

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAR 14 2019

David J. Smith
Clerk

No. 18-14100-J

TERRI MCGUIRE MOLLICA,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

ORDER:

Terri McGuire Mollica is a federal prisoner serving a 28-month sentence after pleading guilty to unlawfully using a communication facility, in violation of 21 U.S.C. § 843(b). Mollica moves this Court for a certificate of appealability ("COA") and leave to proceed *in forma pauperis* ("IFP") in her appeal of the district court's denial of her 28 U.S.C. § 2255 motion to vacate sentence, in which she raised 17 claims for relief. To obtain a COA, a movant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A movant must show that reasonable jurists would find debatable both (1) the merits of an underlying claim, and (2) the procedural issues that he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000).

In Claim 1, Mollica argued that her due process rights were violated by the court's upward variance at sentencing. In Claim 13, she argued that her sentence enhancement for obstructing

justice violated the Sixth Amendment. In Claim 14, she argued that the application of a sentencing enhancement for obstruction of justice was impermissible "double counting," in violation of her Fifth Amendment rights. Reasonable jurists would not debate the district court's denial of these claims, as each of them was considered and rejected by this Court on direct appeal. No COA is warranted for the denial of these claims.

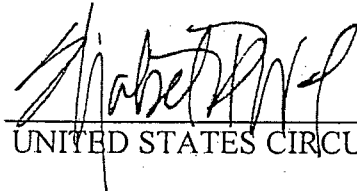
In Claim 3, Mollica argued that her Fifth Amendment rights were violated due to a non-custodial interview. In Claim 4, she asserted that her Sixth Amendment right to counsel was unlawfully interfered with by the government. In Claim 5, she contended that her Fourth Amendment rights were violated by an unlawful search and seizure. In Claim 6, she argued that her Fourth Amendment rights were violated by an unlawful seizure of her property and the violation of her "possessory interest" in it. Reasonable jurists also would not debate the district court's denial of these claims as procedurally defaulted. Each of those claims attempted to raise substantive challenges to Mollica's underlying conviction that should have been raised on direct appeal, and Mollica failed to establish that her procedural default should be excused. The denial of these claims does not merit a COA.

In Claim 9 of her motion, Mollica argued that her plea agreement was entered involuntarily. In Claim 10, she contended that she was coerced into pleading guilty by the government. In Claim 11, she asserted that the government threatened to rescind her plea agreement in a related case if she did not plead guilty. In Claim 12, she argued that she was never informed that a consequence for her guilty plea was a period of supervised release. Reasonable jurists would not debate the district court's denial of any of these claims, as the record reflected that Mollica affirmed that she had not been coerced into pleading guilty and was informed of the consequences

In Claim 16, Mollica alleged that her trial counsel was ineffective for failing to move for a change of venue. Reasonable jurists would not debate the district court's denial of this claim as she failed to show how counsel's performance was deficient or how she was prejudiced by counsel's alleged deficiency in this regard. No COA is warranted for the denial of this claim.

In Claim 17, Mollica argued that the court lacked federal legislative criminal jurisdiction to prosecute her. Reasonable jurists would not debate the district court's denial of this claim, as her statute of conviction was constitutional and the court clearly possessed federal jurisdiction to adjudicate her criminal proceedings. The denial of this claim does not merit a COA.

Accordingly, Mollica's motion for a COA is DENIED and her motion for IFP status is DENIED AS MOOT.


UNITED STATES CIRCUIT JUDGE

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versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

Before: TJOFLAT and BRANCH, Circuit Judges.

BY THE COURT:

Terri McGuire Mollica has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's order dated March 14, 2019, denying her motion for a certificate of appealability and denying as moot her motion for leave to proceed *in forma pauperis* in the appeal of the denial of her 28 U.S.C. § 2255 motion to vacate. Because Mollica has not alleged any points of law or fact that this Court overlooked or misapprehended in denying her motion, her motion for reconsideration is DENIED.

EXHIBIT F