

No.

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# Supreme Court of the United States

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HOPE KANTE, *Petitioner,*

vs.

UNITED STATES OF AMERICA, *Respondent.*

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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## APPENDIX

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COMES NOW PETITIONER Hope Kantete and submits the attached appendix pursuant to Supreme Court Rules.

  
\_\_\_\_\_  
Hope Kantete  
Petitioner  
64511-050  
P.O. Box 27137  
Fort Worth, TX 76127

Date: Dec-23-2019

**APPENDIX A**  
**ORDER & JUDGMENT OF THE COURT OF APPEALS**  
**FOR THE THIRD CIRCUIT**  
**DATED 10-25-19**

**BLD-283**

**September 19, 2019**

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

**C.A. No. 19-1983**

HOPE K. KANTEKE, Appellant

VS.

UNITED STATES OF AMERICA

(D.N.J. Civ. No. 1:16-cv-04801)

Present: AMBRO, KRAUSE and PORTER, Circuit Judges

Submitted are:

- (1) Appellant's motion for appointment of counsel; and
- (2) Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1)

in the above-captioned case.

Respectfully,

Clerk

**ORDER**

Appellant's application for a certificate of appealability is denied. See Miller-El v. Cockrell, 537 U.S. 322, 327 (2003). Appellant's application challenges the District Court's denial of her claim that trial counsel was ineffective for advising her to go to trial. Reasonable jurists would not debate the conclusion that this claim was properly denied because Appellant failed to allege facts or present evidence indicating that there is a reasonable probability that, but for trial counsel's allegedly erroneous advice, Appellant would have opted to plead guilty instead of going to trial. See Vickers v. Superintendent Graterford SCI, 858 F.3d 841, 857 (3d Cir. 2017). Appellant's motion for appointment of counsel is denied. See 18 U.S.C. § 3006A(a)(2); Reese v. Fulcomer, 946 F.2d 247, 263-64 (3d Cir. 1991), superseded on other grounds by statute, 28 U.S.C. § 2254(d).

By the Court,

s/ David J. Porter  
Circuit Judge

Dated: September 25, 2019  
CL W/cc: Ms. Hope K. Kantete  
Mark E. Coyne, Esq.

**APPENDIX B**  
**JUDGMENT OF THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW JERSEY**  
**ENTERED 3-18-14**

AO 245B (Mod. D/NJ 12/06) Sheet 1 - Judgment in a Criminal Case

UNITED STATES DISTRICT COURT  
District of New Jersey

UNITED STATES OF AMERICA

v.

Case Number 12-CR-00388 (01)

HOPE KANTE, A/K/A "THE LADY"

Defendant.

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

The defendant, HOPE KANTE, A/K/A "THE LADY", was represented by Brian Neary, Esq.

The defendant was found guilty on count(s) 1 - 11 by a jury verdict on June 28, 2013 after a plea of not guilty. Accordingly, the court has adjudicated that the defendant is guilty of the following offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date of Offense</u>	<u>Count Number(s)</u>
18:371 [contrary to 18:2312]	Conspiracy to Transport Stolen Motor Vehicles	From in or around July 2010 through in or around March 2012	1
18:2312	Transportation of Stolen Motor Vehicles	From in or around August 2011 through in or around March 2012	2-11

As pronounced on March 14, 2014, the defendant is sentenced as provided in pages 2 through 9 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$1,100.00, for count(s) 1 - 11, which shall be due immediately. Said special assessment shall be made payable to the Clerk, U.S. District Court.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

Signed this the 19<sup>th</sup> day of March, 2014.



ROBERT B. KUGLER  
United States District Judge

11201

AO 245B (Mod. D/NJ 12/06) Sheet 2 - Imprisonment

Judgment - Page 2 of 9

Defendant: HOPE KANTETE, A/K/A "THE LADY"  
Case Number: 12-CR-00388 (01)

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 60 Months, on Count One, a term of 120 months on Count Two, to be served consecutively to Count One, and terms of 82 months on each of Counts Three through Eleven, to be served concurrently with each other but consecutively to the terms imposed on Counts One and Two to the extent necessary to produce a total term of 262 months..

**The Court makes the following recommendations to the Bureau of Prisons:**

The defendant be designated to a facility for service of this sentence as near as possible to her home address.

The defendant participate in the Bureau of Prisons Inmate Financial Responsibility Program (IFRP).

The defendant shall remain in custody pending service of sentence.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
At \_\_\_\_\_ Defendant delivered on \_\_\_\_\_ To \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: HOPE KANTEKE, A/K/A "THE LADY"  
Case Number: 12-CR-00388 (01)

#### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of 3 years.

Within 72 hours of release from custody of the Bureau of Prisons, the defendant shall report in person to the Probation Office in the district to which the defendant is released.

While on supervised release, the defendant shall comply with the standard conditions that have been adopted by this court as set forth below.

The defendant shall submit to one drug test within 15 days of commencement of supervised release and at least two tests thereafter as determined by the probation officer.

If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remains unpaid at the commencement of the term of supervised release and shall comply with the following special conditions:

#### **ALCOHOL/DRUG TESTING AND TREATMENT**

You shall refrain from the illegal possession and use of drugs, including prescription medication not prescribed in your name, and the use of alcohol, and shall submit to urinalysis or other forms of testing to ensure compliance. It is further ordered that you shall submit to evaluation and treatment, on an outpatient or inpatient basis, as approved by the U.S. Probation Office. You shall abide by the rules of any program and shall remain in treatment until satisfactorily discharged by the Court. You shall alert all medical professionals of any prior substance abuse history, including any prior history of prescription drug abuse. The Probation Officer shall supervise your compliance with this condition.

#### **COOPERATION WITH IMMIGRATION AND CUSTOMS ENFORCEMENT**

You shall cooperate with Immigration and Customs Enforcement to resolve any problems with your status in the United States. You shall provide truthful information and abide by the rules and regulations of Immigration and Customs Enforcement. If deported, you shall not re-enter the United States without the written permission of the Attorney General. If you re-enter the United States, you shall report in person to the nearest U.S. Probation Office within 48 hours.

#### **MENTAL HEALTH TREATMENT**

You shall undergo treatment in a mental health program approved by the United States Probation Office until discharged by the Court. As necessary, said treatment may also encompass treatment for gambling, domestic violence and/or anger management, as approved by the United States Probation Office, until discharged by the Court. The Probation Officer shall supervise your compliance with this condition.

#### **NEW DEBT RESTRICTIONS**

You are prohibited from incurring any new credit charges, opening additional lines of credit, or incurring any new monetary loan, obligation, or debt, by whatever name known, without the approval of the U.S. Probation Office. You shall not encumber or liquidate interest in any assets unless it is in direct service of the fine and/or restitution obligation or otherwise has the expressed approval of the Court.

#### **SELF-EMPLOYMENT/BUSINESS DISCLOSURE**

You shall cooperate with the U.S. Probation Office in the investigation and approval of any position of self-employment, including any independent, entrepreneurial, or freelance employment or business activity. If approved for self-employment, you shall provide the U.S. Probation Office with full disclosure of your self-employment and other business records, including, but not limited to, all of the records identified in the Probation Form 48F (Request for Self Employment Records), or as otherwise requested by the U.S. Probation Office.

Defendant: HOPE KANTETE, A/K/A "THE LADY"  
Case Number: 12-CR-00388 (01)

OCCUPATIONAL RESTRICTIONS

As a further special condition of supervised release, you are to refrain from any employment in the auto sales industry and/or any employment involving the import and/or export of automobiles.

*{As an underlying foundation for this special condition, the Court must find that: (1) a reasonably direct relationship existed between the defendant's occupation, business or profession and the conduct relevant to the offense of conviction; (2) imposition of such a restriction is reasonably necessary to protect the public because there is reason to believe that, absent such restriction, the defendant will continue to engage in unlawful conduct similar to that for which the defendant was convicted; and (3) that the time frame and structure of the special condition is for the minimum time frame and to the minimum extent necessary to protect the public.}*

Defendant: HOPE KANTETE, A/K/A "THE LADY"  
Case Number: 12-CR-00388 (01)

**STANDARD CONDITIONS OF SUPERVISED RELEASE**

While the defendant is on supervised release pursuant to this Judgment:

- 1) The defendant shall not commit another federal, state, or local crime during the term of supervision.
- 2) The defendant shall not illegally possess a controlled substance.
- 3) If convicted of a felony offense, the defendant shall not possess a firearm or destructive device.
- 4) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 5) The defendant shall report to the probation officer in a manner and frequency directed by the Court or probation officer.
- 6) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 7) The defendant shall support his or her dependents and meet other family responsibilities.
- 8) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 9) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 10) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances.
- 11) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 12) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 13) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 14) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 15) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 16) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- (17) You shall cooperate in the collection of DNA as directed by the Probation Officer.

*(This standard condition would apply when the current offense or a prior federal offense is either a felony, any offense under Chapter 109A of Title 18 (i.e., §§ 2241-2248, any crime of violence [as defined in 18 U.S.C. § 16], any attempt or conspiracy to commit the above, an offense under the Uniform Code of Military Justice for which a sentence of confinement of more than one year may be imposed, or any other offense under the Uniform Code that is comparable to a qualifying federal offense);*

- (18) Upon request, you shall provide the U.S. Probation Office with full disclosure of your financial records, including co-mingled income, expenses, assets and liabilities, to include yearly income tax returns. With the exception of the financial accounts reported and noted within the presentence report, you are prohibited from maintaining and/or opening any additional individual and/or joint checking, savings, or other financial accounts, for either personal or business purposes, without the knowledge

AO 245B (Mod. D/NJ 12/06) Sheet 3a - Supervised Release

Judgment - Page 6 of 9

Defendant: IIOPE KANTETE, A/K/A "THE LADY"  
Case Number: 12-CR-00388 (01)

and approval of the U.S. Probation Office. You shall cooperate with the Probation Officer in the investigation of your financial dealings and shall provide truthful monthly statements of your income. You shall cooperate in the signing of any necessary authorization to release information forms permitting the U.S. Probation Office access to your financial information and records;

(19) As directed by the U.S. Probation Office, you shall participate in and complete any educational, vocational, cognitive or any other enrichment program offered by the U.S. Probation Office or any outside agency or establishment while under supervision;

(20) You shall not operate any motor vehicle without a valid driver's license issued by the State of New Jersey, or in the state in which you are supervised. You shall comply with all motor vehicle laws and ordinances and must report all motor vehicle infractions (including any court appearances) within 72 hours to the U.S. Probation Office;

For Official Use Only - U.S. Probation Office

Upon a finding of a violation of probation or supervised release, I understand that the Court may (1) revoke supervision or (2) extend the term of supervision and/or modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions, and have been provided a copy of them.

You shall carry out all rules, in addition to the above, as prescribed by the Chief U.S. Probation Officer, or any of his associate Probation Officers.

(Signed) \_\_\_\_\_  
Defendant Date

\_\_\_\_\_ U.S. Probation Officer/Designated Witness Date

AO 245B (Mod. D/NJ 12/06) Sheet 6 - Restitution and Forfeiture

Defendant: HOPE KANTETE, A/K/A "THE LADY"  
Case Number: 12-CR-00388 (01)

Judgment – Page 7 of 9

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$346,936.91. The Court will waive the interest requirement in this case. Payments should be made payable to the U.S. Treasury and mailed to Clerk, U.S.D.C., 402 East State Street, Rm 2020, Trenton, New Jersey 08608, for distribution to the following victims in the following descending order of priority:

<u>Name of Payee (Victim)</u>	<u>Amount of Restitution</u>
Hackensack Chevrolet, Inc. 55 Hackensack Ave. Hackensack, NJ 07601-6006	\$1,000.00
IAL Piping Ltd. 58-22 Maspeth Avenue Maspeth, NY 11378	\$1,000.00
A.E.	\$500.00
J.S.	\$2,030.00
M.S.	\$500.00
N.C.	\$1,500.00
D.S.	\$1,000.00
R.Z.	\$14,811.85
Motors Insurance Co. 1000 Abernathy Rd. Building 400, Ste. 275 Atlanta, GA 30328	\$39,705.00
Harleysville Mutual Co. Box 226 Harleysville, PA 19438-9920	\$65,091.68
Liberty Mutual 11350 McCormick Rd. Executive Plaza IV, Ste. 400 Hunt Valley, MD 21031	\$41,213.95
Geico 750 Woodbury Rd. Woodbury, NJ 11797-2589	\$24,517.30

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

AO 245B (Mod. D/NJ 12/06) Sheet 6 - Restitution and Forfeiture

Judgment - Page 8 of 9

Defendant: HOPE KANTETE, A/K/A "THE LADY"  
Case Number: 12-CR-00388 (01)

Geico Attn: Salvage Dept. One Geico Center Macon, GA 31296	\$35,976.00
Plymouth Rock Assurance P.O. Box 920 Lincroft, NJ 07738	\$29,488.85
Wilber & Associates, P.C. Attorneys at Law 210 Landmark Drive Normal, IL 61761-2194	\$28,553.34
Afni Insurance Services P.O. Box 3068 Bloomington, IL 61702-3068	\$9,215.41
Plymouth Rock Assurance P.O. Box 902 Lincroft, NJ 08736	\$21,348.98
Atlantic Insurers, Inc. 16-17 Route 208 South Fairlawn, NJ 07410	\$29,484.55

The amounts ordered represent the total amounts due to the victims for these losses. The defendant's restitution obligations shall not be affected by any restitution payments made by other defendants in this case, except that no further payments shall be required after the sums of the amounts actually paid by all defendants has fully satisfied these losses. The following defendant(s) in the following case(s) may be subject to restitution orders to the same victims for these same losses:

Kunle Samuel Ajisafe	Cr. No.: 12-00755-001
Roman Vladimir Dilone	Cr. No.: 12-00388-002
Kevin Miles	Cr. No.: 12-00676-001
John Turner	Cr. No.: 12-00709-001
Jill Marisa Carpenter	Cr. No.: 12-00710-001
Mark Anthony Spivey	Cr. No.: 12-00634-001
Manuel DeJesus Olivares	Cr. No.: 12-00756-001
Michael Bankole Omowaiye	Cr. No.: 12-00809-001
Christopher Joseph Barnes	Cr. No.: 12-00810-001

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

AO 245B (Mod. D/NJ 12/06) Sheet 8 - Restitution and Forfeiture

Judgment - Page 9 of 9

Defendant: HOPE KANTETE, A/K/A "THE LADY"  
Case Number: 12-CR-00388 (01)

Carlos L. Arnau

Cr. No.: 13-00133-001

The restitution is due immediately and shall be paid in monthly installments of no less than \$1,000.00, to commence 30 days after the date of this judgment. If the defendant participates in the IFRP, the restitution shall be paid from those funds at a rate equivalent to \$25 every 3 months.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

**APPENDIX C**  
**ORDER & JUDGMENT OF THE COURT OF APPEALS**  
**FOR THE THIRD CIRCUIT**  
**DATED 5-7-15**

AO 245B (Mod. D/NJ 12/06) Sheet 1 - Judgment in a Criminal Case

UNITED STATES DISTRICT COURT  
District of New Jersey

UNITED STATES OF AMERICA

v.

Case Number 12-CR-00388 (01)

HOPE KANTE, A/K/A "THE LADY"

Defendant.

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

The defendant, HOPE KANTE, A/K/A "THE LADY", was represented by Brian Neary, Esq.

The defendant was found guilty on count(s) 1 - 11 by a jury verdict on June 28, 2013 after a plea of not guilty. Accordingly, the court has adjudicated that the defendant is guilty of the following offense(s):

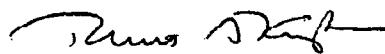
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date of Offense</u>	<u>Count Number(s)</u>
18:371 [contrary to 18:2312]	Conspiracy to Transport Stolen Motor Vehicles	From in or around July 2010 through in or around March 2012	1
18:2312	Transportation of Stolen Motor Vehicles	From in or around August 2011 through in or around March 2012	2-11

As pronounced on March 14, 2014, the defendant is sentenced as provided in pages 2 through 9 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$1,100.00, for count(s) 1 - 11, which shall be due immediately. Said special assessment shall be made payable to the Clerk, U.S. District Court.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

Signed this the 19<sup>th</sup> day of March, 2014.



ROBERT B. KUGLER  
United States District Judge

11201

AO 245B (Mod. D/NJ 12/06) Sheet 2 - Imprisonment

Judgment - Page 2 of 9

Defendant: HOPE KANTETE, A/K/A "THE LADY"  
Case Number: 12-CR-00388 (01)

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 60 Months, on Count One, a term of 120 months on Count Two, to be served consecutively to Count One, and terms of 82 months on each of Counts Three through Eleven, to be served concurrently with each other but consecutively to the terms imposed on Counts One and Two to the extent necessary to produce a total term of 262 months..

**The Court makes the following recommendations to the Bureau of Prisons:**

The defendant be designated to a facility for service of this sentence as near as possible to her home address.

The defendant participate in the Bureau of Prisons Inmate Financial Responsibility Program (IFRP).

The defendant shall remain in custody pending service of sentence.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

At \_\_\_\_\_ Defendant delivered on \_\_\_\_\_ To \_\_\_\_\_, with a certified copy of this Judgment.

United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: HOPE KANTETE, A/K/A "THE LADY"  
Case Number: 12-CR-00388 (01)

#### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of 3 years.

Within 72 hours of release from custody of the Bureau of Prisons, the defendant shall report in person to the Probation Office in the district to which the defendant is released.

While on supervised release, the defendant shall comply with the standard conditions that have been adopted by this court as set forth below.

The defendant shall submit to one drug test within 15 days of commencement of supervised release and at least two tests thereafter as determined by the probation officer.

If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remains unpaid at the commencement of the term of supervised release and shall comply with the following special conditions:

#### **ALCOHOL/DRUG TESTING AND TREATMENT**

You shall refrain from the illegal possession and use of drugs, including prescription medication not prescribed in your name, and the use of alcohol, and shall submit to urinalysis or other forms of testing to ensure compliance. It is further ordered that you shall submit to evaluation and treatment, on an outpatient or inpatient basis, as approved by the U.S. Probation Office. You shall abide by the rules of any program and shall remain in treatment until satisfactorily discharged by the Court. You shall alert all medical professionals of any prior substance abuse history, including any prior history of prescription drug abuse. The Probation Officer shall supervise your compliance with this condition.

#### **COOPERATION WITH IMMIGRATION AND CUSTOMS ENFORCEMENT**

You shall cooperate with Immigration and Customs Enforcement to resolve any problems with your status in the United States. You shall provide truthful information and abide by the rules and regulations of Immigration and Customs Enforcement. If deported, you shall not re-enter the United States without the written permission of the Attorney General. If you re-enter the United States, you shall report in person to the nearest U.S. Probation Office within 48 hours.

#### **MENTAL HEALTH TREATMENT**

You shall undergo treatment in a mental health program approved by the United States Probation Office until discharged by the Court. As necessary, said treatment may also encompass treatment for gambling, domestic violence and/or anger management, as approved by the United States Probation Office, until discharged by the Court. The Probation Officer shall supervise your compliance with this condition.

#### **NEW DEBT RESTRICTIONS**

You are prohibited from incurring any new credit charges, opening additional lines of credit, or incurring any new monetary loan, obligation, or debt, by whatever name known, without the approval of the U.S. Probation Office. You shall not encumber or liquidate interest in any assets unless it is in direct service of the fine and/or restitution obligation or otherwise has the expressed approval of the Court.

#### **SELF-EMPLOYMENT/BUSINESS DISCLOSURE**

You shall cooperate with the U.S. Probation Office in the investigation and approval of any position of self-employment, including any independent, entrepreneurial, or freelance employment or business activity. If approved for self-employment, you shall provide the U.S. Probation Office with full disclosure of your self-employment and other business records, including, but not limited to, all of the records identified in the Probation Form 48F (Request for Self Employment Records), or as otherwise requested by the U.S. Probation Office.

Defendant: HOPE KANTETE, A/K/A 'THE LADY'  
Case Number: 12-CR-00388 (01)

Judgment – Page 4 of 9

OCCUPATIONAL RESTRICTIONS

As a further special condition of supervised release, you are to refrain from any employment in the auto sales industry and/or any employment involving the import and/or export of automobiles.

*{As an underlying foundation for this special condition, the Court must find that: (1) a reasonably direct relationship existed between the defendant's occupation, business or profession and the conduct relevant to the offense of conviction; (2) imposition of such a restriction is reasonably necessary to protect the public because there is reason to believe that, absent such restriction, the defendant will continue to engage in unlawful conduct similar to that for which the defendant was convicted; and (3) that the time frame and structure of the special condition is for the minimum time frame and to the minimum extent necessary to protect the public.}*

Defendant: HOPE KANTETE, A/K/A "THE LADY"  
Case Number: 12-CR-00388 (01)

**STANDARD CONDITIONS OF SUPERVISED RELEASE**

While the defendant is on supervised release pursuant to this Judgment:

- 1) The defendant shall not commit another federal, state, or local crime during the term of supervision.
- 2) The defendant shall not illegally possess a controlled substance.
- 3) If convicted of a felony offense, the defendant shall not possess a firearm or destructive device.
- 4) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 5) The defendant shall report to the probation officer in a manner and frequency directed by the Court or probation officer.
- 6) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 7) The defendant shall support his or her dependents and meet other family responsibilities.
- 8) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 9) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 10) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances.
- 11) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 12) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 13) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 14) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 15) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 16) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- (17) You shall cooperate in the collection of DNA as directed by the Probation Officer.

*(This standard condition would apply when the current offense or a prior federal offense is either a felony, any offense under Chapter 109A of Title 18 (i.e., §§ 2241-2248, any crime of violence [as defined in 18 U.S.C. § 16], any attempt or conspiracy to commit the above, an offense under the Uniform Code of Military Justice for which a sentence of confinement of more than one year may be imposed, or any other offense under the Uniform Code that is comparable to a qualifying federal offense);*

- (18) Upon request, you shall provide the U.S. Probation Office with full disclosure of your financial records, including co-mingled income, expenses, assets and liabilities, to include yearly income tax returns. With the exception of the financial accounts reported and noted within the presentence report, you are prohibited from maintaining and/or opening any additional individual and/or joint checking, savings, or other financial accounts, for either personal or business purposes, without the knowledge

Judgment - Page 6 of 9

Defendant: HOPE KANTETE, A/K/A "THE LADY"  
Case Number: 12-CR-00388 (01)

and approval of the U.S. Probation Office. You shall cooperate with the Probation Officer in the investigation of your financial dealings and shall provide truthful monthly statements of your income. You shall cooperate in the signing of any necessary authorization to release information forms permitting the U.S. Probation Office access to your financial information and records;

(19) As directed by the U.S. Probation Office, you shall participate in and complete any educational, vocational, cognitive or any other enrichment program offered by the U.S. Probation Office or any outside agency or establishment while under supervision;

(20) You shall not operate any motor vehicle without a valid driver's license issued by the State of New Jersey, or in the state in which you are supervised. You shall comply with all motor vehicle laws and ordinances and must report all motor vehicle infractions (including any court appearances) within 72 hours to the U.S. Probation Office;

For Official Use Only - U.S. Probation Office

Upon a finding of a violation of probation or supervised release, I understand that the Court may (1) revoke supervision or (2) extend the term of supervision and/or modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions, and have been provided a copy of them.

You shall carry out all rules, in addition to the above, as prescribed by the Chief U.S. Probation Officer, or any of his associate Probation Officers.

(Signed) \_\_\_\_\_  
Defendant Date

U.S. Probation Officer/Designated Witness Date

Defendant: HOPE KANTETE, A/K/A "THE LADY"  
Case Number: 12-CR-00388 (01)

Judgment – Page 7 of 9

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$346,936.91. The Court will waive the interest requirement in this case. Payments should be made payable to the U.S. Treasury and mailed to Clerk, U.S.D.C., 402 East State Street, Rm 2020, Trenton, New Jersey 08608, for distribution to the following victims in the following descending order of priority:

<u>Name of Payee (Victim)</u>	<u>Amount of Restitution</u>
Hackensack Chevrolet, Inc. 55 Hackensack Ave. Hackensack, NJ 07601-6006	\$1,000.00
IAL Piping Ltd. 58-22 Maspeth Avenue Maspeth, NY 11378	\$1,000.00
A.E.	\$500.00
J.S.	\$2,030.00
M.S.	\$500.00
N.C.	\$1,500.00
D.S.	\$1,000.00
R.Z.	\$14,811.85
Motors Insurance Co. 1000 Abernathy Rd. Building 400, Ste. 275 Atlanta, GA 30328	\$39,705.00
Harleysville Mutual Co. Box 226 Harleysville, PA 19438-9920	\$65,091.68
Liberty Mutual 11350 McCormick Rd. Executive Plaza IV, Ste. 400 Hunt Valley, MD 21031	\$41,213.95
Geico 750 Woodbury Rd. Woodbury, NJ 11797-2589	\$24,517.30

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

AO 245B (Mod. D/NJ 12/06) Sheet 6 - Restitution and Forfeiture

Judgment - Page 8 of 9

Defendant: HOPE KANTEKE, A/K/A "THE LADY"  
Case Number: 12-CR-00388 (01)

Geico Attn: Salvage Dept. One Geico Center Macon, GA 31296	\$35,976.00
Plymouth Rock Assurance P.O. Box 920 Lincroft, NJ 07738	\$29,488.85
Wilber & Associates, P.C. Attorneys at Law 210 Landmark Drive Normal, IL 61761-2194	\$28,553.34
Afni Insurance Services P.O. Box 3068 Bloomington, IL 61702-3068	\$9,215.41
Plymouth Rock Assurance P.O. Box 902 Lincroft, NJ 08736	\$21,348.98
Atlantic Insurers, Inc. 16-17 Route 208 South Fairlawn, NJ 07410	\$29,484.55

The amounts ordered represent the total amounts due to the victims for these losses. The defendant's restitution obligations shall not be affected by any restitution payments made by other defendants in this case, except that no further payments shall be required after the sums of the amounts actually paid by all defendants has fully satisfied these losses. The following defendant(s) in the following case(s) may be subject to restitution orders to the same victims for these same losses:

Kunle Samuel Ajisafe	Cr. No.: 12-00755-001
Roman Vladimir Dilone	Cr. No.: 12-00388-002
Kevin Miles	Cr. No.: 12-00676-001
John Turner	Cr. No.: 12-00709-001
Jill Marisa Carpenter	Cr. No.: 12-00710-001
Mark Anthony Spivey	Cr. No.: 12-00634-001
Manuel DeJesus Olivares	Cr. No.: 12-00756-001
Michael Bankole Omowaiye	Cr. No.: 12-00809-001
Christopher Joseph Barnes	Cr. No.: 12-00810-001

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

AO 245B (Mod. D/NJ 12/06) Sheet 6 - Restitution and Forfeiture

Judgment - Page 9 of 9

Defendant: HOPE KANTETE, A/K/A "THE LADY"  
Case Number: 12-CR-00388 (01)

Carlos L. Arnau

Cr. No.: 13-00133-001

The restitution is due immediately and shall be paid in monthly installments of no less than \$1,000.00, to commence 30 days after the date of this judgment. If the defendant participates in the IFRP, the restitution shall be paid from those funds at a rate equivalent to \$25 every 3 months.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

**APPENDIX D**  
**JUDGMENT OF THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW JERSEY**  
**DATED 4-5-19**

## Kantete v. United States

United States District Court for the District of New Jersey

April 1, 2019, Decided; April 5, 2019, Filed

Civ. No. 16-4801 (RBK)

### Reporter

2019 U.S. Dist. LEXIS 59011 \*; 2019 WL 1500616

### Opinion

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HOPE K. KANTETE, Petitioner, v. UNITED STATES OF AMERICA, Respondent.

**Prior History:** United States v. Kantete, 610 Fed. Appx. 173, 2015 U.S. App. LEXIS 7570 (3d Cir. N.J., May 7, 2015)

**Counsel:** [\*1] For HOPE K. KANTETE, Petitioner: JEREMY BRIAN GORDON, LEAD ATTORNEY, COUNSEL NOT ADMITTED TO USDC-NJ BAR, LAW OFFICE OF JEREMY GORDON, MANSFIELD, TX.

For UNITED STATES OF AMERICA, Respondent: JOSE ALMONTE, LEAD ATTORNEY, U.S. ATTORNEY'S OFFICE, NEWARK, NJ.

**Judges:** ROBERT B. KUGLER, United States District Judge.

**Opinion by:** ROBERT B. KUGLER

### ROBERT B. KUGLER, U.S.D.J.

Petitioner, Hope Kantete, is a federal prisoner currently incarcerated at FMC Carswell in Fort Worth, Texas. She is proceeding through counsel with a motion to vacate, set aside, or correct her sentence pursuant to 28 U.S.C. § 2255. For the reasons set forth below, Petitioner's motion will be denied and a certificate of appealability shall not issue.

### I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On direct appeal, the Court of Appeals for the Third Circuit succinctly described the underlying circumstances as follows:

Kantete owned and operated Safari Auto Sales, a car dealership in Jersey City, New Jersey, but did not limit her stake in the automotive trade to legitimate business. Instead, Kantete worked with several sources to obtain stolen vehicles—typically high-end luxury vehicles, such as Range Rovers, Mercedes-Benzes, BMWs, and Porsches—and employed other individuals [\*2] to change the Vehicle-Identification Numbers ("VINs") and obtain counterfeit Certificates of Title. She also located customers for those vehicles, including many in Africa.

Kantete was ultimately convicted of one count of conspiracy to transport stolen motor vehicles

and ten counts of transportation of stolen motor vehicles, in violation of 18 U.S.C. §§ 371 and 2312. At sentencing, the District Court determined that Kantete was responsible for a loss amount between \$2.5 million and \$7 million, resulting in an eighteen-level Guidelines enhancement. The District Court also found applicable a number of other enhancements that resulted in a Guidelines range of 262 to 327 months' imprisonment. After considering the parties' arguments, the District Judge sentenced Kantete to the bottom of that range, ordering her to serve 262 months' imprisonment and concurrent three-year terms of supervised release and to pay restitution in the amount of \$346,936.91.

*United States v. Kantete*, 610 F. App'x 173, 175 (3d Cir. 2015).

Petitioner appealed to the Third Circuit. *See id.* On May 7, 2015, the Third Circuit denied her appeal and affirmed the sentence imposed by the District Court. *See id.* at 178-79. Petitioner then filed the instant § 2255 motion in August 2016. (*See ECF No. 1.*) In November 2016, Respondents [\*3] submitted their Answer. (*See ECF No. 4.*) Petitioner filed a traverse thereafter. (*See ECF No. 5.*)

## II. LEGAL STANDARD

Under 28 U.S.C. § 2255, a motion to vacate, set aside or correct a sentence of a person in federal custody entitles a prisoner to relief if "the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack." 28 U.S.C. § 2255(a). When considering a § 2255 motion, a district court "must accept the truth of the movant's factual allegations unless they are clearly frivolous on the basis of the existing record." *United States v. Tolliver*, 800 F.3d 138, 141 (3d Cir. 2015) (quoting *United States*

*v. Booth*, 432 F.3d 542, 545 (3d Cir. 2005)). Additionally, a district court must hold an evidentiary hearing on the motion if "the files and records do not show conclusively that [the movant] was not entitled to relief." *United States v. Tolliver*, 800 F.3d 138, 141 (3d Cir. 2015) (alteration in original) (quoting *Solis v. United States*, 252 F.3d 289, 294 (3d Cir. 2001)).

## III. DISCUSSION

Petitioner raises two ineffective assistance of counsel claims in her § 2255 action. First, Petitioner asserts that her trial counsel was ineffective for advising her "to proceed to trial rather than to seek a plea deal, or, at a minimum plead guilty 'open.'" (*See id.* at 5.) Second, [\*4] Petitioner argues that her trial counsel was ineffective for failing to "properly preserve [her] objection to the 'serious bodily injury' upward adjustment." (*See ECF No. 1 at 4.*)

An ineffective assistance of counsel claim has two components:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

*Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

The first prong of the test "requires a defendant to show 'that counsel's representation fell below an objective standard of reasonableness.'" *Lafler v. Cooper*, 566 U.S. 156, 132 S. Ct. 1376, 1384, 182 L. Ed. 2d 398 (2012) (quoting *Hill v. Lockhart*, 474 U.S. 52, 57, 106 S. Ct. 366, 88 L. Ed. 2d 203

(1985) (quoting *Strickland*, 466 U.S. at 688)). There is "a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Strickland*, 466 U.S. at 689 (quoting *Michel v. Louisiana*, 350 U.S. 91, 101, 76 S. Ct. 158, 100 L. Ed. 83 (1955)). "The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged [\*5] with the benefit of hindsight." *Yarborough v. Gentry*, 540 U.S. 1, 8, 124 S. Ct. 1, 157 L. Ed. 2d 1 (2003) (citing *Bell v. Cone*, 535 U.S. 685, 702, 122 S. Ct. 1843, 152 L. Ed. 2d 914 (2002); *Kimmelman v. Morrison*, 477 U.S. 365, 382, 106 S. Ct. 2574, 91 L. Ed. 2d 305 (1986); *Strickland*, 466 U.S. at 689; *United States v. Cronic*, 466 U.S. 648, 656, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984)).

The second prong of the *Strickland* test, prejudice, requires a defendant to "show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. "A reasonable probability is one 'sufficient to undermine confidence in the outcome.'" *Collins v. Sec. of Pennsylvania Dept. of Corr.*, 742 F.3d 528, 547 (3d Cir. 2014) (quoting *Strickland*, 466 U.S. at 694). A court need not address both components of the ineffective assistance inquiry. *Strickland*, 466 U.S. at 697. "If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice [. . .] that course should be followed." *Id.*

#### A. Guilty Plea

Petitioner's first ineffective assistance of counsel claim arises out of the plea process itself. Petitioner argues that her trial counsel was ineffective for allegedly advising her "to proceed to trial rather than seek a plea deal or, at minimum plead guilty 'open.'" (See ECF No. 1 at 5.) To demonstrate ineffective assistance of counsel in the context of a

rejected plea offer, a defendant must show that:

but for the ineffective advice of counsel, there is a reasonable probability that the plea offer would have been presented to the court (i.e. that the defendant would have accepted [\*6] the plea and the prosecution would not have withdrawn it in light of intervening circumstances); that the court would have accepted its terms; and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence ultimately imposed.

*Lafler*, 132 S. Ct. at 1385.

The Third Circuit has recognized that "counsel must provide defendants facing a potential guilty plea 'enough information to make a reasonably informed decision whether to accept a plea offer.'" *United States v. Vaughn*, 704 F. App'x 207, 212 (3d Cir. 2017) (quoting *United States v. Bui*, 795 F.3d 363, 367 (3d Cir. 2015)). Significantly, "[k]nowledge of the comparative sentence exposure between standing trial and accepting a plea offer will often be crucial to the decision whether to plead guilty." *United States v. Day*, 969 F.2d 39, 43 (3d Cir. 1992). But the Third Circuit has also cautioned that courts should be "wary" of claims that trial counsel did not adequately advise a defendant about the benefits and consequences of a plea offer because "defendants will always want the best of both worlds: the chance at acquittal at trial, yet the chance to plead guilty if the trial defense fails." *Id.* at 46 n.9.

Here, Petitioner contends that:

[H]er attorney performed in an objectively unreasonable manner by advising Kantete to proceed to trial rather than to plead guilty. By negotiating [\*7] a plea agreement and pleading guilty there was certainly a reasonable probability Kantete would have obtained some concessions from the Government as inducement for the guilty plea, as is usually the case. But if not, Kantete would certainly have

received a three point "acceptance of responsibility" reduction.  
(ECF No. 1-1 at 9.)

However, contrary to Petitioner's assertion that counsel should have negotiated a plea offer on her behalf, Petitioner did, in fact, receive two plea agreement offers from the Government. (See ECF No. 4 at 5-7.) Petitioner was initially offered the opportunity to plead guilty after the first indictment was brought against her, but she ultimately rejected that offer. (See *id.* at 5.) Petitioner was then again offered the opportunity to plead guilty after the third superseding indictment was handed down. (See *id.* at 6.) At arraignment on that indictment, the Government detailed on the record the charges contained in the indictment, as well as Petitioner's sentencing exposure if convicted of each of those offenses. (See ECF No. 4-1 at 3-5.)

THE COURT: Mr. Almonte, can you tell us what the penalty -- can you the defendant what the penalties are if convicted on these, all these counts? [\*8]

[GOVERNMENT]: Certainly, Your Honor. The government has sought a third Superseding Indictment for purposes of streamlining the trial. This Superseding Indictment has eleven counts. Count one charges Mrs. Kantete with conspiracy to transport stolen motor vehicles in interstate and foreign commerce contrary to Title 18, United States Code, Section 2312 in violation of Title 18, United States Code Section 371.

The remaining counts are all in violation of Title 18, United States Code, Section 2312 and Section 2 as well.

Count [two] charges her with transporting in interstate and foreign commerce a stolen 2009 Mercedes Benz GL550.

Count three charges her with doing the same with respect to a stolen 2008 Mercedes Benz S550.

Count four charges her with the same transporting a stolen 2008 Mercedes Benz ML350.

Count five concerns a stolen 2010 Honda CRV.  
Count six concerns a stolen 2011 Honda Pilot.  
Count seven concerns a stolen 2011 Accura [sic] CSX.  
Count eight concerns a stolen 2011 Land Rover, Range Rover.  
Count nine concerns a stolen 2011 Mercedes Benz E350.  
Count ten charges a stolen 2011 Mercedes Benz C300 and Count [eleven] concerns a second 2011 Land Rover Range Rover.

When convicted of these charges the defendant will face the following maximum terms of imprisonment. Count one, up to five years imprisonment. [\*9] As to Counts two through [eleven], up to ten years imprisonment for each Count. And in addition, the court may impose a fine equal to the greatest of \$250,000 or two times the pecuniary gain to the defendant or the loss to any victim.

Among other things the court may impose a term of supervised release of up to three years per count and should she violate the terms of supervised release, she may be sentenced up to two additional years of imprisonment per count. And finally, Your Honor, if [] the defendant is not a citizen of the United States, a conviction of the charged offenses will likely result in the defendant being subject to immigration proceedings and removed from the United States. If the defendant is a citizen of another country, she has a right to contact the Consulate of that country concerning these charges.

THE COURT: Am I also correct that she is -- would be subject to mandatory restitution?

[GOVERNMENT]: That is correct, Your Honor.

(*Id.*)

Following this recitation, Petitioner was questioned by the Court pursuant to *Missouri v. Frye*, 566 U.S. 134, 132 S. Ct. 1399, 182 L. Ed. 2d 379 (2012), about whether she was aware of the plea offer from

the Government and whether she was aware of the terms of that offer. (See *id.* at 9.) Petitioner stated that she was [\*10] aware of the terms of the plea offer but that she had chosen to reject it. (See *id.*) The transcript of that court proceeding reveals the following:

THE COURT: All right. Mr. Neary, have you explained these penalties to your client if she is convicted?

[DEFENSE COUNSEL]: Judge, with regards to, of course, this is the fourth indictment that we now have the advantage of looking at. I've explained to [Petitioner] or reviewed with her each count of the indictment, including this present third superseding indictment and *we've gone over the potential penalties and consequences if one were to go to trial without the benefit of a plea bargain*, the sentencing would then be controlled by the Sentencing Guidelines modified possibly by 3553(a) and would be up to the Court's discretion and would not be limited by any agreement that we - me on behalf of Miss Kantete with the government would happen. She understands those consequences.

[. . .]

THE COURT: Now, there's a couple other things still out there. Number one, Mr. Neary, I'm sure you saw the letter if April 25th that [the Government] sent me asking me to inquire of you and your client about whether or not you and your client are aware of the proposed [\*11] plea dated April 9, 2013.

[DEFENSE COUNSEL]: I did see the letter.

[. . .]

THE COURT: The question is simply whether or not [Petitioner's] aware of this April 9th, 2013 plea agreement proposal.

[DEFENSE COUNSEL]: The answer simply is yes. I provided a copy to her. I've read it with her. Reviewed it with her.

THE COURT: All right.

[GOVERNMENT]: And, Your Honor, the only

question and the only thing that the Government is seeking to know is whether or not she has rejected it so that we can act accordingly. [. . .] All we're asking here is whether she has rejected that and I think we have a right to know that because we've extended Mr. Neary and Miss Kantete the courtesy of a plea agreement *at their request*.  
[. . .]

THE COURT: Miss Kantete, there is a plea agreement letter from the U.S. Attorney's Office to your lawyer dated April 9, 2013. *Were you aware of the terms of that plea agreement?*

THE DEFENDANT: Yes.

THE COURT: *And do you reject or accept that plea agreement.*

THE DEFENDANT: *I reject it.*

(ECF No. 4-1 at 5-9 (emphasis added).)

The record demonstrates that Petitioner was acutely aware of both her sentencing exposure if convicted at trial, and the sentence offered in the Government's proposed [\*12] plea agreement. The record also establishes that trial counsel discussed with Petitioner the potential penalties and consequences if she were to proceed to trial rather than to accept a plea offer. These facts undermine Petitioner's current assertion that she would have accepted a guilty plea if her counsel had been effective. *See Lafler*, 132 S. Ct. at 1389 ("[A] court may take account of a defendant's earlier expressed willingness, or unwillingness, to accept responsibility for his or her actions."); *see also Sanders v. United States*, 341 F.3d 720, 723 (8th Cir. 2003) ("A defendant who maintains his innocence at all the stages of his criminal prosecution and shows no indication that he would be willing to admit his guilt undermines his later § 2255 claim that he would have pleaded guilty if only he had received better advice from his lawyers.") Petitioner was twice offered the benefit of such a plea agreement and she twice rejected

those offers, even after having been informed of her sentence exposure if she proceeded to trial.

Given the foregoing, Petitioner has failed to demonstrate that her counsel was ineffective for not negotiating a plea agreement for her, when Petitioner indeed received two plea agreement offers. And, Petitioner has failed to demonstrate that she [\*13] would have accepted a guilty plea. *See Lafler*, 566 U.S. at 164. Accordingly, Petitioner has not satisfied the *Strickland* two-prong test for ineffective assistance of counsel and she is, therefore, not entitled to relief on this claim.

## B. Guidelines Enhancement

Petitioner also argues that her counsel was ineffective for "failing to properly preserve Kantete's objection to the 'serious bodily injury' upward adjustment." (See ECF No. 1 at 4.) It is unclear exactly whether Petitioner is alleging that counsel failed to object to the "serious bodily injury" enhancement at sentencing, or whether Petitioner is alleging that her counsel was ineffective for failing to raise the issue on appeal.<sup>1</sup> Regardless, both claims are without merit as they cannot survive *Strickland*'s two-prong test.

Prior to sentencing, defense counsel sent the District Court a letter dated March 7, 2014, wherein counsel listed his objections to various offense level calculations from the Pre-Sentence Report ("PSR"). (See ECF No. 4-2 at 5.) One of defense counsel's objections was the application of a two-level sentence enhancement pursuant to U.S.S.G. § 2B1.1(b)(15), which provides, in relevant part:

If the offense involved (A) the conscious or reckless risk [\*14] of death or serious bodily injury; or (B) possession of a dangerous weapon (including a firearm) in connection with the offense, increase by 2 levels.

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<sup>1</sup> This Court notes that Petitioner was represented by the same attorney both at trial and on direct appeal. (See ECF No. 4-2 at 2); see also *Kantete*, 610 F. App'x at 174.

U.S. Sentencing Guidelines Manual § 2B1.1(b)(15) (U.S. Sentencing Comm'n 2013).

At sentencing, defense counsel and the Government presented oral argument as to whether or not § 2B1.1(b)(15) should apply. (See ECF No. 4-2 at 69-72, 78-70.) The Court ultimately decided to impose the two-level sentencing enhancement, reasoning:

One [enhancement] that's hotly contested is Paragraph 168, which is offense character under 2B1.1(b)(15), that is the conscious or reckless risk of death or serious bodily injury. I don't agree with the government's position on part of this. I don't think that the offense involved a firearm. I think the guidelines are speaking of the offenses that have been charged and proven in the case. None of the offenses charged and proven in the case involved a firearm. Nevertheless, as noted by the government, there is an alternative ground to rely on, and that is the conscious disregard or the serious risk -- or the reckless, excuse me, risk of death or seriously bodily injury. I don't think there is evidence of a conscious disregard, but there is certainly plenty of evidence of a reckless [\*15] risk of death or serious bodily injury both in the one carjacking for which we have evidence and which is, in fact, tied to this defendant, and I think also the conversation she had with Thugger in which she heard that there was a chase by the police through the neighborhoods and damage to the car shows a reckless risk of serious bodily injury. People can be very seriously hurt. And we've all seen those tragic cases in which a car chase leads to the death of innocent people. So I think that is justified.

(*Id.* at 85.)

On direct appeal to the Third Circuit, Petitioner argued that this Court erred when it imposed the two-level enhancement under § 2B1.1(b)(15), asserting that it placed "undue emphasis" on two specific carjackings "when the bulk of the other thefts did not involve such a risk." *See Kantete*, 610

F. App'x at 176. Petitioner further contended that "the Government could not even confirm that Kantete was specifically involved with [those] carjacking[s]." *See id.* (internal quotation marks and citation omitted). The Third Circuit denied Petitioner's assertion, holding that "§ 2B1.1(b)(15) requires only that the offense 'involved' a reckless risk of serious bodily injury, not that every instance of conduct in the course of the offense have done [\*16] so." *See id.*

Moreover, as to Petitioner's contention that the Government could not confirm that Petitioner was involved with the carjacking, the Third Circuit found that under § 1B1.3(a)(1)(B)<sup>2</sup>, which governs relevant offense conduct, Petitioner "need not have been present during the carjacking for it to be considered part of the relevant offense conduct." *See id.* The Third Circuit further explained, in pertinent part:

[Petitioner] is responsible for "all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity," and there is substantial evidence in

<sup>2</sup> Section 1B1.3 of the United States Sentencing Guidelines ("U.S.S.G.") states, in pertinent part:

(a) Chapters Two (Offense Conduct) and Three (Adjustments). Unless otherwise specified, (i) the base offense level where the guideline specifies more than one base offense level, (ii) specific offense characteristics and (iii) cross references in Chapter Two, and (iv) adjustments in Chapter Three, shall be determined on the basis of the following:

(1) (A) all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant; and

(B) in the case of a jointly undertaken criminal activity (a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy), all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity,

that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense;

U.S. Sentencing Guidelines Manual § 1B1.3 (U.S. Sentencing Comm'n 2013).

the record to fulfill each of § 1B1.3(a)(1)(B)'s requirements. *See U.S.S.G. § 1B1.3(a)(1)(B).* As explained in the Presentence Investigation Report ("PSR"), because Kantete "order[ed] high-end vehicles, many of which can only be operated through a 'smart key,'" it was "reasonably foreseeable that one of the ways thieves got vehicles with smart keys was through carjacking." (PSR ¶ 135.) Moreover, Kantete does not contend that the District Court failed to make sufficient findings as to the elements of § 1B1.3, and any such objection is therefore waived. *See United States v. Hoffecker*, 530 F.3d 137, 162 (3d Cir. 2008) ("An issue is waived unless a party raises it in its opening brief, and for those purposes a passing [\*17] reference to an issue will not suffice to bring that issue before this court." (internal quotation marks omitted)).

*Id.* at 176-77.

Accordingly, the Third Circuit found that the Government did not need to confirm that Petitioner [\*18] was specifically involved in the carjacking to find that she had been part of the relevant conduct. *See id.*

In this § 2255 action, Petitioner emphasizes the Third Circuit's statement that since Petitioner did "not contend that the District Court failed to make sufficient findings as to the elements of § 1B1.3," that "any such objection is therefore waived." (See ECF No. 1-1 at 4-8.) Petitioner asserts that if trial counsel had "required the District Court to make factual findings as to the elements of U.S.S.G. § 1B1.3," there is a reasonable probability that the Third Circuit's ruling on whether § 2B1.1(b)(15) applied would have been different. (See ECF No. 1-1 at 7.) Petitioner contends that the Third Circuit even stated as much: "[t]he implication here, is that if counsel had requested the District Court construe the elements of § 1B1.3," there was "more than a reasonable probability the court would have found the indicated carjacking was not reasonably foreseeable to Kantete based merely upon the fact

that Kantete had requested 'high-end' vehicles to export. The ensuing construction of U.S.S.G. § 1B1.3 'relevant conduct' would have militated against such a finding." (See *id.* (emphasis in original).)

This Court does not agree with Petitioner. Even [\*19] though appellate counsel did not argue that this Court failed to make sufficient findings as to § 1B1.3, appellate counsel was not ineffective by failing to raise this issue. Generally, appellate counsel has no obligation to raise every claim on direct appeal. *See Smith v. Robbins*, 528 U.S. 259, 288, 120 S. Ct. 746, 145 L. Ed. 2d 756 (2000); *United States v. Sanders*, 165 F.3d 248, 253 (3d Cir. 1999). The decision of which issues to raise on appeal is a strategic choice, and counsel is not required to bring every possible issue. *Smith*, 528 U.S. at 288 (citing *Jones v. Barnes*, 463 U.S. 745, 103 S. Ct. 3308, 77 L. Ed. 2d 987 (1983)). The chief component of effective appellate advocacy is the winnowing out of weaker claims in favor of those with a greater chance of success. *See Jones*, 463 U.S. at 753. Thus, appellate counsel here was not obligated to raise Petitioner's claim.

Even if appellate counsel had raised the issue of the findings as to § 1B1.3, the Third Circuit still found that this argument was without merit. *See Kantete*, 610 F. App'x at 176. The Third Circuit expressly found that Petitioner was responsible under § 1B1.3(a)(1)(B) for "all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity," and that there was "substantial evidence in the record to fulfill each of § 1B1.3(a)(1)(B)'s requirements." *See id.* Far from implying that if trial counsel had requested this Court make specific findings as to § 1B1.3(a)(1)(B) that the outcome would have been different, [\*20] the Third Circuit evaluated the requirements of § 1B1.3(a)(1)(B) and found that Petitioner did, in fact, satisfy each one. *See id.* The Third Circuit clearly pointed out that when Petitioner "ordered" high-end vehicles, it was "reasonably foreseeable" that some vehicles could have been taken via carjacking. *See id.* Given that the Third Circuit

addressed Petitioner's claim and found it was without merit, Petitioner cannot demonstrate that she was prejudiced by appellate counsel's failure to raise the claim on appeal. Likewise, Petitioner cannot demonstrate that if counsel had requested this Court make specific findings as to § 1B1.3(a)(1)(B), that the result of her appeal would have been different. Accordingly, Petitioner is unable to establish the *Strickland* two-prong test for ineffective assistance of counsel. She is not entitled to relief on this claim.

#### IV. CERTIFICATE OF APPEALABILITY

Pursuant to 28 U.S.C. § 2253(c), a petitioner may not appeal from a final order in a habeas proceeding where that petitioner's detention arises out of his state court conviction unless he has "made a substantial showing of the denial of a constitutional right." "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree [\*21] with the district court's resolution of his constitutional claims or that jurists could conclude that the issues presented here are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003); *see also Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000). Because jurists of reason would not disagree with this Court's conclusion that Petitioner has failed to make a substantial showing of the denial of a constitutional right insomuch as Petitioner's claims are without merit, Petitioner's habeas petition is inadequate to proceed further and therefore, a certificate of appealability shall not issue.

#### V. CONCLUSION

For the reasons stated above, the Petitioner's § 2255 motion is **DENIED** and a certificate of appealability shall not issue.

DATED: April 1, 2019

/s/ Robert B. Kugler

**ROBERT B. KUGLER**

United States District Judge

**ORDER**

This matter having come before the Court by way of Petitioner Hope Kantete's motion to vacate, set aside, or correct her sentence pursuant to 28 U.S.C. § 2255; and the Court having reviewed the parties submissions; and for the reasons set forth in the Opinion filed herewith,

IT IS on this 1st day of April, 2019;

ORDERED that the motion to vacate, set aside, or correct her sentence pursuant to 28 U.S.C. § 2255 is DENIED; and it is further

ORDERED that a certificate of [\*22] appealability shall not be issued; and it is further

ORDERED that the Clerk is directed to close the file accordingly; and it is further

ORDERED that the Clerk shall serve a copy of this Order and Opinion upon Petitioner by regular U.S. mail.

/s/ Robert B. Kugler

**ROBERT B. KUGLER**

United States District Judge

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