IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

UNITED STATES OF AMERICA, Respondent, v. MAURICE ANDERSON, Petitioner.	CR No. 3:12-809-JFA CA No. 3:15-1209-JFA **ORDER**

I. INTRODUCTION

Defendant Maurice Anderson ("Anderson") has filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 ("§ 2255"). The Government has responded with a motion for summary judgment, contending that Taylor's § 2255 Motion is without merit and all claims should be denied. (ECF No. 583).

II. PROCEDURAL HISTORY

On October 18, 2012, a federal grand jury returned an Indictment charging Anderson with conspiring to distribute cocaine and marijuana, as well as other drug-related charges. On January 16, 2013, the grand jury returned a Superseding Indictment which added money laundering charges.

After his arrest, Anderson signed a proffer agreement with the government, which required Anderson to submit to a polygraph because the government believed Anderson was minimizing his involvement in cocaine distribution. Anderson failed the polygraph. Thereafter, on February 19, 2013, a federal grand jury returned a separate Indictment, which charged Anderson with obstructing justice by making false statements to law enforcement.

On May 3, Anderson pled guilty in a written plea agreement to the drug conspiracy charge, a violation of 21 U.S.C. § 846 (Count 1), and to conspiracy to launder drug proceeds, a violation of 18 U.S.C. §1956(h) (Count 8). In signing the agreement, Anderson agreed to cooperate fully and truthfully with the government, and he agreed to submit to a polygraph examination if the government so requested. Anderson also agreed that the government would be released from its obligations under the plea agreement if he refused to take the polygraph examination or failed it.

In return, the government stipulated and agreed to a sentence of twelve (12) years, followed by a term of supervised release of eight years. Further, if Anderson provided substantial assistance to the government, he could argue for a sentence less than twelve years. The stipulation was binding on the court such that Anderson could withdraw his guilty plea if the court rejected the stipulation. However, the stipulation was contingent upon Anderson abiding by all of the terms in the plea agreement.

After Anderson pled guilty, the United States Probation Office provided a Presentence Investigation Report ("PSR"). (ECF No. 503). The PSR provided that, on Count 1, Anderson was held accountable for 3,000 kilograms or more of marijuana, but less than 10,000 kilograms, resulting in a base offense level of 34. (ECF No. 503 p. 36). On the same Count, he received a 2-level enhancement for maintaining a premises for distributing a controlled substance, and he received an addition 2-level enhancement for obstructing justice. *Id.* The resulting offense level for Count 1 was 38. *Id.*

On Count 8, the base offense level was 36. (ECF No. 503 p. 36-37). He received a 2-level enhancement for violating 18 U.S.C. § 1956, and he received another 2-level enhancement for obstruction. (ECF No. 503 p. 37). The resulting offense level for Count 8 was 40. *Id.* The PSR

provided that Anderson's total offense level was 40, which called for 360 months to life imprisonment. (ECF No. 503-2 p. 1).

Both parties subsequently objected to the PSR. The Government contended that Anderson should receive a 3-level reduction for acceptance of responsibility, and the Defendant filed a similar objection, along with other objections not currently relevant.

On November 20, 2013, Anderson appeared for sentencing. (ECF No. 494). The Government contended that Anderson had breached his plea agreement by practicing law without a license. Anderson was allegedly assisting fellow inmates with legal issues and charging at least one inmate for these services. Anderson denied this conduct but subsequently failed a polygraph examination. The Government argued that the failed polygraph was another example of Anderson's breach of the plea agreement.

The court heard testimony and agreed that Anderson had breached the plea agreement. The court determined that it was unnecessary to decide the issue of whether Anderson had criminally practiced law without a license. It determined that his denial and subsequent failure of the polygraph examination were sufficient and clear violations of the plea agreement. Thus, the court sentenced Anderson to 264 months. (ECF No. 495 p. 2).

Anderson subsequently appealed. The plea agreement, however, contained a waiver of the right to appeal from his conviction or sentence. Thus, the Government moved to dismiss the appeal, and this Motion was granted on June 6, 2014.

On March 13, 2015, Anderson moved to vacate his sentence pursuant to 28 U.S.C. § 2255, alleging both ineffective assistance of counsel and prosecutorial misconduct. Anderson alleges that counsel was ineffective for (1) failing to object to the court's finding that Anderson breached his plea agreement; (2) failing to renew the objection to the court's refusal to reduce the

sentence for Anderson's acceptance of responsibility; and (3) failing to properly advise Anderson about the terms of the plea agreement. (ECF No. 593 p. 1-2). Additionally, Anderson alleges that Government's counsel engaged in prosecutorial misconduct because it entered into a plea agreement that it intended to violate. (ECF No. 593 p. 2).

The government subsequently moved for summary judgment on the § 2255 Motion. (ECF No. 583). Thereafter, the Court issued an order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), advising the Defendant of the procedures to be followed by a litigant facing a motion to dismiss or for summary judgment. (ECF No. 387). However, the Defendant did not respond to the government's Motion.[1] Thus it appears this matter is ripe for review.

For the reasons that follow, the Court has determined that the Defendant's § 2255 Petition is hereby denied, and the Government's Motion for Summary Judgment is granted.

III. LEGAL STANDARD

A. 28 U.S.C. § 2255

Prisoners in federal custody may attack the validity of their sentences pursuant to 28 U.S.C. § 2255. In order to move the court to vacate, set aside, or correct a sentence under § 2255, a defendant/petitioner must prove that one of the following occurred: (1) a 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).

[1] Defendant did not file a response to the Government's Motion for Summary Judgment within the allotted time; however, Defendant filed several other documents and motions with the Court. *See* ECF No. 590 (Motion for Extension of Time to File Response/Reply as to 582 Response in Opposition, and 583 Motion for Summary Judgment re: 2255 Petition); ECF No. 593 (Reply to Response to 2255 Motion).

B. SUMMARY JUDGMENT

Summary judgment "should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c)(2). The movant has the burden of proving that summary judgment is appropriate. Once the movant makes the showing, however, the opposing party must respond to the motion with "specific facts showing a genuine issue for trial." Fed. R. Civ. P. 56(e)(2).

When no genuine issue of any material fact exists, summary judgment is appropriate. *See Shealy v. Winston*, 929 F.2d 1009, 1011 (4th Cir. 1991). In deciding a motion for summary judgment, the facts and inferences to be drawn from the evidence must be viewed in the light most favorable to the non-moving party. *Id.* However, "the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986).

"[O]nce the moving party has met [its] burden, the nonmoving party must come forward with some evidence beyond the mere allegations contained in the pleadings to show that there is a genuine issue for trial." *Baber v. Hospital Corp. of Am.*, 977 F.2d 872, 874–75 (4th Cir. 1992). The nonmoving party may not rely on beliefs, conjecture, speculation, or conclusory allegations to defeat a motion for summary judgment. *See id.* Rather, the nonmoving party is required to submit evidence of specific facts by way of affidavits, depositions, interrogatories, or admissions to demonstrate the existence of a genuine and material factual issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

IV. DISCUSSION

A. INEFFECTIVE ASSISTANCE OF COUNSEL

Anderson contends that he received ineffective assistance of counsel both before his plea and at sentencing. The Sixth Amendment right to counsel is "the right to the effective assistance of counsel." *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970). To successfully challenge a sentence on the basis of ineffective assistance of counsel, the Defendant must demonstrate (1) that his counsel's performance fell below an objective standard of reasonableness; and (2) that he was prejudiced by his counsel's deficient performance. *See Sharpe v. Bell*, 593 F.3d 372, 382 (4th Cir. 2010); *Strickland v. Washington*, 466 U.S. 668, 687 (1984). With respect to the first prong, there is "a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Strickland*, 466 U.S. at 689. A reviewing court must be highly deferential in scrutinizing counsel's performance and must filter from its analysis the distorting effects of hindsight. *Id.* at 688–89.

In addition to showing ineffective representation, the Defendant must also show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694. "The likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 112 (2011) (citing *Strickland*, 466 U.S. at 693).

1. Counsel Failed to Object to Court's Finding that Anderson Breached Plea Agreement.

First, Anderson essentially argues that the court had no basis to find that he had breached his plea agreement, and thus counsel should have objected to that particular finding. Anderson's written plea agreement contained the following provision at Paragraph Nine (9):

> The Defendant agrees to submit to such polygraph examinations as may be requested by the Government and agrees that any such examinations shall be performed by a polygraph examiner selected by the Government. Defendant further agrees that his refusal to take or his failure to pass any such polygraph examination to the Government's satisfaction will result, at the Government's sole discretion, in the obligations of the Government within the agreement becoming null and void.

(ECF No. 344 p. 5-6).

Anderson failed a government-administered polygraph, and, according to the terms of the plea agreement, such failure constituted a breach of his obligations. Thus, any objection by counsel would not have changed the ultimate result. Under *Strickland*, Anderson must show there is a "reasonable probability" that his counsel's failure to object would have changed the outcome. *Strickland*, 466 U.S. at 694. Anderson cannot make such a showing because he clearly breached the plea agreement.

Therefore, given the foregoing, it is evident that Defendant breached his plea agreement, and the Court thus finds that this argument fails.

2. Counsel Failed to Renew the Objection to the Court's Refusal to Reduce the Sentence for Anderson's Acceptance of Responsibility.

Second, Anderson argues that his counsel "failed to renew the loss of the acceptance of responsibility reduction." (ECF No. 573-1 p. 13). In opposition, the Government points out that Anderson's counsel did, in fact, make an appropriate objection on Anderson's behalf. (ECF No. 582 p. 8).

At sentencing, the court addressed the issue of Anderson's breach of the plea agreement and determined that he had, in fact, breached it. (ECF No. 524 p. 111) ("I find that the government has proven by a preponderance of the evidence that the defendant Maurice Anderson has breached the terms of his plea agreement."). Thereafter, counsel

for the Government stated, "by finding that this defendant has failed to be fully and completely truthful and that he lied to agents after signing a plea agreement, that forbids him from getting acceptance of responsibility." (ECF No. 524 p. 114). The court then asked to hear from Mr. Floyd, Defendant's counsel, regarding the "two objections on the table now." (ECF No. 524 p. 114). Mr. Floyd then responded as follows:

> Your Honor, as to acceptance of responsibility, early on shortly after his arrest Mr. Anderson voluntarily appeared and entered into a proffer agreement in which he was fully debriefed by the government and gave them substantial information concerning his criminal activities. I understand that it was later ruled by this court that he breached that proffer agreement by flunking a polygraph examination. It doesn't take away from the fact that he did provide all that information concerning his criminal activity. He later even at a hearing in front of your Honor testified under oath and admitted to his criminal activity involving the distribution of marijuana.
>
> He then entered into a plea agreement where he freely admitted his involvement. I understand what they are trying to say. All this came up about this unauthorized practice of law, but we don't think — we understand your Honor's ruling it's not a trivial matter, but we don't think it should remove from him his acceptance of responsibility because he's always accepted responsibility for his criminal activities and pled guilty at the appropriate time your Honor.

(ECF No. 524 p. 115). The court rejected Mr. Floyd's arguments, stating the following: "I don't think it's a difficult call to say the defendant should not receive acceptance of responsibility credit, so I will overrule that objection to the plea agreement — to the presentence report."

Given the foregoing, it is evident that Defendant's counsel, Mr. Floyd, properly made an objection on Anderson's behalf. *See* (ECF No. 524 p. 115). Therefore, the Court finds that Defendant's second claim for ineffective assistance of counsel is unsupported by the record.

*3. **Counsel Failed to Properly Advise Anderson About the Terms of the Plea Agreement.***

Anderson's final argument as to ineffective assistance of counsel is that his counsel "discussed the plea agreement with [him], but [counsel] did not explain the terms of the plea agreement before [counsel] encouraged [Anderson] to sign the plea." (ECF No. 573-1 p. 18). Anderson's assertion is unsupported by the evidence in this case.

Anderson's plea hearing was conducted in accordance with Rule 11 of the Federal Rules of Criminal Procedure. *See* (ECF No. 518). The court stated the following at the outset of the plea hearing: "if at any time during this process you wish to stop and confer with your attorney, if you'll just give me a signal, I will be glad to take a recess and you can speak with your counsel." (ECF No. 518 p. 4). When asked whether he understood, Anderson responded, "Yes, Sir." (ECF No. 518 p. 4). Furthermore, the court asked Defendant: "How far did you go in school?" (ECF No. 518 p. 8). Anderson replied, "[a] senior in college." *Id.* Thus, Defendant Anderson is an educated man.

Furthermore, the court asked Anderson whether he "had an ample opportunity to discuss [his] case with [his] attorney." (ECF No. 518 p. 9). Anderson responded: "Yes, Sir." (ECF No. 518 p. 10). The court subsequently asked Anderson, "[a]re you satisfied with your attorney's representation in this case?" Anderson replied: "Yes, Sir." (ECF No. 518 p. 10). The court then asked, "[h]as your attorney done everything that you have asked him to do for you in this—in your case?" Anderson again replied: "Yes, Sir." (ECF No. 518 p. 10). Thereafter, the court asked, "[i]s there anything you need for your attorney to do for you right now before we proceed any further in your case?" (ECF No. 518 p. 10). Anderson responded: "No, Sir." (ECF No. 518 p. 11).

Finally, the plea agreement itself clearly states that "the obligations of the Government within the Plea Agreement are expressly contingent upon the Defendant's abiding by federal and

state laws and complying with the terms and conditions of any bond executed in this case." (ECF No. 344 p. 4). The Plea Agreement also states that "if the Defendant readily demonstrates acceptance of responsibility by pleading guilty, abiding by **all** terms of this agreement and by not falsely denying or frivolously contesting otherwise provable relevant conduct," he would receive a two-level decrease in his sentence. (ECF No. 344 p. 8) (emphasis in original). The Plea Agreement also states the following regarding Anderson's satisfaction with his attorney's explanation of the Agreement:

> The Defendant represents to the court that he has met with his attorney on a sufficient number of occasions and for a sufficient period of time to discuss the Defendant's case and receive advice; that the Defendant has been truthful with his attorney and related all information of which the Defendant is aware pertaining to the case; that the Defendant and his attorney have discussed possible defenses, if any, to the charges in the Superseding Indictment including the existence of any exculpatory or favorable evidence or witness, discussed the Defendant's right to a public trial by jury or by the Court, the right to the assistance of counsel throughout the proceedings . . . and that the Defendant, with the advice of counsel, has weighed the relative benefits of a trial by jury or by the Court versus a plea of guilty pursuant to his Agreement, and has entered this Agreement as a matter of the Defendant's free and voluntary choice, and not as a result of pressure or intimidation by any person.

(ECF No. 344 p. 8–9). Maurice Anderson signed this Agreement. (ECF No. 344 p. 11).

Given the foregoing, it is evident that Defendant's counsel, Mr. Floyd, provided Anderson with sufficient information regarding the Plea Agreement, and the court did the same. Defendant Maurice Anderson is an educated man, and he clearly stated that he was satisfied with his attorney's representation and that he understood the terms of the Plea Agreement. Therefore, the Court finds that Anderson's third claim for ineffective assistance of counsel is unsupported by the record.

B. PROSECUTORIAL MISCONDUCT

The last issue this Court will address is Anderson's claim that the Government intended to violate the terms of the Plea Agreement, and thus it is guilty of prosecutorial misconduct. (ECF No. 573-1 p. 20). Specifically, Anderson alleges the following: "At the time of the Rule 11 hearing held on May 3, 2013, the government knew that Petitioner had been helping other defendants with legal matters in the county jail where Petitioner was being housed." (ECF No. 573-1 p. 20-21).

In regards to prosecutorial misconduct, the Fourth Circuit Court of Appeals has held the following:

> In reviewing a claim of prosecutorial misconduct, [the court] reviews the claim to determine whether the conduct so infected the trial with unfairness as to make the resulting conviction a denial of due process. Under this analysis, a defendant must first show that the prosecutor's remarks were improper and then establish that the remarks prejudicially affected his substantial rights thus depriving him of a fair trial. In making this second inquiry, we look to six factors: (1) the degree to which the remarks had a tendency to mislead the jury and prejudice the defendant; (2) whether the remarks were isolated or extensive; (3) the strength of the evidence against the defendant; (4) whether the comments were deliberately place to divert the jury's attention; (5) whether the remarks were invited by defense counsel; and (6) whether the district court gave curative instructions to the jury.

U.S. v. Swain, 397 F. App'x 893, 896 (4th Cir. 2010) (citing *United States v. Scheetz*, 293 F.3d 175, 185–86 (4th Cir. 2002).

The Plea Agreement, which was entered on May 3, 2013, states that "if the Defendant readily demonstrates acceptance of responsibility by pleading guilty, abiding by **all** terms of this agreement and by not falsely denying or frivolously contesting otherwise provable relevant conduct," he would receive a "decrease of two (2) levels." (ECF No. 344 p. 8) (emphasis in original). The terms of the Plea Agreement include the following: "the obligations of the Government within the Plea Agreement are expressly contingent upon the Defendant's abiding

by federal and state laws and complying with the terms and conditions of any bond executed in this case." (ECF No. 344 p. 4).

On October 7, 2013, the Government filed an objection to the PSR. (ECF No. 448-3). In the Objection, the Government states, "Defendant is entitled to a three level reduction for acceptance of responsibility." (ECF No. 448-3 p. 2). At the sentencing hearing on November 20, 2013, counsel for the Government indicated that, since filing the Objection, "[the Government] received information Mr. Anderson has been practicing law without a license." (ECF No. 524 p. 2). In support of its assertion, the Government offered testimony of Special Agent Jeff Newton. (ECF No. 524 p. 30). Newton indicated that he had administered a polygraph test to Defendant Anderson on November 14, 2013. (ECF No. 524 p. 37). Newton further indicated that Anderson failed the polygraph test when questioned about "his giving advice to inmates and filing papers on behalf of inmates since the date of his guilty plea." (ECF No. 524 p. 32).

As discussed above, it is evident that the Government's counsel did not engage in prosecutorial misconduct. More specifically, the evidence in this case shows that the Government did not intend to violate the terms of the Plea Agreement when it entered into the Agreement. Therefore, the Court finds that Defendant's claim for prosecutorial misconduct is unsupported by the record.

V. CONCLUSION

For the reasons stated above, Government's Motion for Summary Judgment is GRANTED, and Defendant's motion for relief under § 2255 is DENIED. Defendant's § 2255 petition is dismissed with prejudice.

Furthermore, because the Defendant has failed to make "a substantial showing of the denial of a constitutional right," a certificate of appealability is denied.[2] 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

Joseph F. Anderson, Jr.

January 5, 2018
Columbia, South Carolina

Joseph F. Anderson, Jr.
United States District Judge

[2] 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) (West 2018). 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); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001).

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6192

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MAURICE ANDERSON, a/k/a Mo, a/k/a Mayor Mo,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Columbia. Joseph F. Anderson, Jr., Senior District Judge. (3:12-cr-00809-JFA-3)

Submitted: June 29, 2018 Decided: July 25, 2018

Before KEENAN, DIAZ, and FLOYD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Maurice Anderson, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Maurice Anderson 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 Anderson 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

FILED: October 16, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6192
(3:12-cr-00809-JFA-3)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MAURICE ANDERSON, a/k/a Mo, a/k/a Mayor Mo

Defendant - Appellant

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Keenan, Judge Diaz, and Judge Floyd.

For the Court

/s/ Patricia S. Connor, Clerk

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