

UNITED STATES SUPREME COURT

ULRISTE TULIN,
Petitioner,

v.

Case No.

UNITED STATES OF AMERICA,
Respondent.

/

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THRU 15

FILED: August 23, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6712
(1:15-cr-00173-LO-2)
(1:19-cv-00157-LO)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ULRISTE TULIN, a/k/a Blade

Defendant - Appellant

JUDGMENT

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

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

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

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

No. 19-6712

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ULRISTE TULIN, a/k/a Blade,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Liam O'Grady, District Judge. (1:15-cr-00173-LO-2; 1:19-cv-00157-LO)

Submitted: August 20, 2019

Decided: August 23, 2019

Before FLOYD and RUSHING, Circuit Judges, and SHEDD, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Ulriste Tulin, Appellant Pro Se. Joseph Attias, National Security Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Ulriste Tulin seeks to appeal the district court's orders denying relief on his 28 U.S.C. § 2255 (2012) motion, his Fed. R. Civ. P. 59(e) motion to reconsider, and his Fed. R. Civ. P. 60(b)(3) motion for relief from judgment based on fraud and misrepresentation. The orders are 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 Tulin 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

(EXHIBIT 'OKD')
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

ULRISTE TULIN,)
)
Petitioner) CRIMINAL NO. 1:15-cr-173-LO-2
) CIVIL NO. 1:19-cv-157-LO
v.)
UNITED STATES OF AMERICA,) Hon. Liam O'Grady
)
Respondent.)
)

ORDER

This matter comes before the Court on Petitioner Ulriste Tulin's Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 (Dkt. 153) and Motion for Bond Pending § 2255 Motion (Dkt. 155). The government opposed both Motions. *See* Dkts. 158, 159. For the reasons stated below, and for good cause shown, both Motions are hereby **DENIED**.

1. Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 (Dkt. 153).

Petitioner claims he received ineffective assistance of counsel both at trial and on appeal because his lawyer (1) failed to move to suppress the "fake" arrest warrant used to arrest Petitioner without an extradition order and to establish both jurisdiction and venue in this Court; (2) failed to investigate the indictment, which Petitioner argues did not include his name, and object to jury instructions listing Petitioner as a charged individual; and (3) failed to seek a stipulated fact bench trial. To establish that his counsel was ineffective, Petitioner must show that (a) his counsel's representation fell below "an objective standard of reasonableness," and (b) "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the

proceeding would have been different.” *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). Petitioner has failed to meet this burden.

Petitioner makes only conclusory assertions that his arrest warrant was “fake” and photoshopped. “[V]ague and conclusory allegations” such as Petitioner’s “may be disposed of without further investigation by the District Court,” *United States v. Dyess*, 730 F.3d 354, 359 (4th Cir. 2013) (quoting *United States v. Thomas*, 221 F.3d 430, 437 (3d Cir. 2000)), and are insufficient to carry Petitioner’s burden under *Strickland*, *Keiber v. United States*, 2017 WL 6759816, at *2 (E.D. Va. Aug. 16, 2017) (citing *United States v. Turcotte*, 405 F.3d 515, 537 (7th Cir. 2005)). In any event, the Court had jurisdiction over Petitioner because Petitioner was physically present in the United States, even if against his will, and was charged with kidnapping a United States citizen. *United States v. Shabin*, 722 F.3d 233, 244, 247 (4th Cir. 2013). His counsel’s failure to challenge the Court’s jurisdiction given this clear precedent was neither unreasonable performance nor prejudicial. *Beyle v. United States*, 269 F. Supp. 3d 716, 740 (E.D. Va. 2017), *appeal dismissed*, 740 F. App’x 285 (4th Cir. Oct. 22, 2018).

Petitioner’s arguments that he was not named in the indictment and should not have been named as a charged individual in jury instructions are equally unavailing. While Petitioner was not named in the original indictment in the case, Dkt. 1, he was named in the Superseding Indictment under which he was tried, Dkt. 6. His counsel’s failure to argue that the indictment did not name Petitioner, and that the jury instructions should not name him, was therefore neither unreasonable nor prejudicial.

Finally, Petitioner’s counsel was also not ineffective for failing to seek a stipulated fact bench trial because such trials are rare in this district and there is no evidence the government, or Petitioner’s co-defendant, would have agreed to a stipulated fact bench trial. *United States v.*

Ocoro, 2012 WL 12964652, at *4 (S.D. Ala. Dec. 17, 2012), *aff'd*, 607 F. App'x 864 (11th Cir. April 6, 2015).

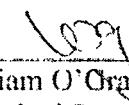
Accordingly, for these reasons and for good cause shown, Petitioner's Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 (Dkt. 153) is **DENIED**.

2. Motion for Bond Pending § 2255 Motion (Dkt. 155).

Having denied Petitioner Tulin's § 2255 Motion, Petitioner's Motion for Bond (Dkt. 155) is **DENIED** as moot.

It is **SO ORDERED**.

March 21, 2019
Alexandria, Virginia



Liam O'Grady
United States District Judge

FILED: November 5, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6712
(1:15-cr-00173-LO-2)
(1:19-cv-00157-LO)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ULRISTE TULIN, a/k/a Blade

Defendant - Appellant

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

EXHIBIT 13

JURY INSTRUCTION NO. 32

Count One of the Indictment charges that:

From on or about March 1, 2012, and continuing through on or about July 12, 2012, within the Republic of Haiti, the defendants, Monclaire Saint Louis and Ulriste Tulin, did knowingly combine, conspire, confederate and agree together and with others known and unknown to the grand jury to seize, detain, and threaten to kill, to injure, and to continue to detain Yvroseline Fergile, a United States citizen, and Ariante Marcelin, a United States citizen, in order to compel a third person to do an act as an explicit and implicit condition of the release of the persons detained, namely to compel the families of the hostages to pay a ransom, in violation of Title 18, United States Code, Section 1203.

(In violation of Title 18, United States Code, Section 1203)

JURY INSTRUCTION NO. 37

Count Two of the Indictment charges that:

On or about June 2, 2012, through on or about June 9, 2012, within the Republic of Haiti and elsewhere, the defendants, Monclaire Saint Louis and Ulriste Tulin, together with others known and unknown to the Grand Jury, did knowingly seize and detain and threaten to kill, injure and continue to detain Yvroseline Fergile, a United States citizen, in order to compel a third person to do and abstain from doing an act as an explicit and implicit condition for the release of the person detained, namely, to compel the family of Yvroseline Fergile to pay a ransom for her release.

(In violation of Title 18, United States Code, Sections 1203 and 2)

JURY INSTRUCTION NO. 38

Count Three of the Indictment charges that:

On or about July 9, 2012, through on or about July 12, 2012, within the Republic of Haiti and elsewhere, the defendants, Monclaire Saint Louis and Ulriste Tulin, together with others known and unknown to the Grand Jury, did knowingly seize and detain and threaten to kill, injure and continue to detain Ariante Marcellin, a United States citizen, in order to compel a third person to do and abstain from doing an act as an explicit and implicit condition for the release of the person detained, namely, to compel the family of Ariante Marcellin to pay a ransom for her release.

(In violation of Title 18, United States Code, Sections 1203 and 2)

(EXHIBIT-5142)

JURY INSTRUCTION NO. 42

Count Four of the Indictment charges that:

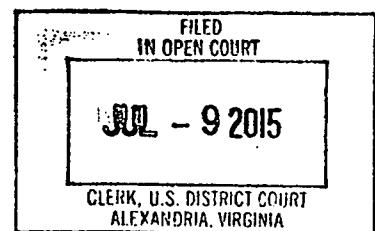
On or about March 1, 2012, through on or about July 12, 2012, within the Republic of Haiti and elsewhere, the defendants, Monclaire Saint Louis and Ulriste Tulin, together with others known and unknown to the Grand Jury, did knowingly and unlawfully use and carry firearms, that is, various handguns, during and in relation to a crime of violence for which they may be prosecuted in a court of the United States, that is conspiracy to commit hostage taking and hostage taking, as set forth and charged in Counts One through Three.

(In violation of Title 18, United States Code, Sections 924(c) and 2)

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division



UNITED STATES OF AMERICA)

v.)

MONCLAIRE SAINT LOUIS,)

Also known as "Montclair
Saint Louis,")

also known as "Top,")
also known as "Top M.S.T.,")

Defendant.)

CRIMINAL NO. 1:15-CR-173

Count 1 - 18 U.S.C. § 1203
(Conspiracy to Commit
Hostage Taking)

Count 2 - 18 U.S.C. §§ 1203, 2
(Hostage Taking; Aiding and
Abetting and Causing an Act
to be Done)

Count 3 - 18 U.S.C. §§ 1203, 2
(Hostage Taking; Aiding and
Abetting and Causing an Act
to be Done)

Count 4 - 18 U.S.C. §§ 924(c), 2
(Using a Firearm During a
Crime of Violence and
Aiding and Abetting
and Causing an Act to be
Done)

INDICTMENT

July 2015 TERM - at Alexandria, Virginia

General Allegations

At all times relevant to this Indictment:

COUNT 1

(Conspiracy to Commit Hostage Taking)

THE GRAND JURY CHARGES THAT:

From on or about March 1, 2012, and continuing thereafter through on or about July 12, 2012, within the Republic of Haiti, the defendant, MONCLAIRE SAINT LOUIS, also known as "Montclair Saint Louis," also known as "Top," also known as "Top M.S.T.," did knowingly combine, confederate, conspire and agree with others, whose true identities are known and unknown to the Grand Jury (hereinafter identified by position, title, or simply as "conspirators"), to seize and detain and threaten to kill, injure and continue to detain Yvroseline Fergile, a United States citizen, and Ariante Marcellin, a United States citizen, in order to compel a third person to do an act as an explicit and implicit condition of the release of the persons detained, namely, to compel families of the hostages to pay a ransom, in violation of Title 18, United States Code, Section 1203.

The allegations in paragraphs 1 through 5 of this Indictment are incorporated herein by reference.

Manners and Means of the Conspiracy

The defendant and his coconspirators used the following manner and means, among others, in furtherance of the conspiracy:

6. It was part of the conspiracy that the defendant and his co-conspirators sought to take citizens of the United States or Europe hostage in order to collect large ransoms paid in United States currency.

COUNT 2

(Hostage Taking)

THE GRAND JURY FURTHER CHARGES THAT:

On or about June 2, 2012 through on or about June 8, 2012, within the Republic of Haiti and elsewhere, the Defendant, MONCLAIRE SAINT LOUIS, also known as "Montclair Saint Louis," also known as "Top," also known as "Top M.S.T.," together with others known and unknown to the Grand Jury, did knowingly seize and detain and threaten to kill, injure and continue to detain Yvroseline Fergile, a United States citizen, in order to compel a third person and a governmental organization to do and abstain from doing an act as an explicit and implicit condition for the release of the person detained, namely, to compel the family of Yvroseline Fergile to pay a ransom for her release in violation of Title 18, United States Code, Section 1203, and did knowingly aid and abet such offense.

The allegations in paragraphs 1 through 5 and 21 through 25 of this Indictment are incorporated herein by reference.

(In violation of Title 18, United States Code, Sections 1203 and 2.)

COUNT 3

(Hostage Taking)

THE GRAND JURY FURTHER CHARGES THAT:

On or about July 9, 2012 through July 12, 2012 within the Republic of Haiti and elsewhere, MONCLAIRE SAINT LOUIS, also known as "Montclair Saint Louis," also known as "Top," also known as "Top M.S.T.," together with others known and unknown to the Grand Jury, did knowingly seize and detain and threaten to kill, injure and continue to detain Ariante Marcellin, a United States citizen, in order to compel a third person and a governmental organization to do and abstain from doing an act as an explicit and implicit condition for the release of the person detained, namely, to compel the to compel family of Ariante Marcellin to pay a ransom for her release in violation of Title 18, United States Code, Section 1203, and did knowingly aid and abet such offense..

The allegations in paragraphs 1 through 5 and 26 through 29 of this Indictment are incorporated herein by reference.

(In violation of Title 18, United States Code, Sections 1203 and 2.)

COUNT 4

(Using a Firearm During a Crime of Violence and Aiding and Abetting and Causing an Act to be Done)

THE GRAND JURY FURTHER CHARGES THAT:

On or about March 1, 2012 through July 12, 2012 within the Republic of Haiti and elsewhere, MONCLAIRE SAINT LOUIS, also known as "Montclair Saint Louis," also known as "Top," also known as "Top M.S.T.," together with others known and unknown to the Grand Jury, did knowingly use and carry firearms, that is, various handguns, during and in relation to a crime of violence for which the defendant may be prosecuted in a court of the United States, that is conspiracy to commit hostage taking and hostage taking, in violation of Title 18, United States Code, Section 1203, as set forth in Counts One and Two of this Indictment, and did knowingly and intentionally aid and abet such offense.

The allegations in paragraphs 1 through 29 of this Indictment are incorporated herein by reference.

(In violation of Title 18, United States Code, Sections 924(c) and 2.)

A TRUE BILL
Pursuant to the F. Government Act,
the original of this page has been filed
under seal in the Clerk's Office.

Foreperson

Dana J. Boente
United States Attorney

By:


Michael P. Ben'Ary
Assistant United States Attorney