No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Samuel William Maines,

Petitioner,

v.

United States of America,

Respondent.

On Petition For Writ of Certiorari

To The United States Court of Appeals

For The Fifth Circuit

APPENDIX

Samuel William Maines
Petitioner Pro Se
Reg. # 44442-177
FCI Oakdale 1
P.O. Box 5000
Oakdale, Louisiana 71463

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 17-10497

A True Copy
Certified order issued Nov 19, 2018
Clerk, U.S. Court of Appeals, Fifth Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

SAMUEL WILLIAM MAINES,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas

O R D E R:

Samuel William Maines, federal prisoner # 44442-177, seeks a certificate of appealability (COA) with respect to the district court's denial of his 28 U.S.C. § 2255 motion to vacate his sentence for possession of child pornography. Maines asserts that the district court erred by: (1) denying without an evidentiary hearing his claim that his guilty plea was involuntary because he was unaware that he was waiving nonjurisdictional defects, including ineffective assistance of counsel claims not affecting his guilty plea's voluntariness; (2) admitting the testimony of Maines's second criminal defense attorney at the evidentiary hearing; and (3) denying Maines's claims that his guilty plea was involuntary and his third criminal defense attorney rendered ineffective assistance because Maines was not informed of the true nature of the offense.

A prisoner seeking a COA must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A COA should issue only if the movant "demonstrat[es] that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Because Maines has failed to make the required showing, his motion for a COA is DENIED. Maines's motion for appointment of counsel is likewise DENIED.

ANDREW S. OLDHAM
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-10497

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

SAMUEL WILLIAM MAINES,

Defendant - Appellant

Appeal from the United States District Court
for the Northern District of Texas

Before OWEN, WILLETT, and OLDHAM, Circuit Judges.

PER CURIAM:

A member of this panel previously denied a motion for certificate of appealability and appointment of counsel. The panel has considered appellant's motion for reconsideration of the denial of a certificate of appealability. IT IS ORDERED that the motion for reconsideration is DENIED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SAMUEL WILLIAM MAINES, Movant,	§ § §	ID # 44442-177,
v.	§ §	No. 3:13-CV-4631-B (3:12-CR-0151-B)
UNITED STATES OF AMERICA, Respondent.	§ §	

POST-EVIDENTIARY HEARING ORDER RESOLVING MAINES' REMAINING GROUNDS FOR RELIEF UNDER 28 U.S.C. § 2255 AND DENYING CERTIFICATE OF APPEALABILITY AS TO ALL CLAIMS

Now pending before the Court is defendant/movant Samuel William Maines's remaining grounds for relief through a motion under 28 U.S.C. § 2255 to vacate, set aside or correct sentence--that is Supplemental Grounds A and D. On March 8, 2017, the Court convened an evidentiary hearing on these remaining grounds for relief. (March 8, 2017 § 2255 Motion Hearing Transcript (TR).) After hearing all testimony and considering both the admitted exhibits and the arguments of counsel, this Court made oral findings that defendant Samuel Maines understood the true nature of the charge against him in Count Two (possession of child pornography) of the indictment, and all elements of this offense to which he pled guilty, such that his plea was knowing and voluntary; and that Maines's attorneys did not render ineffective assistance of counsel in their advice regarding the elements necessary to prove Count Two (possession of child pornography). The Court determined that the foregoing claims by Maines' claims were not credible based on the evidence adduced at the hearing. Therefore, Maines's remaining grounds for relief are denied for the reasons stated in open Court, and for the additional reasons set forth in more detail herein.

I. Underling Proceedings/Chronology

Samuel Maines was arrested at his home on May 2, 2012, after a weeks-long investigation by Department of Homeland Security agents who successfully downloaded child pornography from a computer at the residence. (CR. Doc. 28 Presentence Report (PSR) ¶¶ 11-18.) Based on a criminal complaint and arrest warrant, Maines appeared with Federal Public Defender (FPD) Charles Bleil for his initial appearance and detention hearing on May 3, 2012. (CR Docs. 1; 3; 4; 8.) After he was ordered detained, FPD Doug Morris entered a notice of appearance as Maines's counsel on May 4, 2012. (CR Doc. 3.) On May 23, Maines was charged in a two-count indictment with transporting and shipping child pornography (Count One) and possessing child pornography (Count Two). (CR Doc. 12.) He pled not guilty on May 31, and the Court scheduled a jury trial to begin on July 2. (CR Docs. 14-15.) On June 6, Maines and Morris signed and filed a written plea agreement and factual resume in which Maines agreed, pursuant to Fed. R. Crim. P. 11(c)(1)(C), to plead guilty to possessing child pornography as charged in Count Two in exchange for dismissal of the more serious transporting/shipping charge in Count One and a binding recommendation of 10 years' imprisonment. (CR Docs. 16, 18.(§ 2255 Hearing Exhibits 2, 3).)

After Maines signed and filed the plea agreement, factual resume, and notice of collateral consequences, the Court scheduled rearraignment for July 12, 2012. (CR Doc. 19.) Prior to rearraignment, and notwithstanding his professed intent to plead guilty, Maines attempted—in phone calls that were recorded by jail officials—to convince his father to take the blame for the crimes charged in the indictment. [1](Cr. Doc. 28 (PSR) at ¶¶ 27-30, 40.) Following this, FPD Doug Morris notified the Court that he was moving to withdraw:

---

[1] The Court will reveal additional facts related to this event *supra*.

> Undersigned counsel and others within the Office of the Federal Public Defender have spent many hours visiting with Mr. Maines and his family members and reviewing the evidence in this case. Through those visits it has become clear that there are significant issues relevant to the Texas Disciplinary Rules of Professional Conduct that prevent undersigned counsel or any other member of the Office of the Federal Public Defender from representing Mr. Maines in the above styled case.

(CR Doc. 21 at 1.)

The Court granted the motion, appointed attorney George Johnson as successor counsel, and continued the rearraignment until August 16. (CR Doc. 22-25.) On August 9, counsel Johnson confirmed with the government that the original plea agreement had not been withdrawn and that the government would not seek an obstruction of justice charge against Maines based on his phone calls to his father. (§ 2255 Memorandum (Exhibits), Doc. 2 at 85.)

On August 12, Maines pled guilty pursuant to the plea agreement and factual resume that had previously been signed and filed on June 6. The Court placed Maines under oath before conducting the guilty-plea colloquy. (August 16, 2012 Rearraignment Hearing Transcript, CR Doc. 49 at 3.) This Court explained the significance of pleading guilty and encouraged Maines to ask questions at any time:

> THE COURT: You're here this afternoon as I understand because you've agreed to enter a guilty plea to Count 2 of the indictment in this case charging you with possession of child pornography.
> Is that correct?
>
> THE DEFENDANT: Yes, Your Honor.
>
> THE COURT: Before I can allow you to plead guilty and accept your plea I have to make sure that you understand the consequences of pleading guilty to the charge, the rights that you have as a person charged with a crime, making sure you understand the consequences of your plea, and once I've told you all of that, make sure you want to continue to persist in your plea, once you understand the nature of the charges and the ramifications of your plea.
> If you have any questions as I go through it I want you to feel free, it's a very important, critical part of a criminal plea, if you have any questions please stop me.

> If you want to talk to your counsel at any time, if you're not understanding and concerned, you just let me know and I will let you do it.
>
> THE DEFENDANT: Yes, ma'am.

(*Id.* at 2-3.) The Court warned Maines that any false answer could subject him to prosecution. (*Id.* at 3.) In response to direct questioning, Maines assured the Court of the following:

- He understood his right to persist in his not guilty plea, the rights attendant to a jury trial, and the waiver thereof, (*id.* at 8-10);
- He and attorney Johnson discussed the indictment, the factual resume, and the plea agreement, and he was "fully satisfied" with Johnson's "representation and advice"; (*id.* at 5, 7-8, 10-11, 13);
- He understood the maximum penalties were 10 years in prison, a $250,000 fine, and supervised release from five years to life, (*id.* at 11);
- He understood that he was entering into a binding plea agreement under Rule 11(c)(1)(C) wherein the parties would recommend a 10-year sentence, and that if the Court rejected the agreement, the parties would be returned to their respective positions prior to the entry of the guilty plea, (*id.* at 11-12);
- He previously read the indictment and understood the elements of the crime, and after hearing the government recite them for the record, he agreed that he committed each of them, (*id.* at 4, 13-14);
- Outside of the written plea agreement, no one made any promises or threats of any kind to induce his guilty plea, (*id.* at 8);
- He entered into the agreement voluntarily and was pleading guilty because he was guilty, (*id.* at 8);
- Subject to the exceptions listed in the agreement, he knowingly waived his appellate and postconviction rights, (*id.* at 6-7); and
- He had read the factual resume with counsel and agreed it was accurate (*id.* at 13).

After the Court ensured that Maines did not have "any questions or concerns or confusion," it found that he entered a knowing and voluntary guilty plea and it set the case for sentencing. (*Id.* at 14-15.)

During his presentence interview, Maines told the probation officer that the factual resume was accurate, affirming that the stipulated facts were true. (Doc. 28 (PSR) ¶ 29, *see also* CR Docs. 18, 49 at 13.) The probation officer calculated a guideline range of 235 to 293 months based on a total offense level of 38 and no criminal history points, but the effective range became 120 months due to the 10-year statutory maximum for possession of child pornography. (Doc. 28 (PSR) ¶ 74.) Maines received an enhancement for obstructing justice and was denied an acceptance-of-responsibility credit, but even without the obstructive behavior, his guideline range would have been 135 to 168 months—above the 10-year statutory maximum. (PSR ¶¶ 40, 43.) Had Maines been convicted of transporting child pornography as charged in Count One, his guideline range would have been 262 to 327 months in prison. (PSR ¶ 75.) Maines withdrew his objections to the PSR before sentencing. (CR Doc. 31.)

At the outset of sentencing, Maines agreed that he "thoroughly review[ed]" the PSR with counsel. (November 15, 2012 Sentencing Transcript, CR Doc. 48 at 2.) Maines declined the Court's invitation to ask questions about the PSR or to submit additional material beyond the letters from his family. (*Id.* at 2-3.) Maines voiced no opposition when attorney Johnson said he consulted with Maines before withdrawing the objections to the PSR. (*Id.*) The Court adopted the PSR and noted that, absent the plea agreement, Maines faced a much higher guideline range than 120 months. (*Id.* at 4.) The Court placed Maines under oath and told him that he has "an absolute right to speak, on [his] own behalf." (*Id.* at 3-4.) Maines responded: "I don't have anything to say." (*Id.* at 5.) The Court accepted the binding plea agreement and imposed a term of 120 months' imprisonment. (CR Nos. 34, 49 at 5-6.) The hearing concluded with no questions from Maines about any aspect of his prosecution, including his guilty plea, the PSR, the guidelines, his sentence, or the representation and advice he had received from his three lawyers.

In November 2013, Maines filed this § 2255 motion, claiming—in his motion and various amendments, affidavits, and memoranda—that each of his attorneys provided ineffective representation. (Docs. 1-2, 12, 15-16, 22.) The Court has now resolved all of those claims except for the supplemental grounds A and D. These supplemental grounds focus narrowly on the questions of whether Maines actually knew that there was child pornography on his computer, and that his plea of guilty to the elements of the charge were with the understanding that he knew child pornography was on the computer, and whether either attorney Doug Morris or attorney George Johnson gave inadequate advice related to the knowledge element of the charge.

II. The Plea Documents

Maines's written plea agreement confirmed that he understood his jury trial rights. (CR Doc. 16 at 1.) In the plea agreement, Maines agreed that he was waiving his jury trial rights, and was pleading guilty to the offense charged in Count Two of the indictment -- possession of child pornography in violation of 18 U.S.C. § 2252.(CR Doc. 16, at 1.) He expressly agreed that he understood "the nature and elements of the crime to which he [was] pleading guilty," and that "the factual resume he has signed is true and will be submitted as evidence." (*Id.*)

In the factual resume that he signed, Maines agreed that the government must prove two elements beyond a reasonable doubt for a conviction under Count Two, including that he "knowingly possessed a computer that contained an image of child pornography as alleged in the Indictment." (CR Doc. 18 at 1.) Maines also stipulated to the following facts:

> • On March 26, 2012, he offered 1,200 files for "sharing" through "the peer-to-peer program Shareaza, [and] most of the files had names that were indicative of child pornography";
>
> • The same day, an undercover DHS agent downloaded two image files and one video file containing child pornography from Maines's shared folder;

• On May 2—the date of the offense charged in Count Two to which he was pleading guilty—agents searched Maines's home and seized the computer that he used to store child pornography files, including those he shared with the undercover agent on March 26;

• He "knowingly possessed a computer hard drive containing images and videos of child pornography that had been transported in interstate and foreign commerce, which include visual depictions of sexually explicit conduct of minors, and of the lewd and lascivious exhibition of the genitals and pubic area of minors, as defined in Title 18 U.S.C. § 2256";

• He waived his *Miranda* rights and told the agents that the computer they seized from his bedroom "was his and that he had built it himself" and that "he was the only user of the computer";

• His computer's hard drive contained "over 900 videos and 1,200 images of child pornography";

• The components of the computer, including the hard drives, were manufactured outside the State of Texas;

• He used the internet to download the child pornography files on his computer, and he knew the files "depicted minors engaged in sexually explicit conduct";

• He knew the production of those files "involved real minors, including the videos alleged in count two";

• He knew that the files were shipped and transported using the internet, a facility and means of interstate commerce;

• The child pornography files that he received and possessed "included bondage and other sadistic acts involving minors"; and

• "[M]ost of his collection of child pornography images and videos were of prepubescent minors."

(*Id.* at 1-5.)

III. § 2255 Evidentiary Hearing

Because the two remaining grounds for relief interrelate, the Court will consider them together:

(A) Supplemental Ground A: Movant's guilty plea was involuntary because he was not informed of and did not understand the true nature of the offense;

> (D) Supplemental Ground D: Movant's counsel rendered ineffective assistance by "misadvising him that he was, in fact guilty of the indicted offense as long as [he] was actually in possession of the child porn, and that it was irrelevant whether or not [he] knew that he possessed it, and irrelevant that [he] never viewed or intended to view it."

At the hearing on this matter, Maines was represented by appointed counsel Kevin Ross, and the government was represented by assistant United States Attorneys Timothy Funnell and Camille Sparks. (Tr. at 3.) Testimony was presented from attorneys George Johnson and Doug Morris and from defendant/movant Samuel Maines. The Court was also presented with exhibits to include the Plea Agreement, the Factual Resume, Maines's § 2255 Motion, Maines's Affidavit in Support of the § 2255 Motion, and a copy of a letter from Maines to his former counsel Doug Morris.

A. Testimony of Attorney George Johnson

Counsel for Maines called Mr. Johnson, the last attorney to represent Maines as his first witness. In response to questioning about what Maines might have known, attorney Johnson credibly explained that Maines was a detailed and inquisitive client:

> Q. Mr. Johnson, if Mr. Maines knew that there was child pornography on the computer, then he wouldn't have any reason for you - - to ask you to go and investigate whether or note there was a virus or some other malware on the computer that could have put it there without his knowledge, correct?
> A. I don't know that I would agree with that. And the reason I say that is, whenever I would meet with Mr. Maines, he would have some sort of theory upon which to – for me to look at. I mean, he was very direct and would give orders and say, "Go do this," and "Go do that," and these kinds of things. Every time I would do that, I would come back to him and say, "This is not going to work, I have addressed this issue, this is not a viable defense. This is not– this is a frivolous motion. I'm not going to file a frivolous motion." He would immediately sort of shift gears into something else.
>
> And so to answer your questions, I don't know what Mr. Maines was thinking or what he was thinking at the time. I know that he had asked me to reach out to Doug Karl, the expert. I did. And Mr. Karl, what he had told me in regards to all of this was, you know, "You can have somebody search the computer and search the hard drive and do X, Y, and Z, you can do that. But understand, anything is possible." But the one thing you have to consider is the sophistication of the person who actually owns the computer. . . .

> Now. The reason I bring that up is, in regards to whether or not Mr. Maines knew what was going on and knew, you know, what the government had to prove, was that - - and this all goes back to Doug Karl, was that what Mr. Karl said was, "listen, the key here is the sophistication of the person who owns the computer." After Mr. Maines was arrested, he gave statements to the agents that, one, he built that computer himself; two, it's password protected, nobody else had the password; and three, nobody else in that house - - or nobody else ever gets on his computer.

(Tr. at 22-24.) Mr. Johnson expressly and credibly testified that he did not tell Maines that mere possession of the computer was sufficient:

> Q. Well let me ask you this: When you were advising Mr. Maines in regards to the elements of the offense and whether or not he should enter a plea or he should go to trial, did you tell him that by him possessing that computer that he was going to be found guilty?
> A. No. I mean, that - - that alone, the possession of the computer alone, is not the criminal act in this particular - - in any child pornography case of any possession case. The mere possession of it, of a computer, is not a crime.

(Tr. at 29.)

Mr. Johnson explained that Maines always had very technical questions each time that they would meet:

> Q. So he never said anything to you in regards to him knowing that there was child pornography on this hard drive. Is that what you are saying?
> A. No. I think I mis-spoke, It's hard to describe the conversations that I had with Mr. Maines. They were very technical. . . . But he - - there was always a different sort of angle of defense he wanted me to address. And the actual crux of the case was whether or not he possessed these. We went over the factual resume. I asked him – I mean, we went back through it, and I said – because with the factual resumes, I will go over it line by line with the defendants. And we went back over it again. We went back over the plea agreement again. And after taking everything into consideration, he - - it was his decision and his decision alone to press forward on the plea agreement, which he already had in place.

(Tr. 30-31.)

Counsel also questioned attorney Johnson about his post-plea and pre-sentencing contacts and interaction with Maines:

> Q. And in this letter dated November the 6th of 2012, it sounds as if - - right here it says, "As discussed, if you wish to withdraw your plea, I need to know as soon as possible." Is that right?

A. Yes, sir.
Q. Now this is in November. So what is occurring between August, when he entered his plea of guilty and received the bargained for sentence and now, November?
A. What's taking place with Mr. Maines?
Q. Well, why would you tell him that, if you want to withdraw your plea that you need to know as soon as possible?
A. Because even after the rearraignment and the presentence report interview, up until we came in and actually did sentencing, he was, again, sending me down rabbit trails to figure out a way through this. He had entered his plea of guilty, but there were times even after that where he wavered on that and said, "Why won't you look at this? Why won't you go do this?" Or, "I want you to file this particular motion." And so the times I would go and speak to Mr. Maines, I – as I recall, I met with him when we did the PSR interview. And then I believe I met with him at least one or two more times before we came back in for the actual sentencing. And he each time I met with him, had something else he wanted me to look at as a potential strategy, to potentially withdraw his plea and move forward. That's what I'm referencing.

I mean, it never stopped coming up with a way or do something up until we were actually in front of the judge. That never – the – his mind of trying to come up with different – you know, different strategies or ideas of ways to get through this never stopped. This went all the way to the end.
Q. So from the beginning to the very end, would that indicate to you that he didn't really believe that he was guilty of the offense and he wanted to go to trial?
A. **No. It indicated to me that he didn't want to take responsibility for what had happened, ultimately.**

(Tr. 36-37) (emphasis added).

In questioning by AUSA Funnell about the specific sentences included within the factual resume, counsel Johnson testified that he went over every portion of the FR with Maines "line-by line." (Tr. at 39.) Johnson testified that he went over the portions of the FR in which Maines admitted he understood the nature and elements of the crime, that he built the computer and was the only user of that computer, and in particular, reviewed with Maines paragraph 7 of the factual resume, which reads:

> Maines admits that he downloaded the images and videos of child pornography found on his computer using the internet. Maines knew that the images and videos found on his computer depicted minors engaged in sexually explicit conduct, and, production of those videos involved reals minors, including the videos alleged in Count 2 of the indictment for which he is pleading guilty; and that these same videos were shipped and transported using the internet, a facility and means of interstate commerce. (Tr. at 43 (citing FR at 4.))

Upon additional questioning, attorney Johnson denied Maines's allegation in this § 2255 proceeding that he had instructed Maines to answer questions "in order to falsely indicate that he was guilty of the offense." (Tr. at 45.) And to the question of whether Maines ever claimed to Johnson that he was not guilty, Johnson answered: "He didn't insist to me that he was innocent of the offense. He insisted over and over again that there had to be a way through. And so he – he was insistent that we find something." (Tr. at 45.) Johnson testified that he thoroughly discussed the "knowledge" element with Maines, and informed Maines that the government had to prove that he knowingly possessed not just the computer but also the contraband images of child pornography. (Tr. at 46.) Attorney Johnson credibly testified that Maines "absolutely understood" the knowing element:

> Q. But do you believe that Mr. Maines misunderstood that element?
> A. He absolutely understood it.
> Q. Why do you say that?
> A. Because of the conversations that we had in the – the ideas that he would come up with. You know, "You need to look at this. You need to look at that. You need to speak with Doug Karl." As I mentioned earlier, "What if a van or something drove up and somehow downloaded these images onto my computer without my knowledge." Things like that. **He clearly understood that the issue was not whether he possessed the computer but whether he knew these images were on the hard drive.**

(Tr. at 47-48) (emphasis added).

B. Testimony of Defendant Samuel Maines

Maines's counsel next called Maines. Maines was not a credible witness. Maines testified in response to his appointed counsel's questions, directly in contradiction to the sworn facts as listed in the factual resume, that he understood that he "knowingly [possessed] a computer that contained child pornography, even though I have never seen child pornography and have never wanted to and was not aware that the images that were supposedly on my computer were there. But obviously I can't dispute that. I knew I possessed my computer and that it was alleged that that computer contained child pornography." (Tr. at 52-53.) When asked, however, whether he ever told Mr.

Johnson that he did not know that there were images of child pornography on his computer, he answered "I thought that was implied. I thought that was obvious . . . ." (Tr. at 53.) Maines also directly contradicted Johnson's testimony, claiming that although he had heard Johnson's testimony regarding a "line-by-line" review of the factual resume, Maines testified that Johnson did not go through the factual resume with him. (Tr. 54.) Maines also testified that although he asked attorney Johnson to investigate whether a "virus or similar program could have been responsible for the images that were on the computer if they were, and he would not do it." (Tr. 55.) And Maines insisted that he went ahead and pled guilty because since Johnson would not "look into the possibility that the images got onto my computer without my knowledge, that my knowledge or lack of knowledge of the images, themselves, wasn't relevant." (Tr. at 56-57.) When asked by appointed counsel to explain why he swore to the specific portions of the factual resume that he "downloaded child pornography" Maines explained:

> A. There's two things about the factual resume. One, it's not my words. It's a piece of paper that was handed to me, and I was told, "Sign this or you will go to prison for - - for upwards of 30 years."
> Q. And who told you that?
> A. . . . . That was Mr. Morris .

(Tr. at 59-60.) And Maines insisted that the only reason he pled guilty is that he "felt that the government could easily prove that [he] knowingly possessed a computer." (Tr. at 61.) On questioning from the government's attorney, Maines also contended that attorney Doug Morris also told him that all the government had to do to make its case was to show that he "was the only person who physically sat down in front of that computer, and that's all the government would have to prove." (Tr. at 63.)

This Court engaged direct questioning of defendant Maines regarding his allegations and what he understood. Maines repeatedly told the Court that when he pled guilty he believed that all

he had to do was possess the computer, and he claimed that both counsel Morris and counsel Johnson led him to believe that. (Tr. at 78-79; 81-82.) He also testified that he continued to believe that mere possession of the computer was sufficient, even after being informed of nature of the images and videos of children being sexually touched by adults, and even when he appeared before the Court at rearraignment and sentencing where he now says he then lied to the Court. (Tr. 80-82.) In response to further questions by this Court, Maines continued to insist that he did not know there was file-sharing software on his computer and continued to express his belief that images of child pornography were not actually on his computer. (Tr. 83-87.)

C. **Testimony of Attorney Doug Morris**

Attorney Doug Morris testified that he is a long-time attorney with the Federal Public Defender's Office and has handled dozens of "child pornography cases, child exploitation cases", has researched and written extensively on the issues arising from such cases, and is often consulted by other attorneys on such cases. (Tr. at 90-92.) Prior to his testimony, at the beginning of the hearing, Morris raised to the Court his concerns about the attorney-client privilege and his determination that he could not testify to certain contacts and discussions with his client Maines unless directed to do so by the Court. (Tr. at 8-10.) The Court deferred ruling until it had heard other testimony (including much of the testimony now incorporated into this opinion). *Id.* Thereafter, during Morris's testimony, the Court issued a ruling that under *Armstrong v. United States*, 440 F.2d 658 (5th Cir. 1971), because Maines, during his testimony, had raised claims and statements about the actions of Morris related to Maines's knowledge of the elements of the charge and other alleged misconduct conduct by Morris which allegedly caused Maines to misunderstand the charge, that Maines had waived the attorney-client privilege. (Tr. at 101-03.) The Court thus directed attorney Morris to

"respond to any questions asked of you by counsel, [the Court] or counsel of Mr. Maines with regard to your interactions with him during the attorney-client relationship and otherwise." (Tr. at 102.)

Morris was a highly credible witness. And the evidence—from Morris, Johnson and even Maines himself— established that Maines was a very difficult client. As a part of his representation of Maines in this case, Morris testified that he had the FPD's investigator at that time, Dan James, run a forensic document review inspection of the hard drive from the seized computer. (Tr. at 95.) Morris explained to the Court that the forensic review did not reveal any evidence of any remote access device (RAT) having been placed on the computer:

> Q. So Dan went out and did he, in fact, report to you that he had looked at the computer and assured himself that the things that the government was charging were actually on the computer?
> A. Yes, ma'am.
> Q. Is one of the things or part of his checklist to see if there are any defenses, like viruses or Trojans or anything like that?
> A. There most certainly is. Generally speaking, in any case you're wanting to have -- whether it's a drug case or a gun case or a fraud case, but typically let's say a drug or a gun case where the possession of something is in place, you're wanting to see if there are alternative theories in a case. In a computer-related case, such as a child pornography case, you're having to see are there what we call -- the acronym is a RAT, but it's a remote access tool. And a remote access tool is where somebody else can access your computer from afar. They just can't willy-nilly get there. It's similar to what happened in our recent politics with what is alleged to be the Russians getting into Podesta's computer, is that he had to open an email, and that allowed the Russians allegedly to have access to that computer where they could download things.
>
> When I have had to have work done to my computer, the computer person over in Fort Worth, they have that type of access to my computer, and I can see their cursor moving around on my computer. That's one of the things we look for. Trojan horse, RATs, they are kind of same thing. You just don't put a virus on, somebody has to get access to your computer. So a Trojan horse is a method -- a Trojan horse is just a junk email that you will click on a link to get access to your computer in order to put a remote access tool on to access the computer remotely.
> Q. Did you find -- or did Mr. James find any of evidence of any of these?
> A. No.
> Q. If he had found that, would that have been something you would have brought to Mr. Maines' attention?
> A. Well, certainly, because that would be a defense.

(Tr. 95-97.) Morris also testified that, as in all of his child pornography cases, he explains the requisite elements to his clients, and would have done so to Maines:

> Q. Is one of the elements of child pornography that you have to know the child pornography is on your computer? You just can't have a computer and then you have to plead guilty to it if there's child pornography on it.
> A. Child pornography is not a strict liability offense. You have to know child pornography is on your computer.
> Q. So if you do that with every client, then you certainly would have done that with Mr. Maines to explain that he had to know that child pornography was on the computer.
> A. Yes, I would not have made an exception for Mr. Maines like that.

(Tr. 99-100.)

Morris was questioned about his process of going through the factual resume with Maines, and he advised that though he could not remember exactly, he typically goes through each and every line of the factual resume with a client. (Tr. at 109.) Morris testified that "at no time did Maines say 'I'm not agreeing to that.'" (Tr. at 109.) And with regard to the specific video and still images found on the computer and specifically recited in the factual resume, Morris testified that only images that had been verified by the investigator would be included, and he would not have allowed Maines to plead guilty if he thought some of the images or videos were not on the computer. (Tr. at 110.)

The investigator's report was later reviewed. (Tr. at 129.) And during cross examination of Morris regarding the fact that the report does not state whether the computer had a virus, RAT or Trojan horse, Morris testified that he always has conversations with the investigator regrading whether such items were found on the computer. (Tr. at 130.) Morris expressly confirmed that he went over with Maines a portion of the factual resume at paragraph 8 that reads "Maines also agrees that he received and possessed videos and images that included bondage and other sadistic acts involving minors. He also admits that most of his collection of child pornography images and videos were of prepubescent minors." (Tr. at 113, citing FR ¶ 8.)

Morris confirmed that Maines's entry of the plea agreement and its language that "Maines understands the nature and elements of the crime" necessarily included that Maines had to know that child pornography was on his computer. (Tr. at 114.) During cross examination of Morris by Maines's appointed counsel, Morris answered that a part of his discussion with Maines included "explaining the elements of the offense [to include] that the knowing requirement not was just possession, but that he had to have known that the pornography was on his hard drive." (Tr. at 133.) Morris also testified that it is his practice to tell clients that he will only allow persons who are guilty to actually plead guilty. Thus, Morris testified that "I don't plead innocent people. I don't care. Probation, jail, otherwise, if you are innocent, we will go to trial." (Tr. 115.) And thus, to the question of whether Maines ever claimed innocence, Morris testified "No, I don't plead innocent people." (Tr. at 116.)

Morris provided critical testimony towards the end of the cross-examination of him by Maines's appointed counsel:

> Q. (By Mr. Ross) **Mr. Morris, in your representation of Mr. Maines and your conversations that you had with him, did he ever at any point in any fashion communicate to you that he did not know that there was child pornography on his hard drive?**
> **A. No.**
> **Q. Did he ever affirmatively tell you that he knew that there was child pornography on his hard drive?**
> **A. Yes, he did.**
> Q. And did you note that in your notes?
> A. No.
> Q. Do you recall when he told you that?
> A. In one of the conversations we had at the detention center at Seagoville.
> Q. Were you by yourself, or did you have an investigator with you?
> A. I was by myself.
> Q. And do you take copious notes when you meet with clients?
> A. I don't take any notes.
> Q. Okay. And so did you -- so you did not make any notation in your file that he had specifically told you that he knew that there was child pornography.
> A. Not that I can remember, because I'm not a note taker. I have a pretty good -- some things I don't have memory for, but I have a pretty good memory for

conversations in things that strike me like that. It's upsetting to some clients, but that's just who I am.
THE COURT: Before we move off of that, then, Mr. Morris, do you recall what he said to you to indicate -- this is a pretty critical part of this case. **What do you remember that gave you the impression that he did know the child porn was on there?**
THE WITNESS: Because it struck him as an accident that he admitted it. When I am having this conversation about -- and I don't know what the rest of the conversation was. But Mr. Maines is very unusual in that 99 percent of the people, when they are confronted by law enforcement about this, they want to unburden themselves, one might say. Mr. Maines did not do that with law enforcement. Nowhere is there any indication that he did. So when he told me that he did or he knew that there was child pornography on there, then that struck me as like one of those -- those, okay, kind of moments. They were just --
THE COURT: Do you remember what he said?
THE WITNESS: I don't remember how exactly it went. I just remember that he admitted that he knew -- that he downloaded these images. It's something that has always stuck with me in that case. It's been an unusual case, because always that letter and that type of conversation has never happened in any case at all. And so it's – that's the unusual thing that sticks with me. And so in all of that, it's always stuck with me that, yes, but he admitted it to me.

(Tr. 135-38) (emphasis added).

Morris testified that after Maines entered his plea agreement on June 6, Maines wrote a letter to Morris, received on June 12, in which Maines wrote that he "wanted [Morris] to help conspire with him to get his dad to take the blame." (Tr. at 104.) Morris then met with Maines and his parents to inform them that he would have to withdraw. (Tr. at 104-107.) In response to direct questioning by this Court as to whether Maines genuinely thought his father could be guilty, Morris acknowledged that the letter instead amounted to an effort to "cook this up and blame my dad." (Tr. at 107.) At the close of the government's direct questioning of attorney Morris, the Court asked whether Morris still had a copy of the letter. Morris acknowledged he did, and the Court directed him to produce a copy which was then introduced into evidence as Court's Exhibit 1. (Tr. at 125-26.)

IV. Analysis

As discussed above, the Court determined and announced at the close of the hearing that based upon the testimony and evidence before the Court, Samuel Maines's testimony was simply not credible, and the testimony of attorneys Morris and Johnson was credible. First, it is clear from the testimony and exhibits that Maines was a computer-skilled and inquisitive person, who built and had sole access to this computer, and engaged his attorneys throughout the process to try to "find a way around" his guilt. Everything about this § 2255 proceeding is a confirmation of that underlying fact. The separate testimony from each attorney included similar observations about Maines's detailed nature and understanding of the proceedings and strenuous efforts to attempt to avoid the conviction and avoid taking responsibility for his conduct. Both attorneys testified that Maines understood and was expressly aware of the nature of the requisite knowledge element of the child pornography charge. Attorney Johnson testified that Maines "clearly understood that the issue was not whether he possessed the computer but whether he knew those images were on the hard drive." (Tr. at 48.) Through Morris' testimony, the Court was informed that a forensic examination of the computer was conducted on behalf of Maines, and that analysis reviewed no evidence of an RAT , virus or Trojan horse on the computer. (Tr. 95-97.) Morris also provided testimony that Maines actually told him that he "knew there was child pornography on his hard drive." (Tr. at 16.) Importantly, the reason Morris recalled Maines's admission to him is because it was so inconsistent with Maines's otherwise controlling and detailed personality. (Tr. 135-138.)

As to Maines's credibility, as the Court noted in reading substantial portions of the letter Maines wrote to counsel Morris, his willingness to concoct a calculated and detailed plan to have his father take the blame for his own involvement with child pornography, is alone sufficient to support a finding that his testimony is totally not believable and is incredible. The letter, a virtual treasure

trove of insight into Maines' character and credibly, reveals Maines' ill-fated but earnest attempt to convince this Court that his father committed the crime:

> [T]he point is, it may be that my dad is willing to voluntarily throw himself under the bus for me. I've kicked this idea around in my head for the past week or so, and I won't deny that I've felt guilty about even thinking it (and that the idea of it actually happening makes me feel sick) but the fact is, I have a self-preservation instinct." . . . So, bottom line is, what we're talking about here is: My dad confessing that he used my computer during times when I was away from it, so that the case against me might be dismissed.

(June 7, 2012 Letter from Maines to Morris, Court's Exhibit 1.) Furthermore, in his § 2255 memorandum in support of his § 2255 motion, and Affidavit in Support, Maines actually blamed counsel Morris for coming up with the idea to have his father take the blame.[2] (Doc. 2 at 22-23; 38-39.) Thus, this evidence hurts Maines in two ways. First, reviewing the letter, it reveals a total willingness to do and say anything whatsoever to avoid being convicted of possession of child pornography. Furthermore, even within this whole someone-else-take-the-blame scenario, Maines lied in Court-filed documents about the genesis of such an idea. Thus, indicating that throughout these § 2255 proceedings, Maines has lacked any credibility.

Furthermore, in contrast to the testimony of each attorney, Maines's testimony was filled with inconsistencies and direct contradictions of prior sworn documents and testimony. In responding to a series of questions from government counsel about his prior "sworn" statements, "sworn" documents, and "sworn" testimony, in contrast to later "sworn" documents and testimony, the clever, articulate, and detailed young defendant Maines actually provides a stunning outline of an admitted total lack of any credibility:

> Q. Do you have Exhibits 2 and 3 in front of you there?

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[2] The idea that Morris suggested or condoned this preposterous plan was wholly debunked by the credible evidence. The portion of the letter where Maines advises Morris "[a]t the end of the day, in this scenario we're constructing, I'm just a scared kid who doesn't know what's going on" is but one example of the fact that Maines-alone-was driving this strategy.

A. Yes.
MR. FUNNELL: May I approach, Your Honor?
THE COURT: You may.
Q. (By Mr. Funnell) I'm going to hand you, in addition to 2 and 3, which you already have, Government's Exhibits 8 and 9.
A. Okay.
THE COURT: What are 8 and 9, Mr. Funnell?
MR. FUNNELL: Your Honor, they're in the binder that I provided to the Court. Number 8 --
THE COURT: Okay. I have it.
MR. FUNNELL: -- is a 2255 motion.
THE COURT: Okay. And Number 9.
MR. FUNNELL: Number 9 is Mr. Maines' affidavit, also filed in the 2255 action.
THE COURT: And I know all of this is part of the record, but just to be clear, understanding they are in the notebook, are you offering Government's 8 and 9 for evidence in this case --
MR. FUNNELL: I am, Your Honor.
THE COURT: -- to be considered. Government's 8 and 9. Any objection?
MR. ROSS: No objection.
THE COURT: Both admitted, 8 and 9 of the government's.
Q. (By Mr. Funnell) Mr. Maines, could you take a look at Government's Exhibit 8 first?
A. Yes.
Q. You drafted that; is that correct?
A. Yes.
Q. You swore under penalty of perjury that the allegations in there are correct; is that right?
A. Yes, it is.
Q. And do you stand by those allegations today?
A. Of course I do. I swore to them under oath.
Q. Exhibit 9, did you draft that?
A. I did.
Q. You swore to that under penalty of perjury. Do you still stand by all of those allegations?
A. Yes, I do.
Q. You submitted affidavits as part of this action from your father, Louis Maines, and from your mother, Nan Maines. Do you recall doing that?
A. Yes.
Q. Did you draft those affidavits?
A. I drafted them and asked my parents to sign them if they agreed that they were true.
Q. You stand by the allegations that are in there, I take it, because you admitted them as part of the record in this case.
A. Yes.
Q. Several times in their affidavits, your parents say words to the effect of, "My son told me such and such." Do you recall that in their affidavits?
A. Yes.

Q. And are you saying that those are accurate statements that you made to your parents?
A. Yes, they are.
Q. I would like to have you look at Exhibit 2, the plea agreement. Do you have that?
A. Yes.
Q. Do you see the first page?
A. Yes.
Q. Do you see the bottom, last sentence, where it says that "Maines understands the nature and elements of the crime to which he is pleading guilty and agrees that the factual resume he has signed is true and will be submitted as evidence." Do you see that sentence?
A. I see that sentence.
Q. Did you agree with that sentence when you signed this?
A. I did not agree with that sentence when I signed it.
Q. But you signed it anyway?
A. Yes, I did.
Q. Take a look at page 3, Number 6, where it says, "Defendant's Agreement." Do you see that?
A. Yes.
Q. It says, "Maines shall give complete and truthful information and/or testimony concerning his participation in the offense of conviction." Do you see that sentence?
A. I do.
Q. Did you understand it when you signed this?
A. Yes.
Q. Did you agree with it?
A. I didn't see how I could agree with it, because it goes on to have me, quote, unquote, admit things that I do not agree are truthful.
Q. So the answer to my question is, you understood it, but you didn't agree with it when you signed it.
A. That's correct.
Q. Take a look at page 5, number 10.
THE COURT: Which Government's Exhibit are we on?
MR. FUNNELL: I'm sorry, the same one, Your Honor, Government's Exhibit 2.
THE COURT: Government's Exhibit 2. All right.
Q. (By Mr. Funnell) Do you see where it says,
"Voluntary Plea"?
A. Yes, I do.
Q. It says, "This plea of guilty is freely and voluntarily made and is not the result of force or threats or promises apart from those set forth in this plea agreement. There have been no guarantees or promises from anyone as to what sentence the Court will impose."
Do you see those sentences?
A. I see them.
Q. Did you understand them when you signed this?
A. I understood them.
Q. Did you agree with them?
A. No, not at all.

Q. But you signed this anyway?
A. Yes.
Q. And lastly on Government's Exhibit 2, under paragraph 12, it indicates there -- and feel free to read it if you need to again -- that you are thoroughly satisfied with the representation and advice that you have received from your attorney in that case. Is that a fair summary of paragraph 12?
A. Yes.
Q. Did you understand that when you signed it?
A. Oh, I understood it.
Q. Did you agree with it?
A. Not at all.
Q. And at the time that you signed this, Doug Morris was your attorney, and he's the one who signed this with you, right?
A. Yes.
Q. So even though you didn't agree that Mr. Morris had been effective counsel, you represented to the Court by signing this that he was. Is that right?
Do I have that correct?
A. I signed the document.
Q. All right. Now, later on when Mr. Johnson was appointed, this plea agreement was not replaced with new signatures with Mr. Johnson, but you came into court for rearraignment. You remember that?
A. Yes.
Q. And one of the first things that happened at the outset of the arraignment was that you took an oath to tell the truth, similar to what you did today.
A. I did.
Q. Did you understand what that oath meant?
A. Maybe not entirely.
Q. You didn't understand what the oath meant?
A. I understood it to be something that was being used to make it seem like everything the government was telling me I had to say and everything my attorney was telling me I had to say was actually true.
Q. Being used by whom?
A. I would assume whoever was giving me the oath.
Q. Did you understand that by taking the oath and agreeing to tell the truth, that that's exactly what it meant, that you were going to tell the Court the truth?
A. I understood it to mean that my attorney and the government wanted it to seem like what I was saying was the truth.
Q. Throughout this case, what you are telling us in this 2255 is that you met with both of your attorneys repeatedly and insisted that you were innocent. Do that I have correct?
A. I insisted that I was innocent of knowing that my computer contained unlawful images.
Q. Yet you are telling the Court that despite your insistence and the fact that you wanted to have a trial, that you ultimately decided against a trial and pled guilty. Do I have that correct?
A. Yes.

Q. Why don't you take a look at Government's Exhibit 3. Do you have that in front of you, the factual resume?
A. Yes.
Q. Paragraph -- excuse me. Page 4, Paragraph Number 7. Do you see that?
A. Yes.
Q. Number 7 starts off and says, "Maines stipulates and agrees." Are we on the same paragraph there? Do you see that?
A. Yes.
Q. Second sentence says, "Maines admits that he downloaded the images and video of child pornography found on his computer using the internet." Did you understand that sentence when you signed this?
A. I understood that that's what the government thought happened.
Q. Did you understand that by signing this that is what you would be telling the Court to be the truth?
A. Yes.
Q. Today you're saying that was not the truth. Do I have that, correct?
A. Yes.
Q. But you signed this anyway.
A. I did.
Q. And when you came into court for your rearraignment and swore to tell the truth, you told the Court that this was true, this sentence that I just read.
A. Yes.
Q. Earlier in your testimony in response to counsel's questions you said, "I wouldn't characterize these as admissions." Did I hear you correctly?
A. You did.
Q. Mr. Maines, the very first two words from that sentence are, "Maines admits." Do I have that right?
A. "Maines stipulates."
Q. The sentence that I read, Mr. Maines, where it says, "Maines admits that he downloaded the images and videos." Do you see that sentence?
A. I thought you meant the start of the paragraph. Yes, I see that sentence.
Q. All right. So the first two words are, "Maines admits." Agreed?
A. Yes.
Q. Yet you don't think that can be characterized as an admission by you.
A. If it were me saying it, it would. But it's written in the third person. It was written on a piece of paper and handed to me, and I was told to sign it under the threat of going to prison for life.
Q. So you signed it, adopting it as your statement, rights?
A. Yes.
Q. You swore to its truth before this Court, right?
A. Yes.
Q. So what you are telling the judge is that at your rearraignment you lied under oath, right?
A. Having felt I had no other choice.
Q. Do I hear you correctly that virtually all of your testimony at rearraignment was false?
A. All of my testimony at rearraignment was yeses and nos.

THE COURT: That's not the question,
Mr. Maines. Stop splitting hairs. Listen to his question and answer it. Go ahead and ask the question again. If you need it repeated, I will do that.
MR. FUNNELL: Thank you, Your Honor.
Q. (By Mr. Funnell) Do I hear you correctly that virtually all of your testimony at rearraignment was false?
A. Yes.
Q. You knew it was false at the time that you gave it. Is that what you are telling the Court today?
A. Both me and my attorney knew.
Q. Did both of your attorneys know that? Did they both tell you the same thing, "Go in there in front of the judge and lie about whether you are guilty"?
A. I only had one attorney at rearraignment.
THE COURT: That's not the question.
THE WITNESS: The -- any attorneys that I had that were not representing me at rearraignment did not tell me to go into the Court and do anything. So only the attorney that represented me at rearraignment.
Q. (By Mr. Funnell) Well, in one of your papers in this action, in the 2255 action, you indicated that Mr. Morris told you, "Don't worry about signing the factual resume" -- you know, I'm paraphrasing here -- "Don't worry about signing the plea papers because they can't be used against you." Do you remember writing that in this 2255 action?
A. I do remember saying that.
Q. And is that what Mr. Morris told you?
A. On the day he withdrew from the case, he met with me in this building on whatever floor it was, and I asked him if I needed to be concerned about the fact that even though I hadn't pled yet, the papers were already on file. And he said, quote, the plea papers can't be used against you.
Q. Well, in your earlier statements in this case, though, that's not the context that you said, "Mr. Morris told me the plea papers can't be used against me," it was a totally different context, wasn't it?
A. I don't know what the context was.
Q. Well, wasn't it that you were telling your parents, "Don't worry. My plea, my guilty plea is just a safety net," to use your term. Do you remember saying that?
A. I do.
Q. So in other words, the guilty plea was just a placeholder. It was a safety net to you. It didn't really mean what the Court said that it meant at the time that you pled guilty.
A. That's how I viewed it when I signed it.
THE COURT: That is how you viewed it when you signed it?
THE DEFENDANT: That is how I viewed it when I signed it.
THE COURT: What does that mean?
THE DEFENDANT: It was June 6th, 2012, and my attorney at the --
THE COURT: No, no. That's not my question. The question is: Why is it you say now and said then that you viewed the plea agreement as a safety net. Why?
THE DEFENDANT: I was given a deadline by my attorney. I was told, "You must take this deal by June 6th." He told me this on June 6th. So I signed the papers at

that time, assuming that between that date and the date that I was supposed to come into court, there would be time to figure something out.
THE COURT: Okay. Go ahead, Mr. Funnell.
MR. FUNNELL: Thank you.
Q. (By Mr. Funnell) Lastly, Mr. Maines, did I understand your direct testimony correctly when you said that -- after Mr. Morris is off the case, you have already signed the plea papers, the plea agreement and the factual resume, right, Mr. Johnson is now your attorney. And you go in before the Court and you plead guilty, right?
A. Yes.
Q. Are you with me? You're saying that at no time did Mr. Johnson go over the written plea agreement or the factual resume with you before you pled guilty?
A. No. He only told me that if I didn't plead guilty I would face extra charges and go to prison, in his words, for the rest of my life.
Q. So what you are telling the Court is, Mr. Johnson relied solely on what Mr. Morris had done in signing the plea agreement with you. Mr. Johnson didn't independently go over those documents with you. Is that what you are saying?
A. Yes.
MR. FUNNELL: No further questions. Thank you.

(Tr. at 64-77.) This exchange speaks for itself. The Court finds Maines to not be a credible witness.

In sum, the Court finds and concludes that Samuel Maines was properly informed of the true nature of the offense to which he pled guilty, and was informed and knew and understood that his plea that he knowingly possessed a computer that contained images of child pornography included his knowledge that the computer contained child pornography images. The court further finds and concludes that neither counsel Morris nor Johnson rendered ineffective assistance of counsel with regard to their advice and information about the knowledge element of the charge. In particular, the Court finds and concludes that neither Morris nor Johnson improperly advised Maines that he could be guilty of the charge only if he possessed a computer containing images of child pornography.

For all of these reasons, it is therefore **ORDERED** that the motion for relief under 28 U.S.C. § 2255 remaining Supplemental Grounds A and D are **DENIED** with prejudice.[3]

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[3]As all matters related to the motion under § 2255 in this Court are now resolved, the appointment of Kevin Ross is terminated. Should Samuel Maines seek to file a notice of appeal as a pro se party, he must file a notice of appeal within the time limits set forth in Federal Rule of Appellate Procedure 4(a)(1)(B) (60 days after the judgment or order appealed from is entered).

Certificate of Appealability

Federal Rule of Appellate Procedure 22 provides that an appeal may not proceed unless a certificate of appealability (COA) is issued under 28 U.S.C. § 2253.[4] Rule 11 of the Rules Governing Section 2255 Proceedings now requires that the Court "must issue or deny a certificate of appealability when it enters a final order adverse to the applicant."[5] The COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right."[6] A petitioner satisfies this standard by showing "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists of reason could conclude the issues presented are adequate to deserve encouragement to proceed further."[7]

Upon review and consideration of the record in the above-referenced case as to whether movant defendant Samuel Maines has made a showing that reasonable jurists would question this Court's rulings, the Court determines he has not and that a certificate of appealability should not issue for the reasons stated in the Court's Order Partially Denying Motion Under 28 U.S.C. § 2255, dated February 9, 2016, the Order Resolving Additional Grounds for Relief Under 28 U.S.C. § 2255, dated January 10, 2017, and for the reasons stated in open Court at the hearing of this matter on March 8, 2017, and for the reasons stated in this Order.[8]

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[4]*See* Fed. R. App. P. 22(b).

[5]Rules Governing Section 2255 Proceedings in the United States District Courts, Rule 11(a).

[6]28 U.S.C.A. § 2253(c)(2)(West 2006).

[7]*Miller-El v. Cockrell*, 537 U.S. 322, 326 (2003) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

[8]*See* Fed. R. App. P. 22(b); *see also* 28 U.S.C.A. § 2253(c)(2)(West 2006).

It is further **ORDERED** that a certificate of appealability should not issue.

SIGNED March 24, 2017.

JANE J. BOYLE
UNITED STATES DISTRICT JUDGE

Additional material from this filing is available in the Clerk's Office.