

APPENDIX A

UNPUBLISHED

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

No. 18-7278

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANTHONY ANDREWS, a/k/a Wheat,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at
Wilmington. Terrence W. Boyle, Chief District Judge. (7:01-cr-00027-BO-1; 7:18-cv-
00053-BO)

Submitted: March 8, 2019

Decided: March 28, 2019

Before KING and AGEE, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Anthony Andrews, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Anthony Andrews seeks to appeal the district court's order dismissing his 28 U.S.C. § 2255 (2012) motion as an unauthorized successive 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 Andrews has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny Andrews' motions for a stay pending appeal and to appoint counsel, 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: March 28, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-7278
(7:01-cr-00027-BO-1)
(7:18-cv-00053-BO)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ANTHONY ANDREWS, a/k/a Wheat

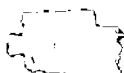
Defendant - Appellant

J U D G M E N T

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

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

/s/ PATRICIA S. CONNOR, CLERK



APPENDIX B

ANTHONY ANDREWS, Petitioner, v. UNITED STATES OF AMERICA, Respondent.
UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA,
SOUTHERN DIVISION
2018 U.S. Dist. LEXIS 167657
No. 7:01-CR-27-BO-1, No. 7:18-CV-53-BO
September 27, 2018, Decided
September 28, 2018, Filed

Editorial Information: Subsequent History

Appeal dismissed by, Certificate of appealability denied, Motion denied by, Stay denied by United States v. Andrews, 2019 U.S. App. LEXIS 9235 (4th Cir. N.C., Mar. 28, 2019)

Editorial Information: Prior History

United States v. Andrews, 113 Fed. Appx. 524, 2004 U.S. App. LEXIS 22958 (4th Cir. N.C., Nov. 3, 2004)

Counsel

{2018 U.S. Dist. LEXIS 1} For USA, Plaintiff (7:01-cr-00027-BO):
Lawrence Jason Cameron, LEAD ATTORNEY, United States Attorney's Office, Raleigh, NC.
Anthony Andrews, Petitioner (7:18cv53), Pro se, Bennettsville,
SC USA.

Judges: TERRENCE W. BOYLE, UNITED STATES DISTRICT JUDGE.

Opinion

Opinion by: TERRENCE W. BOYLE

Opinion

ORDER

This cause comes before the Court on petitioner's *pro se* motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. [DE 237]. Respondent has moved to dismiss the Section 2255 petition. [DE 242]. These matters are ripe for disposition. For the reasons discussed below, respondent's motion to dismiss [DE 242] is GRANTED, and petitioner's Section 2255 motion [DE 237] is DISMISSED.

BACKGROUND

In 2001, petitioner pleaded guilty, pursuant to a written plea agreement, to distribution of cocaine base (crack), in violation of 21 U.S.C. § 841(a)(1). [DE 21]. He was sentenced to 188 months' imprisonment. [DE 29].

In 2002, petitioner filed his first 28 U.S.C. § 2255 motion. [DE 48]. That same year, the Court held two evidentiary hearings on petitioner's claims. [DE 60; 79]. Then, in 2003, petitioner withdrew his Section 2255 claims. [DE 87; 89]. Petitioner has since filed various other challenges to his conviction and sentence.

In March 2018, petitioner filed another motion to vacate, amend, or correct his sentence{2018 U.S. Dist. LEXIS 2} under 28 U.S.C. § 2255. [DE 237]. Petitioner brings claims of prosecutorial misconduct arising out of Operation Tarnished Badge. [DE 237, p. 4-5]. Respondent moved to dismiss the Section 2255 petition under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). [DE 242].

DISCUSSION

The government argues that petitioner's Section 2255 petition must be dismissed because it is an unauthorized successive petition. [DE 243, p. 2]. Federal habeas petitioners are generally permitted only one Section 2255 motion. 28 U.S.C. § 2255(h). As such, under Federal Rule of Civil Procedure 12(b)(1), federal courts lack subject-matter jurisdiction to hear successive petitions. *United States v. Winestock*, 340 F.3d 200, 204-05 (4th Cir. 2003); see also *In re Goddard*, 170 F.3d 435, 436 (4th Cir. 1999). There are, however, some exceptions. If the first petition was not decided on the merits, for example, the second petition is not improperly successive. *Slack v. McDaniel*, 529 U.S. 473, 485-86, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000). Or if the second petition is based on the intervening vacatur of a conviction used to enhance the petitioner's sentence, it is not improperly successive. *United States v. Hairston*, 754 F.3d 258, 262 (4th Cir. 2014).

Petitioner has not shown that any of the exceptions to 28 U.S.C. § 2254(h) are applicable to his petition. He argues that his sentence should be vacated or amended on the basis of prosecutorial misconduct. Petitioner's allegations arise from the federal prosecution and conviction of law enforcement personnel following an investigation entitled "Operation Tarnished Badge." Operation Tarnished{2018 U.S. Dist. LEXIS 3} Badge was a joint state and federal investigation of corrupt law enforcement officers in Robeson County, North Carolina. The investigation resulted in over twenty federal convictions, including the conviction of former Robeson County Sheriff Glenn Maynor and nearly his entire 'command structure. *United States v. Maynor*, 310 Fed. App'x 595, 596-98 (4th Cir. 2009) (per curiam).

Petitioner relies on the conviction of one officer in particular, Mr. Leon Oxendine. Mr. Oxendine was sentenced to fifty-one months' imprisonment in 2007 on various charges of corruption. *United States v. Oxendine*, 237 Fed. App'x 852, 853 (4th Cir. 2007). Mr. Oxendine was the head of the Selective Enforcement Team in Lumberton, North Carolina, and petitioner alleges that it was members of that Selective Enforcement Team who were directly responsible for his arrest and later prosecution. Petitioner also cites *Quintana v. United States*, 2010 U.S. Dist. LEXIS 99233, 2010 WL 3743769 (E.D.N.C. Sept. 21, 2010), where this Court permitted a second Section 2255 petition which arose out of Operation Tarnished Badge. But, unlike Mr. Quintana, petitioner has not shown that his current petition is not successive.

Unlike Mr. Quintana, petitioner pleaded guilty pursuant to a written plea agreement. He has raised his prosecutorial misconduct claims previously, in Section 2255 petitions and in other challenges to his sentence and conviction. Further, petitioner has not shown that{2018 U.S. Dist. LEXIS 4} the 2010 conviction of Mr. Oxendine undermines his guilty plea or resuscitates his earlier claims of prosecutorial misconduct. Petitioner has been given multiple opportunities-and has taken advantage of them-to challenge his sentence and his conviction on grounds of prosecutorial misconduct. None of the exceptions to 28 U.S.C. § 2255(h) are applicable. This successive petition must, therefore, be dismissed.

CERTIFICATE OF APPEALABILITY

A certificate of appealability shall not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A petitioner satisfies this standard by demonstrating that

reasonable jurists would find that an assessment of the constitutional claims is debatable and that any dispositive procedural ruling dismissing such claims is likewise debatable. *Miller-El v. Cockrell*, 537 U.S. 322, 336-38, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483-84, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). As reasonable jurists would not find this Court's dismissal of petitioner's § 2255 motion debatable, a certificate of appealability is DENIED.

CONCLUSION

For the above reasons, respondent's motion to dismiss [DE 242] is GRANTED, and petitioner's Section 2255 motion [DE 237] is DISMISSED. A certificate of appealability is DENIED.

SO ORDERED, this 27 day of September, 2018.

/s/ Terrence W. Boyle

TERRENCE W. BOYLE

UNITED STATES DISTRICT JUDGE{2018 U.S. Dist. LEXIS 5}

APPENDIX C

FILED: June 3, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-7278
(7:01-cr-00027-BO-1)
(7:18-cv-00053-BO)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ANTHONY ANDREWS, a/k/a Wheat

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.

Upon consideration of submissions relative to the motion to stay mandate, the court denies the motion.

Entered at the direction of the panel: Judge King, Judge Agee, and Senior Judge Hamilton.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX D

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

June 18, 2019

Mr. Anthony Andrews
P.O. Drawer 388
Farmville, VA 23901

Re: Anthony Andrews
v. United States
Application No. 18A1316

Dear Mr. Andrews:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to The Chief Justice, who on June 18, 2019, extended the time to and including October 31, 2019.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by

Susan Frimpong
Case Analyst

