

NO. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

ADEKUNLE OLUFEMI ADETILOYE- PETITIONER

vs.

UNITED STATES OF AMERICA- RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI

**TO THE UNITED STATES COURT OF APPEALS FOR THE
EIGHTH CIRCUIT**

APPENDIX

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 17-3742

Adekunle Olufemi Adetiloye

Petitioner - Appellant

v.

United States of America

Respondent - Appellee

Appeal from U.S. District Court for the District of North Dakota - Fargo
(3:17-cv-00205-RRE)

JUDGMENT

Before GRUENDER, BOWMAN and KELLY, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

April 04, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

"Appendix A"

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 17-3742

Adekunle Olufemi Adetiloye

Appellant

v.

United States of America

Appellee

Appeal from U.S. District Court for the District of North Dakota - Fargo
(3:17-cv-00205-RRE)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

Judge Erickson did not participate in the consideration or decision of this matter.

June 14, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

"Appendix B"

Local 2255 Judgment (Rev. 6/16)

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

Adekunle Olufemi Adetiloye,

Petitioner/Defendant

v.

United States of America

Respondent/Plaintiff.

**JUDGMENT ON PETITION
PURSUANT TO 28 U.S.C. § 2255**

Criminal Case No. 3:08-cr-28

Civil Case No. 3:17-cv-205

IT IS ORDERED AND ADJUDGED that the Petitioner's Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 is dismissed, pursuant to the Order filed on 10/27/2017.

CLERK OF COURT

Date: October 30, 2017

/s/ Ashley Sanders, Deputy Clerk

Signature of Clerk or Deputy Clerk

"Appendix C"

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

United States of America,

Plaintiff,

vs.

Adekunle Olufemi Adetiloye,

Defendant.

Criminal No. 3:08-cr-28
Civil Case No. 3:17-cv-205

**ORDER DENYING MOTION TO
VACATE, SET ASIDE OR
CORRECT SENTENCE**

I. INTRODUCTION AND SUMMARY OF DECISION

Defendant Adekunle Olufemi Adetiloye moves to vacate, correct, or set aside his sentence under 28 U.S.C. § 2255.¹ The United States has opposed the motion.² Adetiloye continues to challenge this court's jurisdiction as it relates to his extradition from Canada.

Because these issues have been decided both by this court and the Eighth Circuit Court of Appeals, Adetiloye is barred from re-litigating the issues. Since the issues raised in the motion were decided against Adetiloye on the merits, he is unable to demonstrate an ineffective assistance of counsel claim. His motion is DENIED.

II. DISCUSSION

Ineffective assistance of counsel claims are reviewed under the familiar Strickland v. Washington standard.³ In order to obtain relief, Adetiloye must prove that his lawyer was defective and that these deficiencies prejudiced his defense.⁴ The burden of proving

¹ Doc. #291.

² Doc. #295.

³ 466 U.S. 668 (1984).

⁴ Id. at 687; United States v. Lee, 715 F.3d 215, 221 (8th Cir. 2013).

ineffective assistance of counsel rests on the defendant.⁵ Whenever a court is called upon to scrutinize counsel's performance, it is required to be "highly deferential"⁶ and should strive to avoid the distorting view of hindsight or "second guessing."⁷

All of Adetiloye's various claims for ineffective assistance of counsel center around one issue – the alleged defective extradition from Canada. Adetiloye raised this issue in two motions before the district court.⁸ The court issued two orders denying his motions on the merits.⁹ Adetiloye appealed the district court's orders to the Eighth Circuit Court of Appeals. The Court of Appeals concluded that while Adetiloye's claims regarding extradition fell outside the scope of the remand, his "arguments also fail on their merits for the reasons stated by the district court."¹⁰

Decades ago the Eighth Circuit Court of Appeals explained that "Section 2255 is not intended to provide a forum to relitigate the same issue previously decided."¹¹ That rule remains unchanged today.¹² Adetiloye's claims regarding this court's jurisdiction and his extradition from Canada have been decided. Section 2255 is not a vehicle to relitigate fully litigated issues *ad nauseam*.

⁵ United States v. Vargas, 469 F. Supp. 752, 759 (D.N.D. 2007) (citing United States v. White, 341 F.3d 673, 678 (8th Cir. 2003)).

⁶ Anderson v. United States, 393 F.3d 749, 754 (8th Cir. 2005).

⁷ Johnson v. United States, 278 F.3d 839, 842 (8th Cir. 2002).

⁸ Docs. #201 & #237.

⁹ Docs. #211 & #248.

¹⁰ Doc. #287; United States v. Adetiloye, 623 Fed.Appx. 825 (8th Cir. Dec. 3, 2015).

¹¹ Peterson v. United States, 467 F.2d 892, 893 n. 3 (8th Cir. 1972).

¹² Winters v. United States, 716 F.3d 1098, 1103 (8th Cir. 2013) (noting that one of the limitations on § 2255 motions, is "the principle that issues of law and fact, once finally decided, may not be revisited.")

No claim for ineffective assistance of counsel can lie when counsel fails to perform acts which appear to be futile or fruitless at the time the decision is made.¹³ Because Adetiloye's claim that he was improperly extradited from Canada has been fully and finally litigated to a decision on the merits and affirmed on appeal, no cognizable ineffective assistance of counsel claim exists.

III. DECISION

Adetiloye's motion to vacate, set aside, or correct a sentence by a person in federal custody under 28 U.S.C. § 2255 is **DENIED**. His motion for copies relating to his filings is also **DENIED**.

IV. CERTIFICATE OF APPEALABILITY

The court certifies that an appeal from the dismissal of this action may not be taken *in forma pauperis* because such an appeal would be frivolous and cannot be taken in good faith.¹⁴ Furthermore, the court finds that Adetiloye has failed to make a substantial showing of the denial of a constitutional right, and the issues presented in this case are inadequate to deserve further consideration.¹⁵ Therefore, the court will not issue a certificate of appealability.

¹³ Garrett v. United States, 78 F.3d 1296, 1304 n. 11 (8th Cir. 1996).

¹⁴ See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

¹⁵ See Miller-El v. Cockrell, 537 U.S. 322, 327 (2003).

If Adetiloye desires further review of his motion, he may request the issuance of a certificate of appealability by a circuit judge of the Eighth Circuit Court of Appeals.¹⁶

IT IS SO ORDERED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 27th day of October, 2017.

Sitting by designation:

/s Ralph R. Erickson
Ralph R. Erickson, Circuit Judge
Eighth Circuit Court of Appeals

¹⁶ Tiedeman v. Benson, 122 F.3d 518, 520-22 (8th Cir. 1997).