IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-15057-JJ

CHRISTOPHER R. GLENN,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

ORDER:

Christopher R. Glenn moves for a certificate of appealability ("COA") in order to appeal the district court's denial of his 28 U.S.C. § 2255 motion to vacate. In order to obtain a COA, a movant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Because Glenn has failed to make the requisite showing, his motion for a COA is DENIED.

/s/ Charles R. Wilson
UNITED STATES CIRCUIT JUDGE

CHRISTOPHER R. GLENN, Movant, v. UNITED STATES OF AMERICA, Respondent.
UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA
2017 U.S. Dist. LEXIS 214809
CASE NO.: 17-80479-CIV-MARRA/WHITE,14-80031-Cr-MARRA
October 19, 2017, Decided
October 20, 2017, Entered on Docket

Editorial Information: Prior History

Glenn v. United States, 2017 U.S. Dist. LEXIS 72116 (S.D. Fla., May 10, 2017)

Counsel {2017 U.S. Dist. LEXIS 1}Christopher Glenn, Plaintiff, Pro se, Miami, FL.

For United States of America, Defendant: Noticing 2255 US Attorney, LEAD ATTORNEY; Ricardo A. Del Toro, LEAD ATTORNEY, United States Attorney's Office, Miami, FL.

Judges: KENNETH A. MARRA, United States District Judge.

Opinion

Opinion by: KENNETH A. MARRA

Opinion

FINAL JUDGMENT AFFIRMING AND APPROVING REPORT AND RECOMMENDATION

This cause is before the Court upon the Movant's Motion to Vacate Sentence Under 28 U.S.C. § 2255 (DE 1). The Motion was referred to United States Magistrate Judge Patrick A. White for consideration and a report and recommendation.

Magistrate Judge White entered a Report of Magistrate Judge on May 10, 2017 (DE 7) in which he recommends that the motion be denied and no certificate of appealability be issued. (*Id.* at 42.) The Movant filed Objections to the Report on June 22, 2017 and July 7, 2017 (DE 8, 9).

The Court, having conducted a *de novo* review of the entire file and record herein, agrees with the conclusion of the Magistrate Judge. Accordingly, it is hereby **ORDERED AND ADJUDGED** that the Report of Magistrate Judge **(DE 7)** is **AFFIRMED AND APPROVED** in its over the Objections (DE 8 & 9) made by the Movant.1 The claims of ineffective assistance of counsel are refuted by Petitioner's**{2017 U.S. Dist. LEXIS 2}** sworn testimony at his change of plea hearing. Petitioner's assertion that the signature page of the factual proffer he signed was fraudulently attached by his attorney to the one appearing in the Court record, and his claim that the one he signed is different than the one appearing in the Court record is preposterous. Petitioner represented to the Court he read the factual proffer which appears in the Court record, he reviewed it with his attorney, he understood it and he agreed the facts were all true and correct. Petitioner is not entitled to an evidentiary hearing based on outrageous and false allegations which have no support in the record. As a result, the Motion to Vacate under 28 U.S.C. § 2255 **(DE 1)** is **DENIED**. Additionally, Petitioner's Motion to Stay Proceedings **(DE 10)** is **DENIED.**

Under Rule 11(a) of the Rules Governing Section 2255 Proceedings in the United States District

Courts, this Court must issue or deny a certificate of appealability when entering a final order adverse to the applicant. The Court concludes under *Slack v. McDaniel*, 529 U.S. 473, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000), that Petitioner cannot shown that "jurists of reason would find it debatable whether the petition states a valid claim of denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural{**2017 U.S. Dist. LEXIS 3**} ruling." *Id.* at 478. Therefore, the Court **DENIES** the issuance of a certificate of appealability. The Court notes that under Rule 22(b)(1) of the Federal Rules of Appellate Procedure, the Petitioner may seek a certificate of appealability from the U.S. Court of Appeals for the Eleventh Circuit.

The Clerk shall **CLOSE** this case. Any other pending motions are **DENIED** as moot.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida this 19th day of October, 2017.

/s/ Kenneth A. Marra

KENNETH A. MARRA

United States District Judge

Footnotes

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The Court rejects the Magistrate Judge's suggestion that the issues raised by Petitioner were procedurally defaulted because they could have been raised on direct appeal. [DE 7 at 31-33]. All of the claims raised by Petitioner are for ineffective assistance of counsel which generally cannot be asserted on direct appeal. Regardless, the claims fail on the merits.

CHRISTOPHER R. GLENN, Movant, vs. UNITED STATES OF AMERICA, Respondent.
UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA
2017 U.S. Dist. LEXIS 72116
CASE NO. 17-80479-Civ-MARRA,(14-80031-Cr-MARRA)
May 10, 2017, Decided
May 10, 2017, Entered on Docket

Editorial Information: Subsequent History

Adopted by, Post-conviction relief denied at, Stay denied by, Certificate of appealability denied, Motion denied by, As moot Glenn v. United States, 2017 U.S. Dist. LEXIS 214809 (S.D. Fla., Oct. 19, 2017)

Editorial Information: Prior History

United States v. Glenn, 2014 U.S. Dist. LEXIS 52882 (S.D. Fla., Mar. 28, 2014)

Counsel Christopher Glenn, Plaintiff (9:17-cv-80479-KAM), Pro se, Miami, FL.
For United States of America, Defendant (9:17-cv-80479-KAM): Noticing 2255 US Attorney, LEAD ATTORNEY; Ricardo A. Del Toro, LEAD ATTORNEY, United States Attorney's Office, Miami, FL.
For USA, Plaintiff (9:14-cr-80031-KAM-1): Ricardo A. Del Toro, Vanessa S. Johannes, LEAD ATTORNEYS, Benjamin J. Widlanski, Daren Grove, United States Attorney's Office, Miami, FL.

Judges: Patrick A. White, UNITED STATES MAGISTRATE JUDGE.

Opinion

Opinion by: Patrick A. White

Opinion

REPORT OF MAGISTRATE JUDGE

I. Introduction

This matter is before the Court on the movant's *pro se* motion to vacate, filed pursuant to 28 U.S.C. § 2255, attacking the constitutionality of his convictions and sentences for unauthorized access, willful retention, and failure to deliver national defense information, exceeding authorized access to a computer, obtaining national defense information, and willfully retaining that information, entered following a guilty plea in **case no. 14-80031-Cr-Marra.**

This cause has been referred to the undersigned for consideration and report pursuant to 28 U.S.C. § 636(b)(1)(B),(C); S.D.Fla. Local Rule 1(f) governing Magistrate Judges; S.D. Fla. Admin. Order 2003-19; and Rules 8 and 10 Governing Section 2255 Cases in the United States District Courts.

No order to show cause has been issued because, on the face of the petition, it is evident the petitioner is entitled to no relief. See Rule 4,1 Rules Governing Section 2255 Proceedings.

Because summary dismissal is warranted and the movant is not entitled to post-conviction relief, no order to show cause has been issued in the instant case and, therefore, the government was not

required to file a response. See Broadwater v. United States, 292 F.3d 1302, 1303-04 (11th Cir. 2002) (a district court has the power under Rule 4 of the Rules Governing Section 2255 Cases to summarily dismiss a movant's claim for relief so long as there is a sufficient basis in the record for an appellate court to review the district court's decision).

Before the Court for review are the movant's § 2255 motion (Cv-DE#1) with supporting appendix (DE#1-1), the Presentence Investigation Report ("PSI"), Statement of Reasons ("SOR"), along with all pertinent portions of the underlying criminal file, including the plea agreement with incorporated stipulated factual proffer (Cr-DE#101), together with the change of plea (Cr-DE#175) and sentencing (Cr-DE#178) transcripts.

II. Claims

Construing the § 2255 motion liberally as afforded *pro se* litigants pursuant to Haines v. Kerner, 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972), as can best be discerned, the movant raises the following grounds for relief:

1. He was denied effective assistance of counsel, where his lawyer, through his deceptive and/or reckless actions, legal malpractice, bad faith, and breach of contract, deceived the movant into believing that U.S.S.G. § 2M3.2 would not be applied because the movant was to be convicted of violating 18 U.S.C. § 793(e) since movant never transmitted nor communicated any secrets or defense information to any individual, entity, or government. (Cv-DE#1:16).

2. He was denied effective assistance of counsel, where his lawyer knowingly, willfully, through trickery, concealment, or fraud covered up a material fact regarding the signature page of the stipulated factual proffer, purposefully concealing and not presenting to the court the defense's factual proffer. (Cv-DE#1:17-18).

3. He was denied effective assistance of counsel, where his lawyer, who had actual knowledge that the movant was factually innocent of the espionage counts, nevertheless misadvised movant to accept a guilty plea as to those offenses, thereby making movant's plea not knowing and voluntary. (Cv-DE#1:18-19).

III. Factual and Procedural Background

A. Facts of the Offense

The stipulated factual proffer reveals as follows. (Cr-DE#101). Movant is a U.S. citizen and a civilian contractor working as a network system administrator for Harris Corporation ("Harris") stationed at the U.S. Army Southern Command's Joint Task Force Bravo ("JTF-B"), in Soto Cano Air Base, Honduras, between February and August 2012. Investigation revealed evidence that movant took without authorization Department of Defense ("DOD") classified documents and electronic messages (emails); then copied and transferred this classified information onto a computer hard drive. (Id.:8). He then transferred the information onto a DVD disc that he took to his residence in Comayagua, Honduras. (Id.). There, he copied the classified files onto a Synology brand Network Attached Storage device and encrypted the files. (Id.). Movant erased the computer event logs that tracked his actions. (Id.). On the unclassified computer system of JTF-B, movant not only accessed, copied, converted, and stole classified materials, he executed a wiretapping and two password revealing programs. (Id.). The wiretapping program can be used for legitimate system administrator functions, but also to steal network data in transit, including passwords and other sensitive information. (Id.).

In February 2012, movant was hired by Harris Corporation to work as an information technology ("IT") contractor in the role of system administrator at JTF-B in Soto Cano Air Base, and tasked to implement the Windows 7 operating system on the JTF-B unclassified and classified systems,

together with other system administrator functions. (Id.).

Executive Order No. 13526, 75 Fed. Reg. 707 (Jan. 5, 2010) defines "classified information" as information in any form that (1) is owned by, produced by or for, or under the control of the United States government; (2) falls within one or more of the categories of information set forth in the order, and (3) is classified by an original classification authority who determines that its unauthorized disclosure reasonably could be expected to result in damage to the national security. (Id.:9). Under executive order, the designation "SECRET" is applied to information, the unauthorized disclosure of which could reasonably be expected to cause serious damage to the national security. (Id.).

Pursuant to executive order, classified information can generally only be disclosed to those persons who have been granted appropriate level United States government security clearance and possess a need to know the classified information in connection to their official duties. (Id.:9). As a computer network system administrator and contractor for Harris Corporation at JTF-B at Soto Cano Air Base, movant held a SECRET security clearance. As a condition to his security clearance, movant had signed classified information nondisclosure agreements with the United States, acknowledging that "unauthorized retention of classified information...could cause damage or irreparable injury to the United States or could be used to the advantage of a foreign nation." Movant further acknowledged and agreed in these nondisclosure agreements that he "shall return all classified materials which have, or may come into my possession...upon the conclusion of my employment or relationship with the Department or Agency that...provided me access to classified information." (Id.).

On Sunday, June 17, 2012, movant went to the JTF-B Network Operations Center ("NOC"), a secure work area where the computer system administrators worked. (Id.). A forensic examination of a computer hard drive that movant used at a classified computer terminal at the NOC revealed that on Sunday, June 17, 2012, movant used his individual assigned JTF-B computer account to sign onto a JTF-B Secure Internet Protocol Router ("SIPR") computer terminal and create a folder on the SIPR hard drive labeled "DOCS." (Id.:10). The DOCS folder contained three sub-folders, containing 18 files, which were created or copies into the folder by movant on or about June 17, 2012. (Id.:10). All of the files, but one contained information classified up to the SECRET level which movant took and converted from the SIPR email account of another individual who was then the JTF-B Commander. (Id.). The 17 files were either email messages or email message file attachments and documents which originated from the JTF-B Commander's SIPR email inbox folder. (Id.). The last file movant copied onto the DOCS folder consisted of the contents of the JTF-B Commander's entire SIPR email account called the Microsoft Outlook Personal Storage Table ("PST"), which contained over 1,000 emails, many of which were classified up to the SECRET level. (Id.). The JTF-B Commander confirmed he never authorized movant to take or otherwise copy his entire SIPR email account or any email or document within it. (Id.). As a result, movant had no authority to possess, access, or control the JTF-B Commander's SIPR PST email account or any emails or documents contained therein. (Id.).

A forensic examination of the SIPR hard drive the movant used on June 17, 2012 revealed that several minutes after creating the DOCS folder on his classified hard drive, movant unsuccessfully attempted to burn or otherwise create a DVD disk, but received an error message from the disk burning software indicating that his access was denied because the SIPR computer terminal he was using was not authorized to copy or burn classified materials onto removable media such as a DVD. (Id.). In fact, only two individuals at JTF-B were authorized to do so and had computers that were authorized to copy classified materials onto removable media. Movant, however, was not one of them. (Id.). After the first unsuccessful attempt to burn a DVD, movant successfully initiated the burning of a DVD disk whose volume label was "DOCS" and contained three folders and 18 files. (Id.). To do so, movant had to disable and override system security protections which had first

prevented him from creating the DVD. Movant then copied the three subfolders and 18 files belonging to the JTF-B Commander, including the classified files and entire SIPR PST account onto the DVD that movant burned. (Id.:11). Forensic analysis confirmed that the 18 files movant copied onto the DVD disk were the same files the movant first copied onto the DOCS folder in the SIPR computer terminal's hard drive that movant used on June 17, 2012, at the JTF-B NOC. (Id.:11).

After burning the classified files onto a DVD, movant tried to delete from the computer system evidence of the steps he took to copy the JTF-B Commander's classified files and the steps he took to transfer them onto a DVD. (Id.).

Meanwhile on August 27, 2012, Army investigators and JTF-B personnel seized, as potential evidence for examination, hard drives from the SIPR classified and unclassified network computers and associated removable media, such as CD/DVD disks, and hard drives in and around movant's JTF'B work space. (Id.). One hard drive seized was the classified (SIPR) hard drive movant had used, on or about June 17, 2012, to copy the then JTF-B Commander's classified email messages and documents. (Id.). The DVD that movant had burned on June 17, 2012, containing the JTF-B Commander's classified documents and emails was not found in movant's work space and was not located by Army investigators who searched it. (Id.). Movant's employment with Harris Corporation at JTF-B was terminated in October 2012. (Id.).

On March 11, 2014, Honduran police obtained a warrant to search a house maintained by the movant in Comayagua, Honduras air base. (Id.:11-12). A search of that home revealed that the movant maintained computers, servers, removable media, and other electronic equipment, including one Synology brand Network Attached Storage device. (Id.12). They also seized numerous DVDs, one of which contained all of the same classified files that movant burned onto a DVD on June 17, 2012, including the entire classified email account of the former JTF-B Commander and the classified documents contained in the email account. (Id.). That network device also contained all of the same classified documents and emails in an encrypted electronic folder. (Id.). Movant never returned the classified files he had copied onto the SIPR computer hard drive, onto the DVD he burned on June 17, 2012, or onto the Synology Network Attached Storage device to any person authorized to receive those classified files. (Id.). Neither movant's residence nor the Synology Attached Storage device were authorized or certified by U.S. government officials to store classified materials. (Id.).

The classified emails and documents movant copied onto his account in the classified SIPR computer terminal at JTF-B and which he then burned onto a DVD on June 17, 2012, all constituted national defense information because they relate to the national defense and movant had reason to believe they could be used to injure the United States or to the advantage of any foreign nation. (Id.:12). After movant copied the national defense information onto his SIPR account, onto a DVD, and onto a Synology Network Attached Storage device found in movant's Honduran residence, movant willfully retained and failed to deliver the national defense information to any officer or employee entitled to receive it. (Id.).

Next on April 20, 2007, movant and his second wife, Khadraa A. Glenn ("Khadraa") conspired to obtain naturalization for Khadraa through a pattern of material false statements, fabrication, and submission of materially fraudulent documents and fraud perpetrated against U.S. Citizenship and Immigration Services ("USCIS"). (Id.:13). At that time, movant submitted to USCIS a Relative Immigrant Visa Petition Form I-130 on behalf of Khadraa stating he had divorced his first wife, "M.T.A." on December 20, 2006, and then movant and Khadraa had been married on March 23, 2007. (Id.). The Form I-130 sought an immigration visa on behalf of Khadraa, claiming her as movant's spouse, which was the first step toward the eventual naturalization of Khadraa. (Id.).

Later, Khadraa and movant submitted to USCIS a divorce decree indicating the movant had divorced M.T.A. on April 22, 2007, not on December 20, 2006. Movant and Khadraa also submitted to USCIS a marriage certificate dated April 23, 2007, which directly contradicted the statement on the I-130 claiming the marriage between the movant and Khadraa took place on March 23, 2007. (Id.).

In response to a demand from USCIS requiring proof that his purported divorce from M.T.A. in Jordan was legally valid in order to establish the legality of his subsequent marriage to Khadraa, movant sent an email message to several email addresses requesting a rental lease for an apartment in Amman, Jordan, but requiring it to be blank (empty) and in Arabic. (Id.). In fact, in January 2008, movant emailed Khadraa, requesting that she email alit@yahoo.com and ask that she send a blank one page, basic rental agreement (lease) from Amman, Jordan in Arabic. (Id.:14). Zhadraa responded saying she hoped her inquiries were helpful. (Id.). On January 16, 2008, movant received an email attachment containing a rental agreement lease.doc from an individual with an email address ziad@ziadcom.com . He then forwarded the attachment to Khadraa, asking her whether the attachment was "good" and whether she could change it into "Amman, Jordan." (Id.:14). After sending Khadraa the lease form, Khadraa responded in February 2008, enclosing two signed Jordanian lease agreements, each with a corresponding English translation, purporting to show movant had leased an apartment in Amman, Jordan, from October 2005 until April 26, 2007. (Id.:15).

Thereafter, the movant sent a letter on February 1, 2008, to USCIS, responding to their letter, explaining that he had leased an apartment in Amman, Jordan from October 2005 until April 26, 2007. (Id.:15). He attached in support thereof copies of the two lease agreements Khaadra had obtained for the movant. (Id.). Later in December 2009, Khadraa signed an Application for Naturalization Form N-400, attaching a purported Jordanian divorce decree dated April 22, 2007, to attempt to prove that movant had legally divorced his first wife, M.T.A., on April 22, 2007. (Id.:15).

During an April 2010 Google chat, the movant coached Khadraa to lie in her naturalization interview with USCIS by informing the interviewer that she resided in Honduras with the movant, when in fact, she resided in Australia. He also counseled Khadraa to deceive the USCIS by purchasing a one-way ticket to Honduras in order to make it appear as if Khadraa was living with the movant in Honduras. (Id.).

Two months later, in June 2010, movant again coached Khadraa to lie during her naturalization interview by stating she did not work or reside in Australia, when in fact she did. By letter dated October 18, 2013, in support of Khadraa's appeal following denial of her security clearance, movant admitted that Khadraa remained working for an Australian government agency, while the movant worked in Honduras. (Id.). On June 29, 2010, Khadraa completed her naturalization interview and on July 20, 2010, Khadraa obtained her U.S. citizenship through naturalization. (Id.:16).

B. Procedural History

The movant was charged with, and then entered into a negotiated plea agreement, agreeing to plead guilty to unauthorized access, willful retention, and failure to deliver national defense information, in violation of 18 U.S.C. § 793(e) (Count 1), exceeding authorized access to a computer, obtaining national defense information, and willfully retaining that information, in violation of 18 U.S.C. § 1030(a)(1) (Count 5), and conspiracy to commit naturalization fraud, in violation of 18 U.S.C. § 371 and § 1425(a). (Cr-DE#s21,1010). Pursuant to the terms of the plea agreement, movant understood that the sentence would be imposed by the court after considering the advisory, federal sentencing guidelines. (Cr-DE#101:2). Movant acknowledged that the court could depart from the advisory guideline range computed, and while required to consider that range, it was not bound to impose a

sentence within the advisory range, but was permitted to tailor the sentence in light of other statutory concerns. (Id.:2).

The movant also acknowledged that any estimate of the probable sentence to be imposed, whether from his attorney, the government, or the probation office, was merely a predication, not a promise, and was not binding on the government, the probation office, or the court. (Id.:2). He confirmed his understanding that he could not withdraw his plea based on the court's decision not to accept a sentencing recommendation made by the parties. (Id.:7-8). He also understood that the court could impose a statutory maximum of up to 10 years imprisonment as to Counts 1 and 5, and 5 years imprisonment as to Count 10, followed by a term of up to three years supervised release. (Cr-DE#101:2).

In exchange for the concessions made by the movant, the government agreed to dismiss all remaining charges after sentencing, and to recommend up to a 3-level reduction to movant's base offense level based on his timely acceptance of responsibility. (Id.:1,3). Movant acknowledged he had the right to prosecute a direct appeal under 18 U.S.C. § 3742 and 28 U.S.C. § 1291. (Id.:4). In exchange for the undertakings made by the government in the plea agreement, movant waived the right to appeal any sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure and/or upward variance from the advisory guideline range the court establishes at sentencing. (Id.:4).

On January 23, 2015, a thorough change of plea proceeding, pursuant to Fed.R.Cr.P. 11, was conducted by district court. (Cr-DE#175). Careful review of the transcript confirms that after the movant first gave the oath, he understood that if he made any false representations, they can be used against him in a prosecution for perjury or making a false statement. (Id.:3). Movant then provided background information regarding his age and education. (Id.:3-4). Movant affirmed he had never been treated for a mental illness or for addiction to narcotic drugs. (Id.:4). He denied being under the influence of any drugs or alcohol during the past 48 hours. (Id.:4). He did not believe he suffered from any mental or physical condition or illness that prevents him from understanding the Rule 11 proceedings. (Id.).

Movant acknowledged receipt of a copy of the Second Superseding Indictment, and confirmed having had an opportunity to fully discuss the allegations contained therein, and the case in general, with counsel. (Id.:4). He further affirmed that he was satisfied with the representation and advice provided by counsel. (Id.).

Regarding the negotiated, written plea agreement, movant affirmed it was his signature on the plea agreement, having signed it after reading and discussing it with counsel. (Id.:5). Movant denied being forced or threatened by anyone to plead guilty, and stated he was pleading guilty freely and voluntarily. (Id.:6-7). Next, movant acknowledged and confirmed he was pleading guilty to Counts 1, 5, and 10, and the nature and substance of those charges. (Id.:7). Movant further affirmed that he could be sentenced up to 10 years imprisonment as to Counts 1 and 5, for a total sentence of 20 years imprisonment, and then 5 years imprisonment as to Count 10, for a total sentence exposure of 25 years imprisonment, and 3 years supervised release as to each offense, for a total of up to 9 years supervised release. (Id.:8).

Movant acknowledged that the court would review the PSI and statutory factors when fashioning a reasonable sentence, but that the court had the authority to sentence the movant up to the statutory maximum, and that he could not withdraw the plea as a result of the sentence imposed. (Id.:9-10). The court then questioning movant regarding his understanding of the relative paragraphs of the negotiated plea agreement. (Id.:10-12).

Movant denied being forced or threatened by anyone to change his plea to guilty. (Id.:14,17). Movant also confirmed that the government had agreed to reduce his guideline range based on movant's timely acceptance of responsibility. (Id.:14). Movant also understood that his plea agreement contained a limited appeal waiver. (Id.:17-18). He further confirmed having discussed this right and stated affirmatively that he was freely and voluntarily giving up that right. (Id.:18).

Next, movant understood that he was also giving up certain constitutional rights by pleading guilty, including the right to be presumed innocent, to proceed to trial, to be represented by an attorney at trial, to confront witnesses, to present defense witnesses, and to testify or not on his own defense at trial. (Id.:18-19). He also understood that he was agreeing to give up certain civil rights as a result of the plea, including the right to vote, to hold public office, to serve on a jury, and to possess any type of firearm. (Id.:20). If he were not a U.S. citizen, movant understood he could be removed from the United States, and not permitted to return. (Id.).

Regarding the stipulated factual proffer, movant indicated he had read and discussed it with counsel prior to signing it. (Id.:20-21). Movant acknowledged and confirmed that he understood all of the facts set forth therein. (Id.:21). He denied being forced or threatened in anyway into signing the factual proffer. (Id.:21). Movant confirmed that the stipulated facts support the three charges. (Id.:22).

When the movant was then asked how he wished to plead to Counts 1, 5, and 10 of the Indictment, guilty or not guilty, the movant responded, "Guilty, Your Honor." (Id.:22). As a result of the foregoing, the court found the movant was fully competent and capable of entering into an informed plea, that the movant is aware of the nature of the charge and the consequences of his plea, and that his plea of guilty is a knowing and voluntary plea, supported by an independent basis in fact, containing each of the essential elements of the offense. (Id.:22). The court further found the movant had knowingly and voluntarily waived his right to a direct appeal. (Id.). The court then accepted the plea, and adjudicated the movant guilty as to Counts 1, 5, and 10 of the Second Superseding Indictment. (Id.:23).

Meanwhile, prior to sentencing, a PSI was prepared which revealed as follows. The guidelines for Counts 1 and 5, charging a violation of 18 U.S.C. § 793(e), is found in U.S.S.G. § 2M3.2. (PSI ¶42). The guideline for Count 10, charging a violation of 18 U.S.C. § 371, is found in U.S.S.G. § 2X1.1 and § 2L2.1. (Id.). Count 10 is not grouped with the other two offenses because Count 10 represents separate and distinct harm. (Id.). The probation officer determined that the base offense level for the violation of § 793(e) was the greater of the adjusted offense level and therefore set the offense level at 34. (PSI ¶57). No reduction was given for acceptance of responsibility because it was determined that the movant has obstructed justice in the case. (PSI ¶61).

Next, the probation officer determined that movant had a total of zero criminal history points, resulting in a criminal history category I. (PSI ¶65). Based on a total offense level 34 and a criminal history category I, the movant's advisory guideline imprisonment range was set at 151 months on the low end, and 188 months imprisonment at the high end. (PSI ¶101). Statutorily, movant faced a maximum of 10 years imprisonment as to Counts 1 and 5, and a maximum of 5 years imprisonment as to Count 10. (PSI ¶100). Movant filed numerous objections to the PSI and a motion for downward departure. (Cr-DE#s128,136).

On **July 31, 2015**, the movant appeared for sentencing. (Cr-DE#178). At that time, the government called Gerald Parsons, an Army counter-intelligence special agent, working for the U.S. Army at Fort Sam Houston in Texas testified he worked as a senior digital forensic examiner for the U.S. Army. (Id.:8-10). After giving his education and background information, he explained that a digital forensic

examiner reviews data contained in cellphones, computers, hard drives, thumb drives, CD, DVD, removable media and the like. (Id.:10).

He then testified that he examined a hard drive obtained from the SIPR ("Secret Internet Protocol Routing" network) computer system of the JTF-B from the Soto Cano Air Base in Honduras. (Id.:14). After also reviewing the evidence of activities the movant undertook in this case, Parsons concluded that on the afternoon of June 17, 2012, the movant's account was active on the above computer system for several hours, and shortly before 2:00 p.m., his account accessed 16 to 17 email files with attachments of the base commander, Colonel Ross Brown, who was departing. (Id.:15). He then saved all of Colonel Brown's SECRET e-mail holdings, both incoming and outcoming, for the preceding year, in a separate PST file common to Microsoft Outlook. (Id.). He copied 18 e-mail holdings as a separate PST file, and saved them to a local SIPRnet hard drive and then attempted to copy them onto a DVD disc. (Id.:16). He further confirmed movant copied all of the emails onto a folder named "DOCS," which he created on that computer system. (Id.). The government then introduced into evidence at sentencing copies of all the files that the movant had copied or otherwise accessed, all of which had a common theme, dealing with the Middle East. (Id.:17-19). Parsons found the content of the information accessed disturbing because Cano Air Force Base's mission is Central and South America medical support and humanitarian operations, and had absolutely nothing to do with the Middle East. (Id.:19).

Next, Parsons determined that after the movant created the PST file and saved it onto the DOCS folder, he launched a disc copying program called Imgburn to try to copy the DOCS directory, but was unsuccessful in doing so. (Id:21-22). Movant then attempted using the Imgburn software a second time to copy the DOCS directory, and this time he successfully copied all of the DOCS directory onto a DVD disc. (Id.:23). After successfully doing so, movant then deleted the three computer event security logs in the Windows IMF subfolder, so that his log in and log outs of security related events would not be shown. (Id.:24-25).

Parsons also testified that he was present at a debriefing of the movant held on January 20, 2015 in West Palm Beach, Florida. (Id.:28). When the movant was asked how and why he took the JTF-B Commander's SECRET email account files without authorization, he responded that he was being proactive, in the event Colonel Brown wanted a copy of them. (Id.:28). Movant also stated that he had wanted to develop for JTF-B a secure way for personnel to transport classified information from one point to another, using TrueCrypt to encrypt and then move the classified files. (Id.:40-51). Movant stated he used a government issued laptop computer, belonging to JTF-B, at his home, at which time he wrote a Macro/script, that invoked TrueCrypt which would automatically copy the contents of the DVD drive to a folder on his hard drive encrypt it using TrueCrypt, then copy the encrypted container back to the DVD drive for safe transport. (Id.:41). Regarding the erasure of his log files, movant explained that he did so because his system was "freezing up," since it operates on Windows XP, and by deleting the log histories, it helps the system operate more effectively. (Id.:28-29). As to the DVD disc containing the classified files which was found in his residence, movant explained it must have shown up there accidentally when he swept things off his desk and into a bag containing work he normally brings home. (Id.).

Parsons next testified that he also examined the Synology storage device recovered from the second floor of the movant's residence on March 11th. (Id.:31). Using TrueCrypt container encryption software, the storage device contained encrypted classified files that movant had burned onto a DVD on June 17th, including Brown's PST file. (Id.:32). Examination, however, also revealed that the movant had modified Colonel Brown's folder two minutes after it had been put on the Synology device. (Id.:32-33). Brown's PST file contained thousands of messages and 352 individual file attachments. (Id.:33). Parsons further testified that the Synology device did not contain any "script"

the movant claimed to have developed, nor did any of the other evidence collected from the movant's work place. (Id.:43). In fact, Parsons testified that TrueCrypt was not authorized to be used to protect or secure classified information, nor was it an acceptable form of business practice. (Id.:43).

Regarding movant's job, Parsons explained that the JTF-B IT department where the movant worked ran a ticketing service to track jobs for users relating to calls involving monitors that stopped working or a malfunctioning mouse, etc. (Id.:51). He was also required to do updates and batches to the Blackberry enterprise services manager. (Id.:43-51).

More importantly, evidence also showed that someone accessed the classified information on November 8, 2012, but Parsons could not ascertain who had done so. (Id.:71-72). Parsons did confirm that on June 15, 2016, a "remedy ticket" was issued asking the JTF-B system administrator, Eric Blakely, to copy Colonel Brown's system. (Id.:75). Colonel Brown, however, denied ever asking anyone to copy his SIPR account. (Id.:76). Upon questioning by the court, Parsons explained that in March 2014, the U.S. Government obtained all evidence, including the Synology network hard drive seized from the movant in March 2014. (Id.:77).

The defense called Frank Henry, who testified that he worked with the movant back in June 2012, while he was in the United States Air Force, during which he spent most of his time as a systems administrator. (Id.:87). During the last year and a half, he worked for Harris, a defense contractor, working for the DOD primarily on drug interdiction, at the Soto Cano Air Force Base in Honduras, as a technical lead. (Id.). While he worked with the movant, he never got any indication that the movant wanted to hurt the United States nor did he believe the movant wanted to commit espionage. (Id.:93). He confirmed, however, that the movant did not have a JTF-B laptop issued to him, but he could have gotten one without Henry knowing about it. (Id.:114).

At the conclusion of the testimony, and after hearing argument from the parties, the court sustained the objections to the obstruction of justice enhancement, finding that the movant's conduct in deleting the log file, and also in taking the information and encrypting and then hiding it in another database was part of the offense, and not an obstruction. (Id.141). The court further found that the movant's lies during debriefing did not obstruct or impede the official investigation or movant's prosecution. (Id.:141-42). However, the court did find that the movant was not entitled to the 3-level reduction for acceptance of responsibility, believing the movant lied as to the reason why he downloaded Brown's information and then erased the log. (Id.:142). The court determined movant had falsely denied or otherwise frivolously contested relevant conduct, and acted in a manner inconsistent with acceptance of responsibility by lying about specific reasons for his actions. (Id.:143). As a result, the movant's total offense level was set to a level 32 and his criminal history category. (Id.:142-43).

The movant then indicated that he did not want to allocute, but merely wanted the court to consider a letter he had written in support of mitigation of his sentence. (Id.:161-62). The court then stated that he had read the movant's statement, and considered the statements of all parties, the PSI containing the advisory guidelines, and the 18 U.S.C. § 3553 statutory factors, including the circumstances of the offense, which the court believes were "very serious," the characteristics of the movant, his criminal history, and the fact that the sentence imposed must promote respect for the law, provide just punishment, and afford adequate deterrence to criminal conduct. (Id.:162-63).

Although the court believed the movant lied to law enforcement and was not deserving of acceptance of responsibility reductions, because he did plead guilty, the court agreed to vary below the guideline range slightly in order to give him some benefit for having pleaded guilty, and not sentence him consistent with the government's recommendation. (Id.:163). The court, however,

advised the movant that "betraying your country is one of the most egregious things that a citizen can do." (Id.:163). The court commented that taking secrets of the government either to harm or otherwise injure the United States, or to gain profit from it, the end result to the country is "just despicable." (Id.:164). Thereafter, the court sentenced the movant to a total term of 120 months imprisonment, consisting of two concurrent terms of 120 months as to Counts 1 and 5, and a concurrent term of 60 months as to Count 10, to be followed by a total of 3 years supervised release. (Id.:164-65). An amended judgment was entered on August 13, 2015, reflecting the sentence imposed by the court, and to include forfeiture. (Cr-DE#146).

Movant prosecuted a direct appeal, appealing his 120-month term of imprisonment, but the government moved to dismiss the appeal based on the appeal waiver contained in the plea agreement. (Cr-DE#181). The movant, however, argued that his appellate waiver no longer applied because the government breached the terms of the plea agreement by failing to recommend a sentence adjustment based on acceptance of responsibility. (Cr-DE#181:3). The Eleventh Circuit granted the government's motion by written Order on **April 27, 2016**, finding no breach by the government because the movant had made false statements in his debriefing and objections to the PSI, regarding the reasons why he cleared the log events, and maintained he downloaded the information due to a miscommunication with his employees. (Id.:3-5). No certiorari review appears to have been filed.

Consequently, for purposes of the federal one-year limitations period, the judgment of conviction in the underlying criminal case become final on **July 26, 2016**, when the 90-day period for seeking certiorari review elapsed following the conclusion of the movant's direct appeal. Under 28 U.S.C. § 2244(d)(1)(A), a conviction becomes final "by the conclusion of direct review or the expiration of the time for seeking such rule." In other words, a conviction is final when a judgment of conviction has been rendered, the availability of appeal exhausted, and the time for a petition for certiorari elapsed or a petition for certiorari finally denied. Griffith v. Kentucky, 479 U.S. 314, 321, n.6, 107 S. Ct. 708, 93 L. Ed. 2d 649 (1986). See also Pugh v. Smith, 465 F.3d 1295, 1295-1300 (11 Cir. 2006)(discussing Nix v. Sec'y for the Dept. Of Corr., 393 F.3d 1235, (11 Cir. 2004) and Bond v. Moore, 309 F.3d 770 (11 Cir. 2002)). Supreme Court Rule 13.1 permits a party to file a petition for a writ of certiorari in the Supreme Court of the United States within ninety days after the state court of last resort enters its judgment.

At the latest, the movant was required to file this motion to vacate within one year from the time the judgment became final, or no later than **July 27, 2017**. See Griffith v. Kentucky, 479 U.S. 314, 321, n.6, 107 S. Ct. 708, 93 L. Ed. 2d 649 (1986); see also, See Downs v. McNeil, 520 F.3d 1311, 1318 (11th Cir. 2008)(citing Ferreira v. Sec'y, Dep't of Corr's, 494 F.3d 1286, 1289 n.1 (11th Cir. 2007)(this Court has suggested that the limitations period should be calculated according to the "anniversary method," under which the limitations period expires on the anniversary of the date it began to run); accord United States v. Hurst, 322 F.3d 1256, 1260-61 (10th Cir. 2003); United States v. Marcello, 212 F.3d 1005, 1008-09 (7th Cir. 2000)). Applying the anniversary method to this case means movant's limitations period is due to expire on **July 27, 2017**.2

The movant's motion to vacate was filed with this court on **April 2, 2017**, the date he signed and then handed the motion to prison authorities for mailing in accordance with the mailbox rule. (Cv-DE#1:20). Absent evidence to the contrary, the movant's motion is deemed filed, in accordance with the mailbox rule, on the date he signed it.3

IV. Standard of Review

Because collateral review is not a substitute for direct appeal, the grounds for collateral attack on final judgments pursuant to § 2255 are extremely limited. A prisoner is entitled to relief under § 2255

if the court imposed a sentence that (1) violated the Constitution or laws of the United States, (2) exceeded its jurisdiction, (3) exceeded the maximum authorized by law, or (4) is otherwise subject to collateral attack. See 28 U.S.C. § 2255(a); McKay v. United States, 657 F.3d 1190, 1194 n.8 (11th Cir. 2011). "Relief under 28 U.S.C. § 2255 'is reserved for transgressions of constitutional rights and for that narrow compass of other injury that could not have been raised in direct appeal and would, if condoned, result in a complete miscarriage of justice.'" Lynn v. United States, 365 F.3d 1225, 1232 (11th Cir. 2004)(citations omitted). It is also well-established that a § 2255 motion may not be a substitute for a direct appeal. Id. at 1232 (citing United States v. Frady, 456 U.S. 152, 165, 102 S. Ct. 1584, 1593, 71 L. Ed. 2d 816 (1982)). The "fundamental miscarriage of justice" exception recognized in Murray v. Carrier, 477 U.S. 478, 496, 106 S. Ct. 2639, 91 L. Ed. 2d 397 (1986), provides that it must be shown that the alleged constitutional violation "has probably resulted in the conviction of one who is actually innocent . . . "

The Eleventh Circuit promulgated a two-part inquiry that a district court must consider before determining whether a movant's claim is cognizable. First, a district court must find that "a defendant assert[ed] all available claims on direct appeal." Frady, 456 U.S. at 152; McCoy v. United States, 266 F.3d 1245, 1258 (11th Cir. 2001); Mills v. United States, 36 F.3d 1052, 1055 (11th Cir. 1994). Second, a district court must consider whether the type of relief the movant seeks is appropriate under Section 2255. This is because "[r]elief under 28 U.S.C. § 2255 is reserved for transgressions of constitutional rights and for that narrow compass of other injury that could not have been raised in direct appeal and would, if condoned, result in a complete miscarriage of justice." Lynn, 365 F.3d at 1232-33 (quoting Richards v. United States, 837 F.2d 965, 966 (11th Cir. 1988)(internal quotations omitted)).

If a court finds a claim under Section 2255 to be valid, the court "shall vacate and set the judgment aside and shall discharge the prisoner or Presentence him or grant a new trial or correct the sentence as may appear appropriate." 28 U.S.C. § 2255. To obtain this relief on collateral review, a petitioner must "clear a significantly higher hurdle than would exist on direct appeal." Frady, 456 U.S. at 166, 102 S. Ct. at 1584 (rejecting the plain error standard as not sufficiently deferential to a final judgment). Under Section 2255, unless "the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief," the court shall "grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto." However, "if the record refutes the applicant's factual allegations or otherwise precludes habeas relief, a district court is not required to hold an evidentiary hearing." Schriro v. Landrigan, 550 U.S. 465, 474, 127 S. Ct. 1933, 167 L. Ed. 2d 836 (2007). See also Aron v. United States, 291 F.3d 708, 715 (11th Cir. 2002)(explaining that no evidentiary hearing is needed when a petitioner's claims are "affirmatively contradicted by the record" or "patently frivolous"). As indicated by the discussion below, the motion and the files and records of the case conclusively show that movant is entitled to no relief, therefore, no evidentiary hearing is warranted.

In addition, the party challenging the sentence has the burden of showing that it is unreasonable in light of the record and the § 3553(a) factors. United States v. Dean, 635 F.3d 1200, 1209-1210 (11th Cir. 2011)(citing United States v. Talley, 431 F.3d 784, 788 (11th Cir. 2005)); see also, United States v. Bostic, 645 Fed.Appx. 947, 948 (11th Cir. 2016)(unpublished).4 The Eleventh Circuit recognizes "that there is a range of reasonable sentences from which the district court may choose," and ordinarily expect a sentence within the defendant's advisory guideline range to be reasonable. United States v. Talley, supra.

A. Guilty Plea Principles

It is well settled that before a trial judge can accept a guilty plea, the defendant must be advised of

the various constitutional rights that he is waiving by entering such a plea. Boykin v. Alabama, 395 U.S. 238, 243, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969). Since a guilty plea is a waiver of substantial constitutional rights, it must be a voluntary, knowing, and intelligent act done with sufficient awareness of the relevant circumstances and likely consequences surrounding the plea. Brady v. United States, 397 U.S. 742, 748, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970). See also United States v. Ruiz, 536 U.S. 622, 629, 122 S. Ct. 2450, 153 L. Ed. 2d 586 (2002); Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985); Henderson v. Morgan, 426 U.S. 637, 645 n.13, 96 S. Ct. 2253, 49 L. Ed. 2d 108 (1976). To be voluntary and knowing, (1) the guilty plea must be free from coercion; (2) the defendant must understand the nature of the charges; and (3) the defendant must know and understand the consequences of his guilty plea. United States v. Moriarty, 429 F.3d 1012, 1019 (11th Cir. 2005)(table); United States v. Mosley, 173 F.3d 1318, 1322 (11th Cir. 1999).

After a criminal defendant has pleaded guilty, he may not raise claims relating to the alleged deprivation of constitutional rights occurring prior to the entry of the guilty plea, but may only raise jurisdictional issues, United States v. Patti, 337 F.3d 1317, 1320 (11th Cir. 2003), cert. den'd, 540 U.S. 1149, 124 S. Ct. 1146, 157 L. Ed. 2d 1042 (2004), attack the voluntary and knowing character of the guilty plea, Tollett v. Henderson, 411 U.S. 258, 267, 93 S. Ct. 1602, 36 L. Ed. 2d 235 (1973); Wilson v. United States, 962 F.2d 996, 997 (11th Cir. 1992), or challenge the constitutional effectiveness of the assistance he received from his attorney in deciding to plead guilty, United States v. Fairchild, 803 F.2d 1121, 1123 (11th Cir. 1986). To determine that a guilty plea is knowing and voluntary, a district court must comply with Rule 11 and address its three core concerns: "ensuring that a defendant (1) enters his guilty plea free from coercion, (2) understands the nature of the charges, and (3) understands the consequences of his plea." Id.; see also, United States v. Frye, 402 F.3d 1123, 1127 (11th Cir. 2005)(*per curiam*); United States v. Moriarty, 429 F.3d 1012 (11th Cir. 2005).5

In other words, a voluntary and intelligent plea of guilty made by an accused person must therefore stand unless induced by misrepresentations made to the accused person by the court, prosecutor, or his own counsel. Brady v. United States, 397 U.S. 742, 748, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970). If a guilty plea is induced through threats, misrepresentations, or improper promises, the defendant cannot be said to have been fully apprised of the consequences of the guilty plea and may then challenge the guilty plea under the Due Process Clause. See Santobello v. New York, 404 U.S. 257, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971).

B. Ineffective Assistance of Counsel Principles

Because the movant suggests in the motion that counsel rendered ineffective assistance, this Court's analysis begins with the familiar rule that the Sixth Amendment affords a criminal defendant the right to "the Assistance of Counsel for his defense." U.S. CONST. amend. VI. To prevail on a claim of ineffective assistance of counsel, a habeas petitioner must demonstrate both (1) that counsel's performance was deficient, and (2) a reasonable probability that the deficient performance prejudiced the defense. Strickland v. Washington, 466 U.S. 668, 687, 694, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); Harrington v. Richter, 562 U.S. 86, 104, 131 S. Ct. 770, 788, 178 L. Ed. 2d 624 (2011). See also Premo v. Moore, 562 U.S. 115, 121-22, 131 S. Ct. 733, 739-740, 178 L. Ed. 2d 649 (2011); Padilla v. Kentucky, 559 U.S. 356, 367, 130 S. Ct. 1473, 1482, 176 L. Ed. 2d 284 (2010). If the movant cannot meet one of Strickland's prongs, the court does not need to address the other prong. Strickland, 466 U.S. at 697, 104 S. Ct. 2069 (explaining a court need not address both prongs of Strickland if the defendant makes an insufficient showing on one of the prongs). See also Butcher v. United States, 368 F.3d 1290, 1293, 95 Fed. Appx. 1290 (11th Cir. 2004); Brown v. United States, 720 F.3d 1316 (11th Cir. 2013).

To show counsel's performance was unreasonable, a defendant must establish that "no competent counsel would have taken the action that his counsel did take." Gordon v. United States, 518 F.3d 1291, 1301 (11th Cir. 2008)(citations omitted); Chandler v. United States, 218 F.3d 1305, 1315 (11th Cir. 2000). With regard to the prejudice requirement, the movant must establish that, but for counsel's deficient performance, the outcome of the proceeding would have been different. Strickland, 466 U.S. at 694. For the court to focus merely on "outcome determination," however, is insufficient; "[t]o set aside a conviction or sentence solely because the outcome would have been different but for counsel's error may grant the defendant a windfall to which the law does not entitle him." Lockhart v. Fretwell, 506 U.S. 364, 369-70, 113 S. Ct. 838, 122 L. Ed. 2d 180 (1993); Allen v. Sec'y, Fla. Dep't of Corr's, 611 F.3d 740, 754 (11th Cir. 2010). A defendant therefore must establish "that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Lockhart, 506 U.S. at 369 (quoting Strickland, 466 U.S. at 687).

In the context of a guilty plea, the first prong of Strickland requires petitioner to show that the plea was not voluntary because he/she received advice from counsel that was not within the range of competence demanded of attorneys in criminal cases, while the second prong requires petitioner to show a reasonable probability that, but for counsel's errors, he/she would have entered a different plea. Hill, 474 U.S. at 56-59. If the petitioner cannot meet one of Strickland's prongs, the court does not need to address the other prong. Dingle v. Sec'y for Dep't of Corr's, 480 F.3d 1092, 1100 (11th Cir.), cert. den'd, 552 U.S. 990, 128 S. Ct. 530, 169 L. Ed. 2d 339 (2007); Holladay v. Haley, 209 F.3d 1243, 1248 (11th Cir.), reh'g and reh'g en banc den'd by, Holladay v. Haley, 232 F.3d 217 (11th Cir.), cert. den'd, 531 U.S. 1017, 121 S. Ct. 578, 148 L. Ed. 2d 495 (2000).

However, a defendant's sworn answers during a plea colloquy must mean something. Consequently, a defendant's sworn representations, as well as representation of defense counsel and the prosecutor, and any findings by the judge in accepting the plea, "constitute a formidable barrier in any subsequent collateral proceedings." Blackledge v. Allison, 431 U.S. 63, 73-74, 97 S. Ct. 1621, 52 L. Ed. 2d 136 (1977); United States v. Medlock, 12 F.3d 185, 187 (11th Cir.), cert. den'd, 513 U.S. 864, 115 S. Ct. 180, 130 L. Ed. 2d 115 (1994); United States v. Niles, 565 Fed.Appx. 828 (11th Cir. May 12, 2014)(unpublished).

A criminal defendant is bound by his/her sworn assertions and cannot rely on representations of counsel which are contrary to the advice given by the judge. See Scheele v. State, 953 So.2d 782, 785 (Fla. 4 DCA2007)("A plea conference is not a meaningless charade to be manipulated willy-nilly after the fact; it is a formal ceremony, under oath, memorializing a crossroads in the case. What is said and done at a plea conference carries consequences."); Iacono v. State, 930 So.2d 829 (Fla. 4 DCA2006)(holding that defendant is bound by his sworn answers during the plea colloquy and may not later assert that he committed perjury during the colloquy because his attorney told him to lie); United States v. Rogers, 848 F.2d 166, 168 (11th Cir. 1988)("[W]hen a defendant makes statements under oath at a plea colloquy, he bears a heavy burden to show his statements were false.").

Moreover, in the case of alleged sentencing errors, the movant must demonstrate that there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been less harsh due to a reduction in the defendant's offense level. Glover v. United States, 531 U.S. 198, 203-04, 121 S. Ct. 696, 148 L. Ed. 2d 604 (2001). A significant increase in sentence is not required to establish prejudice, as "any amount of actual jail time has Sixth Amendment significance." Id. at 203.

Furthermore, a § 2255 movant must provide factual support for his contentions regarding counsel's performance. Smith v. White, 815 F.2d 1401, 1406-07 (11th Cir.1987). Bare, conclusory allegations of ineffective assistance are insufficient to satisfy the Strickland test. See Boyd v. Comm'r, Ala. Dep't

of Corr's, 697 F.3d 1320, 1333-34 (11th Cir. 2012); Garcia v. United States, 456 Fed.Appx. 804, 807 (11th Cir. 2012) (citing Yeck v. Goodwin, 985 F.2d 538, 542 (11th Cir. 1993)); Wilson v. United States, 962 F.2d 996, 998 (11th Cir. 1992); Tejada v. Dugger, 941 F.2d 1551, 1559 (11th Cir. 1991), cert. den'd Tejada v. Singletary, 502 U.S. 1105, 112 S. Ct. 1199, 117 L. Ed. 2d 439 (1992); Stano v. Dugger, 901 F.2d 898, 899 (11th Cir. 1990)(citing Blackledge v. Allison, 431 U.S. 63, 74, 97 S. Ct. 1621, 52 L. Ed. 2d 136 (1977)); United States v. Ross, 147 Fed.Appx. 936, 939 (11th Cir. 2005).

Finally, the Eleventh Circuit has recognized that given the principles and presumptions set forth above, "the cases in which habeas petitioners can properly prevail ... are few and far between." Chandler, 218 F.3d at 1313. This is because the test is not what the best lawyers would have done or even what most good lawyers would have done, but rather whether some reasonable lawyer could have acted in the circumstances as defense counsel acted. Dingle, 480 F.3d at 1099; Williamson v. Moore, 221 F.3d 1177, 1180 (11th Cir. 2000). "Even if counsel's decision appears to have been unwise in retrospect, the decision will be held to have been ineffective assistance only if it was 'so patently unreasonable that no competent attorney would have chosen it.'" Dingle, 480 F.3d at 1099 (quoting Adams v. Wainwright, 709 F.2d 1443, 1445 (11th Cir. 1983)). The Sixth Circuit has framed the question as not whether counsel was inadequate, but rather counsel's performance was so manifestly ineffective that "defeat was snatched from the hands of probable victory." United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992).

V. Threshold Issues

A. Timeliness

As narrated previously, the movant filed his initial § 2255 motion was filed on **April 13, 2017**, and his addendum on **April 19, 2017**, less than one year after his conviction became final on **November 16, 2016**. Since the filings were instituted well before the expiration of the federal one-year limitations period, they are timely for purposes of the AEDPA, and review of the motion is warranted.

B. Procedural Bar

It is worth noting at the outset that the claims raised herein are procedurally defaulted from review in this § 2255 proceeding. It is well settled that a motion to vacate, pursuant to 28 U.S.C. § 2255 is not a substitute for direct appeal, and issues which could have been raised on direct appeal are generally not actionable in a § 2255 motion and will be considered procedurally barred. Lynn v. United States, 365 F.3d 1225, 1234-1235 (11th Cir. 2004); Bousley v. United States, 523 U.S. 614, 621, 118 S. Ct. 1604, 140 L. Ed. 2d 828 (1998); McKay v. United States, 657 F.3d 1190, 1195 (11th Cir. 2011). An issue is "'available' on direct appeal when its merits can be reviewed without further factual development." Lynn, 365 F.3d at 1232 n.14 (quoting Mills, 36 F.3d at 1055).

Absent a showing that the ground of error was unavailable on direct appeal, a court may not consider the ground in a section 2255 motion unless the defendant establishes (1) cause for not raising the ground on direct appeal, and (2) actual prejudice resulting from the alleged error, that is, alternatively, that he is "actually innocent." Lynn, 365 F.3d at 1234; Bousley, 523 U.S. at 622 (citations omitted). To show cause for procedural default, a defendant must show that "some objective factor external to the defense prevented [him] or his counsel from raising his claims on direct appeal and that this factor cannot be fairly attributable to [defendant's] own conduct." Lynn, 365 F.3d at 1235.

As applied here, in his initial motion, the movant has not alleged cause for the procedural default, much less demonstrated prejudice resulting from his failure to pursue those claims. See United States v. Frady, 456 U.S. 152, 167-69, 102 S. Ct. 1584, 71 L. Ed. 2d 816 (1982); McCleskey v. Zant, 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991); Parks v. United States, 832 F.2d 1244,

1245-46 (11th Cir. 1987); Campino v. United States, 968 F.2d 187, 188-90 (2d Cir. 1992). Cause for the default "must be something external to the petitioner, something that cannot be fairly attributed to him." Coleman v. Thompson, 501 U.S. 722, 753, 111 S. Ct. 2546, 115 L. Ed. 2d 640 (1992).

Ignorance or inadvertence by counsel does not constitute "cause" because the attorney is the movant's agent when acting, or failing to act, in furtherance of the litigation, and the petitioner must "bear the risk of attorney error." Id. (quoting Murray v. Carrier, 477 U.S. 478, 488, 106 S. Ct. 2639, 91 L. Ed. 2d 397 (1986)). Nevertheless, a meritorious claim of ineffective assistance of counsel can constitute cause. See United States v. Nyhuis, 211 F.3d 1340, 1344 (11th Cir. 2000). However, ineffective assistance of counsel claims are generally not cognizable on direct appeal and are properly raised by a § 2255 motion regardless of whether they could have been brought on direct appeal. Massaro v. United States, 538 U.S. 500, 503, 123 S. Ct. 1690, 155 L. Ed. 2d 714 (2003); see also United States v. Patterson, 595 F.3d, 1324, 1328 (11th Cir. 2010). Movant here has not alleged in his initial motion cause nor has he shown prejudice to overcome the procedural default of his claims. Consequently, these claims are barred from review here.

This Court is mindful of the Clisby6 rule that requires district courts to address and resolve all claims raised in habeas proceedings, regardless of whether relief is granted or denied. Clisby, 960 F.2d at 935-36 (involving a 28 U.S.C. § 2254 petition filed by a state prisoner); see Rhode v. United States, 583 F.3d 1289, 1291 (11th Cir. 2009) (holding that Clisby applies to § 2255 proceedings). However, nothing in Clisby requires, much less suggests, consideration of claims or arguments raised for the first time in objections. Therefore, to the extent the movant attempts to raise arguments or demonstrate cause and prejudice in objections to this Report, the court should exercise its discretion and refuse to consider the arguments not raised before the magistrate judge in the first instance.7

VI. Discussion

The movant raises three grounds for relief in this federal proceeding, none of which warrant vacatur of his convictions and sentences, as will be demonstrated in detail below. Further, as was found by the district court at sentencing, the court should not tolerate the misrepresentations set forth herein, which are directly contradicted by the movant's sworn statements at the Rule 11 change of plea proceedings, and which border on the perjurious.

In **claim 1**, movant asserts that he was denied effective assistance of counsel, where his lawyer, through his deceptive and/or reckless actions, legal malpractice, bad faith, and breach of contract, deceived the movant into believing that U.S.S.G. § 2M3.2 would not be applied because the movant was to be convicted of violating 18 U.S.C. § 793(e), and movant had never transmitted nor communicated any secrets or defense information to any individual, entity, or government. (Cv-DE#1:16).

This claim is clearly refuted by the record which reveals that the movant acknowledged at the thorough Rule 11 change of plea proceeding that it was his signature on the plea agreement. He further acknowledged pleading guilty to Counts 1, 5, and 10, violations of 18 U.S.C. § 793, and 18 U.S.C. § 1030(a). Movant's suggestion here that counsel somehow tricked or misadvised him that his sentence would only be calculated and then he would only be sentenced on the lesser offense is clearly also refuted by the record. As will be recalled, movant was well informed that counsel's predication or advice was just that, and that the court would not be required to follow any recommendations provided by the parties. Movant was also cautioned and confirmed his understanding that he would be unable to withdraw his plea based on the sentence ultimately imposed by the court. Furthermore, the court went over specific details of the plea, and movant acknowledged and confirmed his understanding of the details and conditions contained therein. His allegations to the contrary here border on the perjurious, and based on the record before this court,

are totally without merit.

Next, in **claim 2**, movant asserts that he was denied effective assistance of counsel, where his lawyer knowingly, willfully, through trickery, concealment, or fraud covered up a material fact regarding the signature page of the stipulated factual proffer, purposefully concealing and not presenting to the court the defense's factual proffer. (Cv-DE#1:17-18). Again, this allegation is clearly unsupported by the record. The court went over the stipulated factual proffer, and the movant acknowledged his involvement in the offense. He allegation that defense counsel swapped his signature page on a purported defense stipulated factual proffer, and gave it to the government to put on its stipulated factual proffer is unsupported by the record and the change of plea proceeding. Movant continues, as he did during his underlying criminal case, to deny responsibility for his actions, casting blame on his lawyers and the government in an effort to gain vacatur of his convictions and resultant sentences. His allegations, however, are disingenuous and incredible.

Finally, in **claim 3**, movant suggests that counsel committed legal malpractice by coercing him to change his plea. This claim is also belied by the record, which confirms that the movant's plea was knowing and voluntary. Further, to the extent he seeks to raise a legal malpractice claim against counsel, he may do so, if he so desires, by filing same with The Florida Bar, but not by way of a § 2255 motion.

Furthermore, the court has combed through the movant's specious allegations regarding the purported misadvice and ineffectiveness regarding possible defenses, the terms and conditions of the plea, and the ultimate sentence imposed, are all either waived by the knowing and voluntary nature of the plea, or belied by the record. Whether or not counsel was paid $190,000 for his legal fees is not relevant to whether he provided more than able representation under Sixth Amendment standards. As applied here, had movant gone to trial and been convicted as charged, he would have faced a much more severe sentence than that which was ultimately imposed by the court. Thus, movant cannot establish deficient performance or prejudice under Strickland arising from any of the arguments raised herein. Habeas corpus relief is therefore not warranted and relief must be denied.

Given the court's findings, as narrated previously in this Report, coupled with the appellate court's determination that no error was shown by the court's determination that the movant was not entitled to an acceptance of responsibility adjustment, the movant cannot prevail on this claim. Movant cannot demonstrate either deficient performance or prejudice under Strickland.

It is further worth mentioning at this juncture that the movant cannot challenge the lawfulness of this claim by raising it in terms ineffective assistance of counsel. As will be recalled, the precise argument regarding the court's failure to award the additional one point reduction, was raised and rejected on direct appeal on the finding that there was no error and thus the government's motion seeking dismissal of the appeal was proper. (Cr-DE#181). Thus, any challenge to the sentence ultimately imposed herein, in the guise of an ineffective assistance of counsel claim, adds nothing of substance which would justify revisiting the issue. See Ochoa v. United States, 569 Fed. Appx. 843, 846 (11th Cir.), cert. den'd, __ U.S. __, 135 S. Ct. 463, 190 L. Ed. 2d 332 (2014) (citing Rozier v. United, 701 F.3d 681, 684 (11th Cir. 2012)); United States v. Rowan, 663 F.2d 1034, 1035 (11th Cir. 1981); Hobson v. United States, 825 F.2d 364, 366 (11th Cir. 1987)(claim raised and considered on direct appeal precludes further review of the claim in a § 2255 motion), vacated on other grounds, 492 U.S. 913, 109 S. Ct. 3233, 106 L. Ed. 2d 581 (1989); United States v. Nyhuis, 211 F.3d 1340, 1343 (11th Cir. 2000); Webb v. United States, 510 F.2d 1097 (5th Cir. 1975); Belford v. United States, 975 F.2d 310, 313 (7th Cir. 1992), overruled on other grounds by Castellanos v. United States, 26 F.3d 717 (7 Cir. 1994); Graziano v. United States, 83 F.3d 587 (2d Cir. 1996)(Collateral attack on a final judgment in a criminal case is generally available under § 2255 only for a

constitutional error, a lack of jurisdiction in the sentencing court, or an error of law or fact that constitutes a fundamental defect which inherently results in complete miscarriage of justice.); Boeckenhaupt v. United States, 537 F.2d 1182, 1183 (4th Cir. 1976).

Contrary to the representations herein, the movant has failed to demonstrate that counsel was ineffective, much less that he suffered prejudice as a result of the purported ineffectiveness. Consequently, absent a showing of deficient performance and prejudice, movant is entitled to no relief on this claim. See Matire v. Wainwright, 811 F.2d 1430, 1435 (11 Cir. 1987). Therefore, movant is not entitled to any relief on the claims presented herein.

This court is mindful of its responsibility to address and resolve all claims raised in a *pro se* habeas petition. See e.g. Clisby v. Jones, 960 F.2d 925, 936 (11th Cir.1992) (instructing "the district courts to resolve all claims for relief raised in a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.") (emphasis added); Williams v. Florida Dept. of Corrections, 391 Fed.Appx. 806, 810 (11th Cir.2010) (unpublished). However, nothing in Clisby requires or suggests consideration of claims or arguments raised for the first time in objections.

The movant is cautioned that he may not raise for the first time in objections to the undersigned's Report any new arguments or new facts in support of the claims raised herein. Daniel v. Chase Bank USA, N.A., 650 F.Supp.2d 1275, 1278 (N.D. Ga. 2009)(citing Williams v. McNeil, 557 F.3d 1287 (11th Cir. 2009). To the extent the movant attempts to do so, the court should exercise its discretion and decline to consider them. See Daniel, supra; See Starks v. United States, 2010 U.S. Dist. LEXIS 110806, 2010 WL 4192875 at *3 (S.D. Fla. 2010); United States v. Cadieux, 324 F.Supp. 2d 168 (D.Me. 2004). This is so because "[P]arties must take before the magistrate, 'not only their best shot but all of the shots.'" See Borden v. Sec'y of Health & Human Servs., 836 F.2d 4, 6 (1st Cir. 1987)(quoting Singh v. Superintending Sch. Comm., 593 F.Supp. 1315, 1318 (D.Me. 1984)).

Finally, when viewing the evidence in this case in its entirety, the alleged errors raised in this collateral proceeding, neither individually nor cumulatively, infused the proceedings with unfairness as to deny the movant due process of law. The movant therefore is not entitled to habeas corpus relief. See Fuller v. Roe, 182 F.3d 699, 704 (9 Cir. 1999)(holding in federal habeas corpus proceeding that where there is no single constitutional error existing, nothing can accumulate to the level of a constitutional violation), overruled on other grounds, Slack v. McDaniel, 529 U.S. 473, 482, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000). See also United States v. Rivera, 900 F.2d 1462, 1470 (10 Cir. 1990)(stating that "a cumulative-error analysis aggregates only actual errors to determine their cumulative effect."). Contrary to the movant's apparent assertions, the result of the proceedings were not fundamentally unfair or unreliable. See Lockhart v. Fretwell, 506 U.S. 364, 369-70, 113 S. Ct. 838, 122 L. Ed. 2d 180 (1993).

It also cannot be overlooked that the entry of the guilty plea was clearly in the best interest of the movant. Because of the plea negotiated by defense counsel, movant benefitted from a downward variance to the guideline range, and ultimately received a sentence significantly below the statutory maximum he faced. Had he proceeded to trial and been found guilty, movant's exposure upon conviction may have been significantly greater.

Under the totality of the circumstances present here, the movant's challenges to his sentence are not cognizable by way of a motion to vacate, pursuant to 28 U.S.C. § 2255. See Burke v. United States, 152 F.3d 1329, 1331 (11th Cir.1998) (holding that, "as a threshold inquiry," this Court would consider whether the prisoner's sentencing claim was cognizable under § 2255); see also, Ayuso v. United States, 361 Fed.Appx. 988, 990 (11th Cir. 2010).

Finally, it should further be noted that this court has considered all of the movant's arguments raised

in his § 2255 motion. (Cv-DE#1). See Dupree v. Warden, 715 F.3d 1295 (11th Cir. 2013)(citing Clisby v. Jones, 960 F.2d 925 (11th Cir. 1992)). For all of his claims, movant has failed to demonstrate he is entitled to vacatur of his conviction and sentence. Thus, to the extent a precise argument, subsumed within the foregoing ground for relief, was not specifically addressed herein, the claim was considered and found to be devoid of merit, warranting no discussion herein. To the extent he attempts to raise new arguments for the first time in his traverse, those claims should be barred.

In conclusion, the record reveals that movant is not entitled to relief on any of the arguments presented as it is apparent from the extensive review of the record above that movant's guilty plea was entered freely, voluntarily and knowingly with the advice received from competent counsel and not involuntarily and/or unknowingly entered. See Boykin v. Alabama, 395 U.S. 238, 243, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); Brady v. United States, 397 U.S. 742, 748, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970).1 See also Hill v. Lockhart, supra; Strickland v. Washington, supra. 466 U.S. 668 (1984). Moreover, he received a low end of the guideline sentence, well below the statutory maximum offense of conviction. Consequently, he cannot show error in sentencing and is entitled to no relief on the claims presented.

VII. Evidentiary Hearing

Movant is also not entitled to an evidentiary hearing on the claims raised in this proceeding. Movant has the burden of establishing the need for an evidentiary hearing, and he would only be entitled to a hearing if his allegations, if proved, would establish his right to collateral relief. See Schriro v. Landrigan, 550 U.S. 465, 473-75, 127 S. Ct. 1933, 167 L. Ed. 2d 836, 1939-40, 127 S. Ct. 1933 (2007)(holding that if record refutes the factual allegations in the petition or otherwise precludes habeas relief, a district court is not required to hold an evidentiary hearing). See also Townsend v. Sain, 372 U.S. 293, 307, 83 S. Ct. 745, 9 L. Ed. 2d 770 (1963); Holmes v. United States, 876 F.2d 1545, 1553 (11th Cir. 1989), *citing*, Guerra v. United States, 588 F.2d 519, 520-21 (5th Cir. 1979)(holding that § 2255 does not require that the district court hold an evidentiary hearing every time a section 2255 petitioner simply asserts a claim of ineffective assistance of counsel, and stating: "A hearing is not required on patently frivolous claims or those which are based upon unsupported generalizations. Nor is a hearing required where the petitioner's allegations are affirmatively contradicted by the record.").

VIII. Certificate of Appealability

As amended effective December 1, 2009, § 2255 Rule 11(a) provides that "[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant," and if a certificate is issued "the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2)." A timely notice of appeal must still be filed, even if the court issues a certificate of appealability. Rules Governing § 2255 Proceedings, Rule 11(b), 28 U.S.C. foll. § 2255.

After review of the record, Movant is not entitled to a certificate of appealability. "A certificate of appealablilty may issue ... only if the applicant has made a substantial showing of the denial of a constitutional right." Id. 28 U.S.C. § 2253(c)(2). To merit a certificate of appealability, Movant must show that reasonable jurists would find debatable both (1) the merits of the underlying claims and (2) the procedural issues he seeks to raise. Slack v. McDaniel, 529 U.S. 473, 478, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000). See also Eagle v. Linahan, 279 F.3d 926, 935 (11th Cir. 2001). Because the § 2255 motion is clearly time-barred, Movant cannot satisfy the Slack test. Slack, 529 U.S. at 484.

As now provided by Rules Governing § 2255 Proceedings, Rule 11(a), 28 U.S.C. foll. § 2255: "Before entering the final order, the court may direct the parties to submit arguments on whether a

certificate should issue." If there is an objection to this recommendation by either party, that party may bring this argument to the attention of the district judge in the objections permitted to this report and recommendation.

IX. Recommendations

Based on the foregoing, it is recommended that the motion to vacate be DENIED on the merits; that no certificate of appealability issue; and, that this case be closed.

Objections to this report may be filed with the District Judge within fourteen days of receipt of a copy of the report.

SIGNED this 10th day of May, 2017.

/s/ Patrick A. White

UNITED STATES MAGISTRATE JUDGE

Footnotes

1

Rule 4 of the Rules Governing Section 2255 Petitions, provides, in pertinent part, that "[I]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner...."

2

Under Fed.R.Civ.P. 6(a)(1), "in computing any time period specified in ... any statute that does not specify a method of computing time ... [the court must] exclude the day of the event that triggers the period[,] count every day, including intermediate Saturdays, Sundays, and legal holidays[, and] include the last day of the period," unless the last day is a Saturday, Sunday, or legal holiday. Where the dates falls on a weekend, the Undersigned has excluded that day from its computation.

3

"Under the prison mailbox rule, a *pro se* prisoner's court filing is deemed filed on the date it is delivered to prison authorities for mailing." Williams v. McNeil, 557 F.3d 1287, 1290 n.2 (11th Cir. 2009); see Fed.R.App. 4(c)(1)("If an inmate confined in an institution files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing."). Unless there is evidence to the contrary, like prison logs or other records, a prisoner's motion is deemed delivered to prison authorities on the day he signed it. See Washington v. United States, 243 F.3d 1299, 1301 (11th Cir. 2001); Adams v. United States, 173 F.3d 1339 (11th Cir. 1999) (prisoner's pleading is deemed filed when executed and delivered to prison authorities for mailing).

4

"Unpublished opinion are not considered binding precedent, but they may be cited as persuasive authority." 11th Cir. R. 36-2. The Court notes this same rule applies to other Fed. Appx. cases cited herein.

5

In Moriarty, the Eleventh Circuit specifically held as follows:

[t]o ensure compliance with the third core concern, Rule 11(b)(1) provides a list of rights and other relevant matters about which the court is required to inform the defendant prior to accepting a guilty

plea, including: the right to plead not guilty (or persist in such a plea) and to be represented by counsel; the possibility of forfeiture; the court's authority to order restitution and its obligation to apply the Guidelines; and the Government's right, in a prosecution for perjury, to use against the defendant any statement that he gives under oath. Id.
6

Clisby v. Jones, 960 F.2d 925, 936 (11th Cir.1992).
7

The petitioner is cautioned that any attempt to provide due diligence in objections to this Report may not be considered in the first instance by the district court. See Starks v. United States, 2010 U.S. Dist. LEXIS 110806, 2010 WL 4192875 at *3 (S.D. Fla. 2010); United States v. Cadieux, 324 F.Supp. 2d 168 (D.Me. 2004). This is so because "[P]arties must take before the magistrate, 'not only their best shot but all of the shots.'" Borden v. Sec'y of Health & Human Servs., 836 F.2d 4, 6 (1st Cir. 1987)(quoting Singh v. Superintending Sch. Comm., 593 F.Supp. 1315, 1318 (D.Me. 1984)).
1

It is well settled that before a trial judge can accept a guilty plea, the defendant must be advised of the various constitutional rights that he is waiving by entering such a plea. Boykin v. Alabama, 395 U.S. 238, 243, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969). Since a guilty plea is a waiver of substantial constitutional rights, it must be a voluntary, knowing, and intelligent act done with sufficient awareness of the relevant circumstances and likely consequences surrounding the plea. Brady v. United States, 397 U.S. 742, 748, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970). A voluntary and intelligent plea of guilty made by an accused person who has been advised by competent counsel may not be collaterally attacked. Mabry v. Johnson, 467 U.S. 504, 508, 104 S. Ct. 2543, 81 L. Ed. 2d 437 (1984).