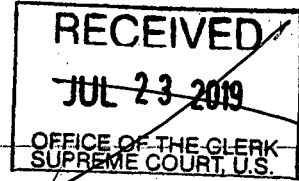


19A87

SUPREME COURT OF THE
UNITED STATES



DAVID CILLA,

DEFENDANT,

v.

UNITED STATES OF AMERICA,

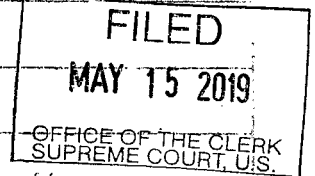
PLAINTIFF.

Appeal Number: 18-13471-4

Motion for an extension

of time to file writ of

certiorari.



Comes now, David Cilla, Pro-Se, before this honorable Court, the Defendant, requesting an extension of time to file his writ of certiorari in the above styled case. - Cilla is requesting a 120 day extension for extenuating circumstances due to him being held in restrictive housing, without access to his legal work and also he will be transferring from U.S.P. Lee in August, 2019. This will hinder his ability to have access to any of his legal work until he reaches his designation, which may be in mid. September. Upon which time he will be able to obtain his legal work only after approximately 2 weeks after arrival when his property will have been mailed to his receiving institution.

Cilla filed an earlier motion and he forgot to attach the lower courts order. Herein is that lower courts order. Cilla apologizes for his human error. Cilla Prays this court grant him an extension.

Certificate of Service

I, David Cilla, Certify under penalty of perjury that the foregoing is true and correct & a copy is being sent to Karen Stewart, for the United States Attorney's office at 500 E. Broward Blvd. Suite 700, Fort Lauderdale, FL 33394, via Pre Paid, First-Class, U.S. mail, on this 15th Day of July, 2019.

x David Cilla

David Cilla 100840-104

U.S.P. Lee

P.O. Box 305

Jonesville, Va. 24263

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-13471-A

DAVID PATRICK CILLA,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

ORDER:

David Cilla is a federal prisoner serving a 180-month sentence after pleading guilty to being a felon in possession of a firearm and ammunition. Cilla moves this Court for a certificate of appealability (“COA”) and appointment of counsel, in the appeal of the denial of his 28 U.S.C. § 2255 motion to vacate.

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). Where the district court has denied a § 2255 motion on the merits, the petitioner must demonstrate that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong,” or that the issues “deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotations omitted).

In Claim 1, Cilla argued that his counsel was ineffective for failing to file a pretrial motion to suppress evidence seized following a search for which consent was unlawfully coerced. Similarly, in Claim 3, Cilla argued that his counsel was ineffective for failing to adequately test the government's case. In Claim 4, Cilla argued that his constitutional rights were violated when key information in the report filed to support the issuance of a search warrant was falsified.

Reasonable jurists would not debate the district court's denial of these claims. As an initial matter, Cilla entered a knowing and voluntary plea after being fully advised of the consequences of pleading guilty. Thus, he waived any pre-plea claims of ineffective assistance not challenging the voluntariness of his plea. *See Tollett v. Henderson*, 411 U.S. 258, 267 (1973) (noting that a defendant's guilty plea made knowingly, voluntarily, and intelligently, with the benefit of competent counsel, waives all nonjurisdictional defects in the proceedings). Alternatively, and to the extent that Cilla argued that his guilty plea was not voluntary, the district court did not err by denying these claims on the merits. With respect to Claims 1 and 3, Cilla's assertion that his counsel had failed to file a motion to suppress and fully investigate his case was belied by his statement at the guilty plea hearing that he was completely satisfied with counsel's preparation and handling of his case. Moreover, Claim 4 correctly was denied, as Cilla affirmed under penalty of perjury that the officers properly obtained a search warrant. No COA is warranted for any of these claims.

In Claim 2, Cilla argued that his constitutional rights were violated after law enforcement officials destroyed an exculpatory DVR recording. Reasonable jurists would not debate the denial of this claim, as Cilla failed to present any objective evidence establishing that such a tape ever existed or that it would have proved his innocence. Moreover, his statement that the search was

improper was belied by his sworn factual proffer, in which Cilla said that he consented to the search. The denial of this claim does not merit a COA.

In Claim 5, Cilla argued that his counsel was ineffective for failing to be present during the plea negotiation stage, instead sending a “fill-in” counsel to assist Cilla in his negotiations with the government over whether he would receive a downward variance for rendering substantial assistance. Reasonable jurists would not debate the district court’s denial of this claim. Cilla stated that he had “fill-in” counsel, so, by his own admission, it appeared that he was represented by counsel throughout this negotiation. Even if his primary counsel was absent during these negotiations, Cilla failed to establish that he was prejudiced, as he was advised, and affirmed that he understood, during his plea hearing that he was not entitled to a substantial assistance departure from the government unless it decided he merited one. Accordingly, no COA is warranted for this claim.

In Claim 6, Cilla alleged that his sentence was invalid based on the U.S. Supreme Court’s decisions in *Descamps v. United States*, 570 U.S. 254 (2013), and *Mathis v. United States*, 136 S. Ct. 2243 (2016). Similarly, in Claim 7 he alleged that his appellate counsel was ineffective for failing to assert the invalidity of his sentence based upon *Mathis*. Reasonable jurists would not debate the district court’s denial of this claim, as this Court has held, post-*Mathis* and post-*Descamps*, that Florida convictions for possession or delivery of cocaine qualify as serious drug offenses. See *United States v. Pridgeon*, 853 F.3d 1192, 1200 (11th Cir.), *cert. denied*, 138 S. Ct. 215 (2017) (citing *United States v. Smith*, 775 F.3d 1262, 1266-68 (11th Cir. 2014)). Therefore, the denial of this claim does not merit a COA.

Cillia's motion for a COA is DENIED, and his motion for appointment of counsel is DENIED AS MOOT.

/s/ Adalberto Jordan
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-13471-A

DAVID PATRICK CILLA,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

Before: JORDAN and NEWSOM, Circuit Judges.

BY THE COURT:

David Patrick Cilla has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's order dated December 19, 2018, denying his motion for a certificate of appealability and motion for appointment of counsel in the appeal of the denial of his habeas corpus petition, 28 U.S.C. § 2254. Because Cilla has not alleged any points of law or fact that this Court overlooked or misapprehended in denying his motion, this motion for reconsideration is DENIED.