

FILED: September 21, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6519
(6:13-cr-00816-TMC-1)
(6:16-cv-02957-TMC)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

KARYEA WILLIAMS

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

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

No. 18-6519

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KARYEA WILLIAMS,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Greenville. Timothy M. Cain, District Judge. (6:13-cr-00816-TMC-1; 6:16-cv-02957-TMC)

Submitted: September 18, 2018

Decided: September 21, 2018

Before WILKINSON and THACKER, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Karyea Williams, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Karyea Williams seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 (2012) motion. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (2012). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2012). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); see *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right. *Slack*, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Williams has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

KARYEA WILLIAMS,)	
Petitioner,)	CR. No. 6:13-CR-816-TMC
)	
vs.)	
)	ORDER
UNITED STATES OF AMERICA,)	
Respondent.)	
)	

This matter is before the court on Karyea Williams's ("Williams") motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. (ECF No. 55). The Government filed a response to Williams' petition and a motion for summary judgment (ECF Nos. 57 and 58), and Williams filed responses opposing the same. (ECF Nos. 61 and 63).¹ Petitioner sent a letter to the court regarding the potential to amend his petition (ECF No. 66), and the court instructed Petitioner to clarify which petition he would like to amend and how he would like to do so (ECF No. 68). Petitioner filed a motion to amend his petition and to stay his case to allow for such amendment. (ECF No. 72). For the reasons set forth below, the court grants the Government's motion for summary judgment and denies both of Williams's motions.

I. Procedural History

Williams was indicted on three counts: (1) possession with intent to distribute drugs, in violation of 21 U.S.C. § 841; (2) possessing a firearm after being convicted of a crime punishable by imprisonment of a term for more than one year, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2) and 924(e); and (3) possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c). (ECF No. 1). On July 16, 2014, Williams pled guilty to count three of the indictment, possessing a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c). (ECF No. 30). On October 28,

¹ Petitioner acknowledges that Docket Numbers 61 and 63 are identical filings and clarified that, though originally titled "Petitioner's Pro Se Opposition in Support of Relief Pursuant to 28 U.S.C. § 2255 And Supporting Case Law of Facts," these filings were his response to the government's motion for summary judgment. (ECF No. 72 at 2).

2014, Williams was sentenced to 262 months of imprisonment and five years of supervised release. (ECF No. 35). Judgment was entered on October 29, 2014. (ECF No. 36).

On November 14, 2014, Williams filed a notice of appeal. (ECF No. 39). The Fourth Circuit Court of Appeals affirmed his conviction and sentence on June 24, 2015. (ECF No. 50). On August 29, 2016, Williams filed the instant motion, seeking to vacate, correct, or amend his sentence pursuant to 28 U.S.C. § 2255. (ECF No. 55).

II. Standard of Review

To obtain relief on a motion under 28 U.S.C. § 2255, the movant must prove that one of the following occurred: (1) his sentence was imposed in violation of the Constitution or laws of the United States; (2) the court was without jurisdiction to impose such a sentence; (3) the sentence was in excess of the maximum authorized by law; or (4) the sentence is otherwise subject to collateral attack. 28 U.S.C. § 2255(a). Thus, a movant must establish either an error of “constitutional or jurisdictional magnitude” or an error which “could not have been raised on direct appeal, and if condoned, would result in a complete miscarriage of justice.” *Hill v. United States*, 368 U.S. 424, 428 (1962). However, if a movant does not raise a claim on direct review, he may not raise it for the first time on collateral review unless the movant can show (1) cause and actual prejudice or (2) actual innocence. *Bousley v. United States*, 523 U.S. 614, 621-22 (1998). If the movant cannot satisfy the cause and prejudice analysis, movant may be excused from default if the case falls “within ‘the narrow class of cases . . . implicating a fundamental miscarriage of justice.’” *Schlup v. Delo*, 513 U.S. 298, 314-15 (1995). To do so, the movant must establish through new evidence “that it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt.” *Id.* at 327.

III. Discussion

In the instant motion, Williams asserts that he has received ineffective assistance of counsel because his attorney did not object to his career offender designation, and, therefore, he seeks to be resentenced without that designation. (ECF No. 55). Specifically, Williams asserts that his § 924(c) conviction should not have been classified as an instant offense under United States Sentencing Guideline 4B1.1, because the

government did not establish an underlying controlled substance offense. (ECF No. 55 at 4). Additionally, Williams's response to the government's motion, his letter requesting an amendment to the petition, and his motion to amend may be liberally construed as asserting that he is entitled to relief under recent Supreme Court decisions: *Beckles v. United States*, 137 S.Ct. 886 (2017); *Mathis v. United States*, 136 S.Ct. 2243 (2016); *Johnson v. United States*, 135 S.Ct. 2551 (2015); and *Descamps v. United States*, 570 U.S. 254 (2013). (ECF Nos. 61, 66, 72). In response, the Government contends that Williams's classification as a career offender was proper and that, therefore, Williams's counsel was not ineffective in failing to object to this classification at sentencing. (ECF No. 57).

In order to obtain relief for ineffective assistance of counsel, a petitioner must show (1) that his counsel's performance was so deficient that it was not the counsel guaranteed by the Sixth Amendment and (2) that the petitioner was prejudiced by counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Accordingly, the petitioner must show that "counsel's representation fell below an objective standard of reasonableness" in order to prevail on an ineffective assistance of counsel claim. *Id.* at 688. Based on the analysis below, the court finds that counsel acted reasonably in not objecting to Williams's career offender designation. Accordingly, the court finds that Williams has failed to meet his burden of showing that his assistance from counsel was ineffective.

The United States Sentencing Guidelines §4B1.1(a) states that:

A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.

U.S.S.G. § 4B1.1(a).² Williams does not dispute that he was at least eighteen years old when he was convicted of violating 18 U.S.C. §924(c), by possessing a firearm during the furtherance of a drug trafficking crime. However, Williams does dispute whether this conviction was a crime of violence or a controlled substance offense (ECF No. 55) and further disputes whether his prior convictions of distribution

² The language of U.S.S.G. § 4B1.1(a) is the same now as it was when Williams was sentenced in 2014.

of powder cocaine and possession with intent to distribute crack cocaine were properly classified as prior felony convictions for purposes of element (3). (ECF Nos. 66, 72).

The Sentencing Guidelines state that a violation of 18 U.S.C. § 924(c) constitutes as a crime of violence or a controlled substance offense when “the offense of conviction establishe[s] that the underlying offense was a ‘crime of violence’ or a ‘controlled substance offense.’” U.S.S.G. § 4B1.2, n.1. Williams claims that the government did not “establish” an underlying controlled substance offense, and that, therefore, his conviction under § 924(c) is not a controlled substance offense itself. (ECF No. 55-1 at 5). For purposes of U.S.S.G § 4B1.1, the term “controlled substance offense” is defined as:

an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance . . . or the possession of a controlled substance . . . with intent to manufacture, import, export, distribute, or dispense.

U.S.S.G. § 4B1.2(b).³ Williams contends that an underlying “drug trafficking crime was never specified by the court, nor the government” and that, therefore, his § 924(c) conviction cannot be considered a controlled substance offense. (ECF No. 55-1 at 1). However, as the government notes in its memorandum in support of summary judgment, the original indictment charged Williams with possessing with the intent to distribute twenty-eight grams or more of crack cocaine; a quantity of cocaine; a quantity of methamphetamine; a quantity of 1-benzylpiperazine; a quantity of 3, 4 methylenedioxymethamphetamine; a quantity of marijuana; a quantity of hydrocodone; and a quantity of Alprazolam –in violation of Title 21 of the United States Code Section 841(a)(1), (b)(1)(B), (b)(1)(C), (b)(2)(D), and (b)(1)(E). (ECF No. 1, 57) This offense, enumerated as count one in the underlying indictment, is punishable by imprisonment for more than one year and is a “controlled substance offense” under the §4B1.2(b) definition. *See* 21 U.S.C. § 841.

Williams correctly states that he was not convicted for this count of the indictment, as he plead guilty only to count three. (ECF No. 55). However, an actual conviction of the underlying drug trafficking offense is not required for a conviction under § 924(c). *See United States v. Munoz-Fabela*, 896 F.2d 908, 911 (4th Cir. 1990). In proving the elements of § 924(c), the government was required to establish that

³ The language of U.S.S.G. § 4B1.2(b) is the same now as it was when Williams was sentenced in 2014.

Williams in fact possessed a firearm in furtherance of a drug trafficking crime. *See* 18 U.S.C. § 924(c)(1)(A). At Williams's guilty plea hearing, the government provided the factual basis underlying Williams's guilty plea as to count three of the indictment. (ECF No. 57-1 at 29–31). The government specifically described the various drugs that Williams possessed at the time of his arrest, and counsel for the government specifically noted on the record that the drugs found in Williams's vehicle were the basis of the allegations in count one of the underlying indictment as well. *Id.* When asked if he agreed with the government's rendition of the facts, Williams stated that he did. (ECF No. 57-1 at 31). When asked if he disagreed with any of the stated facts, Williams stated that he did not. *Id.*

Within the context of a guilty plea, unless there is “clear and convincing evidence to the contrary, a defendant is bound by the representations he makes under oath during a plea colloquy.” *Fields v. Attorney Gen. of State of Maryland*, 956 F.2d 1290, 1299 (4th Cir. 1992). This court finds that there is no clear and convincing evidence that contradicts Williams's assertions at the guilty plea hearing. Therefore, this court holds Williams to his assertions at the guilty plea hearing, and, accordingly, finds that the government sufficiently established an underlying controlled substances offense, in this case possession with intent to distribute various illegal substances in violation of 21 U.S.C. § 841, for Williams's § 924(c) conviction. As such, Williams's § 924(c) conviction was appropriately classified as a controlled substances violation itself. *See* U.S.S.G. § 4B1.2, n.1.

Furthermore, the court finds Williams's assertions in his proposed amendments that he is entitled to relief under *Beckles*, *Mathis*, *Johnson*, and *Descamps* to be without merit. *Beckles* was pending before the United States Supreme Court when Williams filed his motion to amend. The Supreme Court's subsequent ruling in *Beckles* held that *Johnson* did not apply the United States Sentencing Guidelines. 137 S.Ct. 886 (2017). Williams was determined to be a career offender under the Sentencing Guidelines, not the Armed Career Criminal Act, and, therefore, based on the ruling in *Beckles*, *Johnson* is inapplicable to Williams's claim. In any event, *Johnson* does not apply when the conviction under § 924(c) was based on an underlying controlled substance offense. *See United States v. Richardson*, 653 Fed. App'x 209, 210 n.1 (4th Cir. 2016) (stating that “because the conviction underlying [petitioner's] 18 U.S.C. § 924(c) (2012)

conviction was a drug offense rather than a crime of violence, and his sentence enhancements were also based on prior felony drug distribution convictions, *Johnson* is inapposite, and he [was] entitled to no relief”).

Likewise, *Mathis* and *Descamps* do not apply because their rulings focus on classification of violent felonies under the ACCA, and both Williams’s instant conviction and his predicate convictions that were used to classify him as a career offender were drug convictions to which the ACCA was inapplicable. *See Mathis v. United States*, 136 S.Ct. 2243, 2243 (2016) (clarifying the approach by which courts determine if a prior conviction is a violent felony for purposes of the ACCA); *Descamps v. United States*, 570 U.S. 254, 258 (2013) (finding that a state burglary conviction qualifies as a predicate violent offense under ACCA only if the elements of the offense are the same or narrower than the elements of a generic burglary). As such, the court finds that Williams’s reliance on *Beckles*, *Mathis*, *Johnson*, and *Descamps* for relief is misguided because these cases are not applicable to Williams’s claims challenging his classification as a career offender for drug offenses. Furthermore, the court finds that Williams’s proposed amendments would not cure the deficiencies of his § 2255 motion.

Therefore, because Williams’s classification as a career offender was proper, the court finds that it was reasonable for counsel to not object to such classification. Accordingly, Williams’s ineffective assistance of counsel claim fails.

IV. Conclusion

For the foregoing reasons, the Government’s motion for summary judgment (ECF No. 58) is **GRANTED**, and Williams’s § 2255 Motion (ECF No. 55) is **DENIED**. Additionally, because the deficiencies of Williams’s motion could not be cured by amendment, his Motion to Amend (ECF No. 72) is **DENIED**.

A certificate of appealability will not issue absent “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). A prisoner satisfies this standard by demonstrating that reasonable jurists would find both that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. *See Miller-El v. Cockrell*, 537 U.S. 322,

336 (2003); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). In the instant matter, the court finds that Petitioner as failed to make “a substantial showing of the denial of a constitutional right.” Accordingly, the court declines to issue a certificate of appealability.

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

April 4, 2018
Anderson, South Carolina