

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA

VS.

CASE NO: 2:08-cr-160-FtM-29DNF

JACOB BEN-ARI

OPINION AND ORDER

This matter comes before the Court on defendant's Motion For New Trial (Doc. #304)¹ and Memorandum (Doc. #305) filed on February 22, 2016. Defendant filed an Affidavit (Doc. #306) on February 29, 2016. The Government's Response (Doc. #300) was filed on February 1, 2016, and defendant's Reply (Doc. #307) was filed on March 14, 2016. Defendant seeks to set aside or void his conviction, and for a new trial pursuant to Federal Rule of Criminal Procedure 33 based on newly-discovered evidence.

On October 22, 2008, the grand jury returned an Indictment (Doc. #5) charging defendant in Counts One through Six with a scheme to defraud victims of money and property through false pretenses, representations, and promises. On December 16, 2009, the grand jury returned a Superseding Indictment (Doc. #68) alleging Three Counts of a scheme to defraud. Defendant was appointed several new attorneys before finally commencing trial on

¹ The previously filed Motion for New Trial (Doc. #297) will be denied as moot.

September 14, 2010. (Doc. #130.) The government dismissed Count Three on the first day of trial, and on September 21, 2010, the jury returned a verdict of guilty on Counts One and Two on day five of trial. (Docs. #130, #137, #140.) The jury also returned a Supplemental Verdict (Doc. #141) as to forfeiture of a Scottrade Account.

On August 12, 2011, defendant was sentenced to 72 months as to each count to be served concurrently followed by a term of supervised release. (Doc. #236.) Judgment (Doc. #239) was filed on August 15, 2011. On September 5, 2013, the Eleventh Circuit affirmed, including on the issue of his remand into custody, and a Mandate (Doc. #295) was issued on December 6, 2013. The initial motion for new trial was filed on January 20, 2016.

"Any motion for a new trial grounded on newly discovered evidence must be filed within 3 years after the verdict or finding of guilty." Fed. R. Crim. P. 33(b)(1). Therefore, any motion for a new trial had to be filed within 3 years of September 21, 2010. The motion was filed on January 20, 2016. As the motion was not filed within 3 years of the verdict or finding of guilt, it will be denied as untimely.

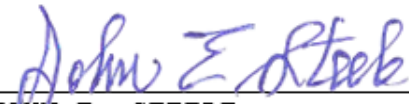
Accordingly, it is hereby

ORDERED:

1. Defendant's Motion for New Trial (Doc. #297) is **DENIED** as moot.

2. Defendant's Motion for New Trial (Doc. #304) is **DENIED** as untimely.

DONE and ORDERED at Fort Myers, Florida, this 5th day of June, 2018.



JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies:
Parties of Record