APPENDIX "A"

COPY OF THE DENIAL OF COA UNDER 28 U.S.C. §2253 (C)(2)

FILED: December 17, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6914
(1:16-cr-00104-LMB-1)
(1:18-cv-00884-LMB)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DOUGLAS DURAN CERRITOS, a/k/a Lil Poison, a/k/a Guason

Defendant - Appellant

JUDGMENT

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

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

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6914

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DOUGLAS DURAN CERRITOS, a/k/a Lil Poison, a/k/a Guason,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (1:16-cr-00104-LMB-1; 1:18-cv-00884-LMB)

Submitted: November 25, 2019 Decided: December 17, 2019

Before AGEE, DIAZ, and HARRIS, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Douglas Duran Cerritos, Appellant Pro Se. Daniel Taylor Young, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

PER CURIAM:

Douglas Duran Cerritos seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 (2012) motion. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(B) (2012). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2012). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. *See Buck v. Davis*, 137 S. Ct. 759, 773-74 (2017). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Cerritos has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

APPENDIX "B"

COPY OF THE DENIAL OF MR. CERRITOS' 28 U.S.C. §2255

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

DOUGLAS DURAN CERRITOS,	)	
	)	
Movant,	)	
	)	
v.	)	No. 1:18-cv-884 (LMB)
	)	No. 1:16-cr-104 (LMB)
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

MEMORANDUM OPINION

Douglas Duran Cerritos ("Cerritos" or "movant") has filed a pro se Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Federal Sentence by a Person in Federal Custody ("Motion to Vacate") [Dkt. No. 84], in which he alleges that the Court deprived him of due process by failing sua sponte to order an evaluation of his competence to stand trial and that his counsel was constitutionally ineffective for failing to have him evaluated by a psychiatrist. Both arguments are meritless and for the reasons that follow the Motion to Vacate will be dismissed.

I. BACKGROUND

On June 25, 2015, a grand jury returned a superseding indictment charging Cerritos with two counts of murder in aid of racketeering, in violation of 18 U.S.C. §§ 1959(a)(1) and 2 [Dkt. No. 1]. One count was dismissed [Dkt. No. 23], and Cerritos proceeded to trial by jury on September 19, 2016 on the remaining count [Dkt. No. 46]. After a four-day trial, the jury found Cerritos guilty of one count of murder in aid of racketeering [Dkt. No. 50]. At trial, the government established that Cerritos, who was 18 years old and a member of the Northern Virginia clique of the MS-13 gang, ordered the murder of Gerson Adoni Martinez Aguilar, a

claims that have been waived are therefore procedurally defaulted unless the movant can show cause and actual prejudice. United States v. Frady, 456 U.S. 152, 165-67 (1982). There is an exception to this rule when a defendant brings a claim of constitutionally ineffective assistance of counsel. See United States v. Gastiaburo, 16 F.3d 582, 590 (4th Cir. 1994). Under § 2255(b), a movant is to be granted an evidentiary hearing on his motion "[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." The district judge has discretion to deny without a hearing § 2255 motions which state "only legal conclusions with no supporting factual allegations." See Raines v. United States, 423 F.2d 526, 531 (4th Cir. 1970) (internal quotation marks and citations omitted).

B. Denial of Due Process

Cerritos' argument that the Court deprived him of due process by failing sua sponte to order a psychiatric evaluation or competency hearing is meritless. A trial court shall order such an evaluation or competency hearing on its own motion "if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent." 18 U.S.C. § 4241(a). To be entitled to relief because the trial court failed to order such an evaluation or a competency hearing, Cerritos must establish that the "trial court ignored facts raising a bona fide doubt regarding his competency to stand trial." United States v. Moussaoui, 591 F.3d 263, 291 (4th Cir. 2010) (internal quotation marks and citation omitted). In making this determination, the district court should examine any history of irrational behavior by the defendant, his demeanor throughout the trial, and prior medical opinions on competency. Id. (internal quotation marks and citation omitted).

As to the issue of sanity at the time of the offense, the Supreme Court has held that "when a defendant has made a preliminary showing that his sanity at the time of the offense is likely to be a significant factor at trial, the Constitution requires that a State provide access to a

("When a seemingly lucid and rational client rejects the suggestion of a psychiatric evaluation and there is no indication of a mental or emotional problem, a trial lawyer may reasonably forego insistence upon an examination."). Given that Cerritos has never alleged that he was suffering from a mental impairment at the time the offense was committed or during the trial proceedings and does not even describe a mental health condition, other than his age, in the present Motion to Vacate, counsel was not deficient in failing to order a psychiatric evaluation. Additionally, Cerritos fails to articulate how he satisfies the prejudice prong of the Strickland analysis, as he makes no proffer of what evidence a psychiatric examination would reveal or how this evidence would have been sufficient to lead to a finding of either incompetence to stand trial or insanity. An allegation of inadequate investigation "does not warrant habeas relief absent a proffer of what favorable evidence or testimony would have been produced." Beaver v. Thompson, 93 F.3d 1186, 1195 (4th Cir. 1996) (citation omitted). Accordingly, this ineffective assistance of counsel claim fails.

III. CONCLUSION

Because Cerritos has failed to present any allegations or facts which persuade the Court that an evidentiary hearing would aid the decisional process and has failed to allege any basis for relief, his Motion to Vacate will be dismissed by an appropriate Order to issue with this Memorandum Opinion.

Entered this 25th day of April, 2019.

Alexandria, Virginia

/s/
Leonie M. Brinkema
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

DOUGLAS DURAN CERRITOS,	)	
	)	
Movant,	)	
	)	
v.	)	No. 1:18-cv-884 (LMB)
	)	No. 1:16-cr-104 (LMB)
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

ORDER

For the reasons stated in the accompanying Memorandum Opinion, it is hereby

ORDERED that Douglas Duran Cerritos' Motion to Vacate [Dkt. No. 84] be and is DISMISSED.

To appeal this decision, movant must file a written Notice of Appeal ("NOA") with the Clerk of this Court within 60 days of receipt of this Order. A written NOA is a short statement stating a desire to appeal an order and including the date of the order movant wants to appeal. Movant need not explain the grounds for appeal until so directed by the Court. Failure to file a timely NOA waives the right to appeal this decision. He must also request and obtain a Certificate of Appealability ("COA") from a circuit justice or judge. See 28 U.S.C. § 2253(c)(1)(B); Fed. R. App. P. 22(b). This Court expressly declines to issue such a certificate for the same reasons stated in the Memorandum Opinion accompanying this Order.

The Clerk is directed to enter judgment in the respondent's favor pursuant to Fed. R. Civ. P. 58 and forward a copy of this Order and the accompanying Memorandum Opinion to movant, pro se, and counsel of record.

Entered this 25th day of April, 2019.

Alexandria, Virginia

/s/
Leonie M. Brinkema
United States District Judge

APPENDIX "C"

COPY OF THE DENIAL OF MR. CERRITOS' DIRECT APPEAL

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-4841

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

DOUGLAS DURAN CERRITOS, a/k/a Lil Poison, a/k/a Guason,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (1:16-cr-00104-LMB-1)

Submitted: November 30, 2017 Decided: December 13, 2017

Before AGEE, DIAZ, and HARRIS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Joseph R. Conte, LAW OFFICE OF J.R. CONTE, Washington, D.C.; Charles Jay Soschin, LAW OFFICE OF C.J. SOSCHIN, Washington, D.C.; Dwight E. Crawley, LAW OFFICE OF DWIGHT CRAWLEY, Washington, D.C. for Appellant. Dana J. Boente, United States Attorney, Tobias D. Tobler, Christopher J. Catizone, Assistant United States Attorneys, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

After a jury trial, Douglas Duran Cerritos was convicted of murder in aid of racketeering in violation of 18 U.S.C. § 1959(a)(1), (2) (2012), and received a mandatory life sentence without parole. On appeal, Cerritos contends that the evidence was insufficient to prove beyond a reasonable doubt that he was a member of a criminal enterprise that affected interstate commerce or that he knowingly participated in the murder. Cerritos also contends that his mandatory life sentence without parole violates his Eighth Amendment protection against cruel and unusual punishment. We affirm.

An appellant challenging the sufficiency of the evidence "must overcome a heavy burden." *United States v. Robinson*, 855 F.3d 265, 268 (4th Cir. 2017) (internal quotation marks omitted). After viewing the evidence in the light most favorable to the government, we must decide whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* (internal quotation marks omitted). A "substantially supported verdict" cannot be overturned simply because another verdict "would be preferable." *Id.* (internal quotation marks omitted).

In order to establish murder in aid of a racketeering enterprise under 18 U.S.C. § 1959(a)(1), the government must show:

> (1) that there was an enterprise engaged in racketeering activity;
>
> (2) that the enterprise's activities affected interstate commerce;
>
> (3) that the defendant committed murder; and
>
> (4) that the defendant, in committing murder, acted in response to payment or a promise of payment by the enterprise or "for the purpose of gaining entrance to or maintaining or increasing position in an enterprise."

United States v. Umana, 750 F.3d 320, 334-35 (4th Cir. 2014) (quoting 18 U.S.C. § 1959(a)(1)).

Here, through the testimony of several witnesses, the Government established that Cerritos was a member of the Park View Locos Salvatruchas (PVLS), one of several cliques in northern Virginia belonging to Mara Salvatrucha, or MS-13. Testimony from an expert and former gang members showed that the PVLS was an enterprise that raised money through dues and criminal conduct, especially drug trafficking. The money was wired to incarcerated gang members in El Salvador or used to buy weapons and more drugs. The PVLS, like MS-13's other cliques, held regular meetings, maintained control over members by imposing a strict regimen of rules with harsh and violent repercussions, and took action against rival gang members. The PVLS had a hierarchy, code words, rituals, and rules that it shared in common with MS-13. *See Boyle v. United States*, 556 U.S. 938, 945 (2009) (defining enterprise); *United States v. Turkette*, 452 U.S. 576, 580 (1981) (noting indicia of an enterprise). Additionally, the evidence clearly established that the PVLS engaged in criminal conduct that affected interstate commerce. *United States v. Lopez*, 860 F.3d 201, 208 (4th Cir.), *cert. denied*, __ S. Ct. __, 2017 WL 4168401 (U.S. Oct. 30, 2017) (No. 17-6044) (drug dealing is an inherently economic activity affecting interstate commerce).

We also conclude that the evidence clearly established that Cerritos was a knowing and voluntary participant in the murder. He had a role in the decision to murder

the victim and participated in the planning and execution. Contrary to Cerritos' claim, he was not just a bystander.

Finally, Cerritos claims that his mandatory life sentence without the possibility of parole violates his Eighth Amendment protection against cruel and unusual punishment because the district court could not consider Cerritos' youth or his lack of criminal history as mitigating sentencing factors. Cerritos relies on *Miller v. Alabama*, 567 U.S. 460 (2012), which held that a mandatory life sentence without parole for persons less than 18 years of age at the time of the crime violates the Eighth Amendment. However, Cerritos was 18 years old when he participated in the murder. Furthermore, despite the severity of the sentence, the district court was not constitutionally obligated to consider mitigating sentencing factors. *See Harmelin v. Michigan*, 501 U.S. 957, 994-95 (1991) (holding that sentencing court not required to consider mitigating sentencing factors before imposing mandatory life sentence).

Accordingly, we affirm the conviction and sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

Additional material from this filing is available in the Clerk's Office.