

B. Perjury

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2 Petitioner contends that this Court erred in finding that he procedurally defaulted
3 on his claim that Christopher Rusch (“Rusch”) and Cheryl Bradley (“Bradley”) perjured
4 themselves at trial by stating that they had handled Petitioner’s FBARs for the years 2000
5 to 2003. (Doc. 23 at 6–13); (Doc. 24). According to Petitioner, these FBARs do not
6 exist, which is made evident by the IRS’s failure to produce the forms to Petitioner after
7 repeated requests made after appeal. (Doc. 23 at 6–13); (Doc. 14). In Petitioner’s view,
8 this claim was not procedurally defaulted, because the “IRS Criminal Investigations” in
9 Phoenix “restrict[ed] access to” Petitioner’s litigation file “which can explain why the
10 IRS refused to answer [Petitioner’s] FOIA requests and why [Petitioner] could not get the
11 information previously.” (Doc. 24 at 1–2).

12 Petitioner fails to adequately justify why he could not have learned that the IRS
13 refused to turn over this information prior to his appeal. His conclusion that he could not
14 have learned of this information, because “IRS Criminal Investigations” was blocking his
15 access to the FBARs, misses the mark. If he had asked for the FBARs prior to appeal,
16 and had received them, then he would have evidence that they do exist, and would have
17 no basis to claim that Rusch and Bradley perjured themselves. Petitioner’s perjury claim
18 derives from precisely the allegations that the IRS will not turn over the FBARs because
19 they do not exist. Thus, because Petitioner’s claim only exists if the IRS refused to grant
20 him access to the FBARs, Petitioner’s failure to pursue the FBARs prior to appeal is not
21 excused by the IRS’s subsequent refusal to provide him with that information.
22 Accordingly, the Court will not reconsider its prior finding that Petitioner procedurally
23 defaulted this claim, because it “involves information that [Petitioner] could have learned
24 with reasonable diligence prior to appeal.” (Doc. 21).

C. Ineffective Assistance of Counsel

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26 Petitioner largely restates the same arguments made in his original § 2255 petition
27 as to why his trial attorney, Michael Minns, was constitutionally ineffective. (Doc. 23 at
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