. On or about November 15, 2017, due to her counsel's personal reasons, Appellant Manzoni moved for a 60-day extension of time to file Appellant's brief and Appendix. This motion was unopposed by all parties. *See* Lacerda Third Circuit Docket Entry No. 003112779251.

32. On or about November 22, 2017, this Court granted Appellant's motion and established the current filing deadline of January 15, 2018. A copy of the Court's November 22, 2017 Order is attached hereto as Exhibit "L".

33. In light of the above, all Appellants' briefs, along with a joint appendix, are to be filed on or before January 15, 2018.

III. MOTION FOR RELIEF FROM CONSOLIDATION ORDER DATED AUGUST 30, 2016 AND REQUEST FOR GUIDANCE FROM THIS COURT ABOUT HOW TO PROCEED

34. In light of, and since, the Clerk's August 2, 2017 "no further extensions" order, Appellant Lacerda has attempted to coordinate filing his brief and compiling and filing the joint appendix in a timely manner, while advancing the Court's consolidation objective.

35. Shortly after learning of the Court's previous November 16, 2017 filing deadline, counsel for Adam Lacerda initiated communication about filing the brief and joint appendix. Attached hereto as Exhibit "M" are several e-mail communications to counsel for co-appellants Resnick and Manzoni concerning this subject. Specifically, on October 16, 2017, undersigned counsel offered to "pull the laboring oar on compiling the Appendix." *Id.* Undersigned counsel asked counsel for co-appellants to provide whatever they would like to include in the Appendix. Undersigned counsel stressed that he would need their submissions within the week, since

“compiling an appendix of this size will take a great deal of time and cannot be done at the last minute.” *Id.*

36. Counsel’s October 16, 2017 email remains unanswered. Consequently, on November 2, 2017, faced with the then-looming November 16, 2017 deadline, undersigned counsel again addressed counsel for the co-appellants and conceded he would not be in a position to put together the appendix and file a brief by the deadline set by the Court. *Id.* In addition, he expressed his client’s dissatisfaction with the lack of progress on the appeal, and suggested Mr. Lacerda may seek to proceed independently of his co-appellants if counsel cannot “give a firm commitment” to file by any additional extended deadline. *Id.*

37. In light of his co-appellants’ unresponsiveness, Mr. Lacerda was prepared to file this (or a similar) motion before the previously-scheduled November 16, 2017 filing deadline. Through that motion, Mr. Lacerda intended to seek relief and guidance from the Court. Before Mr. Lacerda filed his contemplated motion, undersigned counsel learned of personal circumstances affecting Appellant Manzoni’s counsel’s ability to file by the previously proscribed deadline, which is the subject of appellant Manzoni’s November 15, 2017 motion. *See supra*, ¶ 31.

38. Although Mr. Lacerda and, more precisely, his undersigned counsel are sympathetic to Appellant Manzoni’s counsel’s personal issues, counsel is nonetheless obliged to advance his client’s interests. Consequently, on December 5, 2017, undersigned counsel emailed counsel for Appellants Resnick and Manzoni and reminded counsel that although he would “take the compilation [of the joint appendix] bull by the horns,” undersigned counsel still needed the input of counsel, and more specifically “exactly what orders/rulings” they want included in the joint appendix by early this week. Attached hereto as Exhibit “N” is the December 5, 2017 e-mail concerning this subject. In his email, undersigned counsel informs counsel for Mr. Lacerda’s co-

appellants that he will have to seek relief from the consolidation order if he does not hear from them.

39. Notwithstanding two separate requests for input (October 16, 2017 and December 5, 2017), undersigned counsel still has received no input from either co-appellants' counsel concerning what to include in the brief and joint appendix.

40. Undersigned counsel does not file this motion intending to criticize or "blame" any particular party/attorney. In fact, counsel very much appreciates that competent lawyers find themselves in huge demand and often short on time. Additionally, the undersigned understands at least one of the co-appellants' counsel is consumed with personal challenges impeding his ability to attend to this matter. At this point, however, counsel is flummoxed concerning how to proceed. Counsel believes he cannot, consistent with the Court's Consolidation Order, file Mr. Lacerda's brief without filing a joint appendix. At the same time, Mr. Lacerda (whose brief has been substantially complete since August, 2017)³, desires to proceed with his appeal, which has now been pending for almost two (2) years.

41. Undersigned counsel has practiced before this Court for many years, yet has never been confronted with the circumstances presented here. For these reasons, Mr. Lacerda seeks this Court's guidance as to how to best proceed, and/or seeks relief from this Court's August 30, 2016 Consolidation Order (Exhibit "H"), and permission to file a separate appendix.

³ In fact, on or about August 1, 2017, expecting to discuss common arguments for incorporation under Fed.R.App. 28(i), undersigned counsel circulated a "draft" of Mr. Lacerda's brief to counsel for one of his co-appellants.

42. Should this Court grant Mr. Lacerda permission to submit a separate appendix, he may require some additional time (not more than two (2) weeks) to file his brief and appendix.⁴

WHEREFORE, Appellant Adam Lacerda respectfully requests guidance from this Court about how to best proceed and/or requests relief from this Court's August 30, 2016 Consolidation Order (Exhibit "H") and allow Mr. Lacerda to proceed independently of his co-appellants.

Respectfully submitted:

CEDRONE & MANCANO, LLC

Date: December 13, 2017

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⁴ As stated above (*see* note 3), Mr. Lacerda's brief was substantially complete in August, 2017. However, until recently, Mr. Lacerda contemplated that he and his co-appellants' briefs/arguments would discuss and, where possible, incorporate common positions. Mr. Lacerda's draft brief is substantially oversized and will now need to be "reworked" in light of the fact that he will not be in a position to rely on Rule 28(i) and will essentially submit a brief as though he has no co-appellants.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served this 13th day of December, via the Court's Electronic Case Filing ("ECF") system, upon the following:

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