PETITIONER'S EVIDENCE (Pet.Ex.) AND APPENDIX (App.)

(pet.Ex.# 1): Petitioner's plea proceeding transcript (August 16,2007)

(Pet.Ex.# 2): Petitioner's plea agreement (August 14,2007)

(Pet.Ex.# 3): Judge Erik Christian's

(Pet.Ex.# 4):

(Pet.Ex.# 5): Prosecutor Attorney Gleen Kirschner's Affidavit (May 4,2009)

(Pet.Ex.# 6): Attorney Paul Signet's Memorandum (February 26,2008)

(Pet.Ex.# 7): Attorney Paul Signet's Affidavit (May 1,2009)

(Pet.Ex.# 8); Damon Thomas' Affidavit (October 5,2016)

(App.# 1): The Court Of Appeals Judgment (April 30,2020)

(App.# 2): Judge Christian's Order (June 20,2018)

(App.# 3): Judge Christian's Order (June 20,2019)

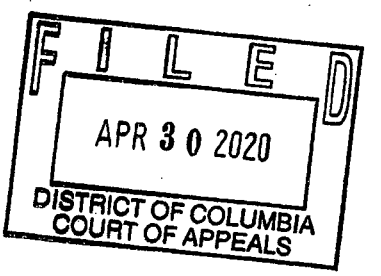
(App.# 4): Judge Christian's Order (August 20,2012)

(App.# 5): The Court of Appeals Judgment (June 22,2011)

(App.# 6): Judge Christian's Order (December 30,2009)

Appendix # 1

District of Columbia
Court of Appeals



No. 19-CO-547

STEVEN ROBINSON
A/K/A MICHAEL MOORE,
Appellant,

v.

2006 CF1 2942

UNITED STATES,
Appellee.

BEFORE: Glickman, Beckwith, and Deahl, Associate Judges.

JUDGMENT

On consideration of appellee's motion and amended motion for summary affirmance, appellee's motion to supplement the record, appellant's cross-motion and motion to supplement the cross-motion for summary reversal, appellee's opposition, appellant's brief and limited appendix, and the record on appeal, it is

ORDERED that appellee's motion to supplement the record is granted and the attachments to the motion are hereby filed as a supplemental record. It is

FURTHER ORDERED that appellee's motion and amended motion for summary affirmance are granted. *See Watson v. United States*, 73 A.3d 130, 131 (D.C. 2013) (summary affirmance is appropriate "as long as the basic facts were uncomplicated and the trial court's ruling rested on a narrow and clear-cut issue of law); *Oliver T. Carr Mgmt., Inc. v. Nat'l Delicatessen, Inc.*, 397 A.2d 914, 915 (D.C. 1979). Appellant fails to establish a tenable basis for relief. This court has previously considered and rejected all of the arguments appellant raises in his brief and motion for summary reversal. *See Robinson v. United States*, No. 12-CO-1619, Mem. Op. & J. (D.C. July 16, 2013); *Robinson v. United States*, No. 10-CO-277, Mem. Op. & J. (D.C. June 22, 2011); *accord Bradley v. United States*, 881 A.2d 640, 645 (D.C., 2005), ("[W]here the original motion was denied on the merits, and affirmed by this court on appeal . . . all the claims [appellant] raised in his first motion, including ineffective assistance of counsel, cannot be raised again in a second (or third or fourth) motion."). It is

FURTHER ORDERED that appellant's motion and supplemental motion for summary reversal are denied as moot. It is

FURTHER ORDERED and ADJUDGED that the order on appeal is affirmed.

ENTERED BY DIRECTION OF THE COURT:

Julio A. Castillo

JULIO A. CASTILLO
Clerk of the Court

Copies mailed to:

Honorable Erik P. Christian

Clerk – Criminal Division

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cml

Appendix #3

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

UNITED STATES OF AMERICA,	:	**Criminal No. 2006 CF1 002942**
	:	
	:	**Judge Erik P. Christian**
v.	:	
	:	**CLOSED FILES**
STEVEN ROBINSON,	:	
(a/k/a Michael Moore)	:	
	:	
DEFENDANT.	:	

ORDER

This matter is before the Court upon consideration of Defendant Steven Robinson's (a/k/a Michael Moore's) "Application Pursuant to Court Order[1] Seeking Leave to File a D.C. Code § 23-110 Motion" filed on July 30, 2018 (the "Application").[2] Attached to the Application is Defendant's proposed § 23-110 Motion.

I. FACTS

On August 16, 2007, Steven Robinson ("Defendant") pled guilty to the charges of second-degree murder while armed and obstruction of justice in D.C. Superior Court. *See* Def.'s signed Waiver of Trial by Jury or Court upon Entry of Guilty Plea, dated Aug. 16, 2007. The Court determined Defendant's guilty plea was "knowing, intelligent, and voluntary." Order, July 31, 2008 at 7. On August 21, 2007, Defendant filed a Motion to Withdraw his Guilty Plea claiming the government coerced him to plead guilty by

[1] This Court issued an Order on November 30, 2015 precluding Defendant from filing any further motions pursuant to D.C. Code § 23-110, D.C. Super. Ct. R. 33, D.C. Super. Ct. Crim. R. 35, or under the *Writ of Coram Nobis* or *Writ of Mandamus*, without first obtaining leave of the Court. *See* Order, Nov. 30, 2015 at 13-14.

[2] Defendant thereafter filed a "Motion to Amend Exhibit #1" (Aug. 16, 2018) and a "Memorandum of Law" (Dec. 26, 2018) which supplement the Application.

threatening to prosecute his wife if he did not do so. Def.'s Mot., Aug. 21, 2007. The Court denied Defendant's motion and sentenced him to thirty-five years imprisonment on October 19, 2007. Order, Oct. 19, 2007. Once more, Defendant moved to withdraw his guilty plea on February 12, 2008. Def.'s Mot., Feb. 12, 2008. Defendant's request to withdraw his guilty plea was denied by Court Order dated July 31, 2008. Order, July 31, 2008.

On October 9, 2008, Defendant filed a Motion Pursuant to D.C. Code § 23-110, and alleged three reasons for his sentence to be vacated and set aside. *See* Def.'s Mot., Oct. 9, 2008. First, Defendant claimed his plea was obtained by threats to prosecute his wife. Def.'s Mot., Oct. 9, 2008 at unnumbered pg. 2-3. Second, Defendant asserted his plea did not comport with D.C. Super. Ct. R. Crim. P. 11's requirement that it be offered knowingly and voluntarily. Def.'s Mot., Oct. 9, 2008 at unnumbered pg. 3-5. Third, Defendant claimed ineffective assistance by trial counsel, Paul Signet, because counsel allegedly failed to interview witnesses, urged Defendant to plead guilty, and failed to file an appeal of the denial of his D.C. Super. Ct. R. Crim. P. 32 (e) Motion. Def.'s Mot., Oct. 9, 2008 at unnumbered pg. 5-8.

The Court granted Defendant a hearing on his October 9, 2008 D.C. Code § 23-110 motion, and appointed Archie Nichols as Defendant's post-conviction legal counsel. *See* Order, March 19, 2009. The hearing was held on September 10, 2009. *See* Order, Nov. 30, 2015 at 3. Following the hearing, the Court issued an Order on December 30, 2009, finding that Attorney Signet's representation had been effective. *See* Order, Dec. 30, 2009 (filed in CourtView January 8, 2010). Defendant filed a direct appeal, and the

D.C. Court of Appeals affirmed the Order on June 22, 2011. *Robinson v. United States*, No. 10-CO-277, slip op. (D.C. June 22, 2011).

Defendant filed a second D.C. Code § 23-110 motion on May 7, 2012. Def.'s Mot., May 7, 2012. Therein, Defendant asserted the representation provided by his trial and post-conviction counsel, Signet and Nichols, respectively, had been ineffective. *See* Def.'s Mot., May 7, 2012 at 5-7. The Court denied this D.C. Code § 23-110 motion on August 20, 2012. Order, Aug. 12, 2012. Defendant appealed the Court's decision, but it was affirmed by the Court of Appeals on July 16, 2013. *Robinson v. United States*, No. 12-CO-1619, slip op. (D.C. July 16, 2013).

Following these motions and appeals, on October 17, 2013, Defendant filed a Motion for Reconsideration of D.C. Code § 23-110. Def.'s Mot., Oct. 17, 2013. Defendant also filed a Motion for *Writ of Error Coram Nobis* on January 8, 2014. Def.'s Mot., Jan. 8, 2014. Additionally, Defendant filed a third D.C. Code § 23-110 motion on July 25, 2014. Def.'s Mot., July 25, 2014. In each of these motions, Defendant raised claims that had been previously considered and resolved by the Court or failed to include evidentiary support, thus requiring the Court to expend unnecessary and extensive judicial resources. *See* Order, Nov. 30, 2015 at 6-11, 13. As a result, the Court precluded Defendant from filing any further motions pursuant to D.C. Code § 23-110, D.C. Super. Ct. R. 33, D.C. Super. Ct. Crim. R.35, or under the *Writ of Coram Nobis* or *Writ of Mandamus*, without first obtaining leave of the Court. *See* Order, Nov. 30, 2015 at 13-14. Similarly, on November 4, 2016, the D.C. Court of Appeals ordered Defendant: "shall not file any future *pro se* appeals stemming from Superior Court No. 2006-CF1-

2942 without first obtaining leave of this court." *See Robinson v. United States*, No. 15-CO-1364, slip op. (D.C. Nov. 4, 2016).

II. SCOPE OF REVIEW

It is well-settled that "[t]he court has the discretion and the power to restrict a litigant who abuses the judicial system." *Ibrahim v. District of Columbia*, 755 A.2d 392, 394 (D.C. 2000); *see, also, Corley v. United States*, 741 A.2d 1029, 1029-30 (D.C. 1999) (inmate was enjoined from filing any prospective submission without leave of court after launching "innumerable unsuccessful attacks" on his convictions). Because frivolous claims utilize courts' limited resources, a court may employ injunctive remedies to protect the integrity of the courts and the orderly administration of justice. *See Little v. United States*, No. 18-CO-640, slip op. (D.C. June 5, 2019); *Ibrahim*, 755 A.2d at 393; *Corley*, 741 A.2d at 1030. Given the extreme nature of this remedy, however, a court must make a showing of a pattern of harassment, looking to both the number and content of the filings, before resorting to this measure. *See Little*, slip op. (D.C. June 5, 2019).

III. ANALYSIS

In *Ibrahim*, the D.C. Court of Appeals affirmed the lower court's decision enjoining a defendant from filing subsequent claims without first obtaining leave of court after finding his 25 lawsuits filed within a 10-year period to be frivolous and an abuse of the judicial system. *Ibrahim*, 755 A.2d at 393. As in *Ibrahim*, this Court finds Defendant's history of filings to be similarly frivolous and abusive. *See id.* Over the span of eleven years, Defendant has filed over 38 motions, notices, petitions, and applications, most of which were denied on the merits or for being duplicative and unnecessary. *See* Order, June 13, 2018 at 4, 7; Order, Nov. 30, 2015 at 13-16.

24. Motion to Deny the Government's Motion for an Extension of Time to Respond (filed March 10, 2015; denied November 30, 2015);
25. Motion for Notice of Status (filed June 5, 2015; denied November 30, 2015);
26. Notice of Error Motion (filed August 4, 2015; denied November 30, 2015);
27. Motion to Expedite Proceeding (filed August 25, 2014; denied November 30, 2015);
28. Motion to Show Cause (filed November 10, 2015; denied November 30, 2015);
29. Motion for Reconsideration (filed December 29, 2015; denied January 8, 2016);
30. Supplemental Motion for Reconsideration (filed January 19, 2016);
31. Formal Complaint for Recuse (filed February 2, 2016 with correspondence);
32. Notice of Appeal (filed December 15, 2015; affirmed November 7, 2016);
33. Defendant's Memorandum of Law (filed October 3, 2017);
34. Application Seeking Leave to File D.C. Code § 23-110 Motion (filed August 17, 2017; denied June 13, 2018);
35. Application Pursuant to Court Order Seeking Leave to File a Notice of Appeal (filed June 26, 2018; granted June 20th, 2019);
36. Application Pursuant to Court Order Seeking Leave to File a D.C. Code § 23-110 Motion (filed July 30, 2018);
37. Motion to Amend Exhibit #1 (filed August 21, 2018); and
38. Memorandum of Law Supporting Application Seeking Leave to File a D.C. Code § 23-110 Motion (filed December 26, 2018).

Looking to both the number and content of the Defendant's eleven years of filings, there is a pattern of harassment which includes Defendant's present "Application

While the Court does not seek to eliminate Defendant's ability to present legitimate claims or new evidence, the Court cannot continue to review duplicative motions. *See* Order, Nov. 30, 2015 at 13. Thus, if Defendant wishes the Court to consider the merits of the § 23-110 Motion attached to his pending Application or to file a new motion in the future, he must specifically certify that the "claim is made in good faith, is not frivolous, and has not been previously disposed of on the merits." *See Ibrahim*, 755 A.2d at 393.

IV. CONCLUSION

Defendant's Application has failed to show any constitutional infirmities, which must be addressed pursuant to D.C. Code § 23-110. Defendant's Application fails to present any new evidence and relies on arguments previously considered and rejected by the Court. In short, Defendant's Application seeking leave to file an attached D.C. Code § 23-110 Motion is without merit. Because Defendant has made a practice of filing duplicative, successive motions, taxing the Court's judicial resources, the Court again finds that Defendant has abused the Court's processes and must be limited from making future filings without leave of Court.

Accordingly, this 20th day of June 2019, it is hereby

ORDERED, that Defendant Steven Robinson's (a/k/a Michael Moore's) Application Pursuant to Court Order Seeking Leave to File a D.C. Code § 23-110 Motion is **DENIED**, and it is further

ORDERED, that Defendant may amend his (1) "Application Pursuant to Court Order Seeking Leave to File a D.C. Code § 23-110 Motion" filed on July 30 2018, (2) "Motion to Amend Exhibit #1" filed August 16, 2018, and (3) "Memorandum of Law"

filed December 26, 2018" provided he is able to specifically include Defendant's certification as to each document that: (1) the claim is made in good faith; (2) the claim is not frivolous; and (3) the claim has not been previously disposed of on the merits; and it is further

ORDERED, that Defendant shall not file any further *pro se* post-conviction motions without first obtaining leave of this Court, which includes Defendant's certification as to each document that: (1) the claim is made in good faith; (2) the claim is not frivolous; and (3) the claim has not been previously disposed of on the merits.

SO ORDERED.

Erik P. Christian

ERIK P. CHRISTIAN
J U D G E
(Signed-in-Chambers)

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555 Fourth Street, NW
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Via CaseFileXpress

Appendix #4

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

UNITED STATES OF AMERICA,	**Criminal No. 2006 CF1 002942**
	Judge Erik P. Christian
v.	
	CLOSED FILES
STEVEN T. ROBINSON, a.k.a. MICHAEL MOORE,	
DEFENDANT.	

ORDER

This matter is before the Court upon consideration of Defendant Steven T. Robinson's[1] Motion to Vacate Conviction and Sentence Pursuant to § 23 D.C. Code Section 110. The Motion is denied.

I. BACKGROUND

On December 31, 2005, 15-year-old John Allen, Jr., was shot and murdered. Defendant Steven T. Robinson was arrested and charged with murder on February 14, 2006. On September 12, 2006, Defendant and Robert Kelsey, Jr. ("Kelsey"), were jointly indicted for John Allen's murder. Defendant was charged with Conspiracy, First Degree Murder While Armed, Assault with a Dangerous Weapon, Possession of a Firearm During a Crime of Violence, Unauthorized Use of a Vehicle, and Obstruction of Justice. On August 10, 2007, Kelsey pled guilty to assault with the intent to kill, accessory after the fact, and unauthorized use of a vehicle.

[1] Steven T. Robinson is also known as Michael Moore.

Court found that Mr. Signet's representation was "complete and thorough." Defendant appealed, but the decision of the trial court was affirmed on June 22, 2011. On May 7, 2012, ten months after his appeal was denied, Defendant filed the instant § 23-110 Motion, asserting that his appointed counsel at the § 23-110 Hearing was ineffective.

II. STANDARD OF REVIEW

"A prisoner in the custody under sentence of the Superior Court claiming the right to be released upon the ground that (1) the sentence was imposed in violation of the Constitution of the United States or the law of the District of Columbia . . . may move the court to vacate, set aside, or correct the sentence." D.C. Code § 23-110(a) (2012). Unless the motion, files, and records from the case conclusively show that a prisoner is not entitled to relief, the court shall hold a hearing to determine the issues relating to the sentence of the prisoner. *Id.* § 23-110(c). There is a statutory presumption in favor of a hearing. *Metts v. United States*, 877 A.2d 113, 118-19 (D.C. 2005). However, no hearing is required where the defendant's motion consists of "(1) vague and conclusory allegations, (2) palpably incredible claims, or (3) allegations that would merit no relief even if true." *Id.* at 119 (quoting *Lopez v. United States*, 801 A.2d 39, 42 (D.C. 2002)).

Defendant alleges that he was denied his right to effective assistance of counsel during the § 23-110 Hearing. However, Defendant's claims are barred because there is no constitutional right to counsel in post-conviction proceedings. *In re R.E.S.*, 978 A.2d 182, 190 n.6 (D.C. 2011) (quoting *Coleman v. Thompson*, 501 U.S. 722, 752 (1991)). There is no statutory basis for an unqualified right to the appointment of an attorney. *Jenkins v. United States*, 548 A.2d 102, 104 (D.C. 1988). Therefore, Defendant's claims of ineffective assistance of counsel must fail because *Strickland v. Washington*, which

applies to the constitutional right to counsel, has not been adopted as a standard when evaluating effectiveness of counsel under a statutory right.[2] *See United States v. Hamid*, 461 A.2d 1043, 1045-46 (D.C. 1983).

However, while the Court could deny Defendant's motion because there is no constitutional right to counsel, in fairness to Defendant, the Court will consider Defendant's claims under the *Strickland* standard. "In order to demonstrate ineffective assistance of counsel, the appellant must show (1) that his trial counsel's performance was constitutionally deficient, and (2) 'that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Mozee v. United States*, 963 A.2d 151, 165 (D.C. 2009) (quoting *Strickland v. Washington*, 466 U.S. 668, 694 (1984)). To find a counsel's performance constitutionally deficient, there is "a strong presumption that counsel's conduct falls within the wide range of professional assistance." *Ready v. United States*, 620 A.2d 233, 234 (D.C. 1993) (quoting *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). In order to determine prejudice, "the court must find that appellant has shown there is reasonable probability that, but for counsel's unprofessional errors, the result [at trial] would have been different." *Ready v. United States*, 620 A.2d 233, 234 (D.C. 1993) (quoting *Strickland*, 466 U.S. 694). For efficacy reasons, courts focus on the second prong of the *Strickland* test because, "without prejudice there can be no ineffective assistance." *Griffin v. United States*, 598 A.2d 1174, 1176 (D.C. 1991).

---

[2] The Court recognized a statutory right to counsel "from such person's initial appearance before the court through appeals, including ancillary matters appropriate to the proceedings." *In re R.E.S.*, 978 A.2d at 190 (quoting D.C. Code § 11-2603 (2001)). This includes appellate counsel researching ineffective assistance by the trial counsel during the pendency of an appeal, and filing an appropriate motion under D.C. Code § 23-110. *Hardy v. United States*, 988 A.2d 950, 960 (D.C. 2010). A counsel must be appointed when a hearing is held to review a motion filed under D.C. Code § 23-110. *Brown v. United States*, 656 A.2d 1133, 1135-36 (D.C. 1995). In this matter, Defendant had a statutory right to counsel based on D.C. Code § 11-2603, and one was appointed for him.

III. ANALYSIS

Defendant claims that Attorney Nichols, who represented Defendant during the § 23-110 Hearing, was ineffective. The Court finds that Mr. Nichols was not constitutionally deficient and, even if he were, Defendant has not been prejudiced.

1. Attorney Nichols and Potential Rule 11 Violations

Defendant believes that his guilty plea was coerced and, therefore, ineffective because of a Rule 11 violation, and that Mr. Nichols failed to present evidence of this coercion to the Court at his § 23-110 Hearing. This Court has found on multiple occasions that Defendant may not revoke his guilty plea, and that there was no Rule 11 violation. (Order, July 31, 2008.) (Oral Order, Oct. 19, 2007.) The Court considered evidence of coercion and believed it insufficient to find the plea ineffective. The Court of Appeals also found that Defendant waived his right to challenge his plea of guilty. *Robinson v. United States*, No. 10-CO-277 (D.C. June 22, 2011). The Court found that his claim was barred because he failed to raise them in the direct appeal of his sentence, and that he failed to challenge the plea deal in his first § 23-110 proceeding. *Id.* Therefore, it would have been improbable, and likely impossible, for Mr. Nichols to succeed on this claim.

Further, the Court considered this argument, heard evidence and had findings presented, and ultimately rejected this theory on prior occasions. Defendant fails to present any new evidence which Mr. Nichols could have presented at the § 23-110 Hearing that would have affected the outcome. To claim that Mr. Nichols failed in some way to bring this to the attention of the Court is simply wrong. The Court finds that Mr. Nichols was not deficient because he presented evidence of the plea agreement both at

the hearing and in findings of fact. Even if Mr. Nichols were deficient in some way, there has been no demonstrated prejudice because the evidence supporting Defendant's contention was heard and rejected on multiple occasions. Defendant's argument has been rejected twice before, and Defendant has offered no new evidence which would now impact the Court's decision. Any assertion otherwise, without new evidence, is palpably incredible. Therefore, because there is no allegation that would warrant a hearing pursuant to § 23-110, the motion is denied.

2. Attorney Nichols and Evidence of Attorney Signet's Ineffectiveness

Second, Defendant believes that Mr. Nichols failed to present evidence showing Attorney Signet was ineffective. In particular, Defendant argues that this evidence would show that Mr. Signet improperly encouraged Defendant to plead guilty by telling him (a) his wife would be prosecuted for obstruction of justice; and (b) Kelsey would testify against him as part of Kelsey's plea agreement. However, these are conclusory claims that were already considered and rejected by the Court. Defendant fails to present any additional evidence which the Court could consider that was not already before the Court. Mr. Nichols presented to the Court allegations that Mr. Signet was ineffective during the plea negotiations, and the Court rejected Mr. Nichols's argument. (Order, Dec. 30, 2009.) The Court found that Mr. Signet had been thorough and effective, and that the plea was not coerced. (*Id.*) Defendant offered no new evidence to support his theory. Mr. Nichols could not be ineffective in presenting evidence when Defendant himself cannot present any new evidence which would show Mr. Signet's ineffectiveness. The Court finds that Mr. Nichols was not deficient because he presented evidence of Mr. Signet's ineffectiveness at the § 23-110 Hearing. Even if Mr. Nichols were deficient in

some way, there has been no demonstrated prejudice because the evidence supporting Defendant's contention was received and rejected. Therefore, because there is no allegation that would warrant a hearing pursuant to § 23-110, the motion is denied.

3. Attorney Nichols and Kelsey's Potential Testimony

Defendant claims that Mr. Nichols was ineffective because he failed to call Kelsey as a witness. Defendant presents extensive evidence, including an affidavit from Kelsey, that he believes supports his contention that Kelsey would be a favorable witness. The Court has already rejected Defendant's proffer. (Order, Jan. 8, 2010.) Neither Mr. Nichols nor Mr. Signet was deficient because the Court found that Kelsey raised his Fifth Amendment privilege against self incrimination. (*Id.*) Kelsey was at the § 23-110 Hearing, and the Court found that Kelsey again asserted his privilege. (*Id.*) Messrs. Signet and Nichols attempted to question him in the past, but failed. (*Id.*) The Court already found that the defense counsel's efforts were complete and thorough with regards to questioning Kelsey. (*Id.*) Kelsey now coming forward and saying he would testify is irrelevant: Defendant claims his attorneys were ineffective, but Messrs. Signet and Nichols were not deficient for failing to call Kelsey as a witness because Kelsey refused to be interviewed until long after trial. Kelsey's failure to come forward sooner should not be imputed as ineffectiveness by Messrs. Signet and Nichols. The Court also notes that, when Mr. Nichols heard that Kelsey might be willing to testify, he notified the Court. (Notice, Nov. 4, 2009.) The Court's Order took this notice into consideration. The Court finds that Mr. Nichols was not deficient because his failure to call Kelsey as a witness was sound strategy considering Kelsey made it impossible for Mr. Nichols to prepare for him as a witness.

Even if Mr. Nichols were deficient in some way, there has been no demonstrated prejudice because Defendant failed to show Kelsey's testimony would have affected the outcome of the § 23-110 Hearing. In order to determine prejudice, "the court must find that appellant has shown there is reasonable probability that, but for counsel's unprofessional errors, the result [at trial] would have been different." *Ready v. United States*, 620 A.2d 233, 234 (D.C. 1993) (quoting *Strickland v. Washington*, 466 U.S. 668, 694 (1984)). In *Ready*, the Court held that a defense counsel's failure to call a witness that the defendant requested was too speculative to warrant a hearing. 620 A.2d at 234. The defendant did not show how the failure to call the witness led to prejudice, instead relying on mere belief that the witness would be of help to his case. *Id.* at 234-35. In this case, just as in *Ready*, Defendant believes that Kelsey would have testified in a way that would have affected the outcome of the § 23-110 Hearing. Mr. Nichols could not reasonably call Kelsey as a witness because Kelsey had invoked his Fifth Amendment privilege. Further, even if Kelsey chose to waive his privilege on the day of the hearing, Mr. Nichols could not reasonably be expected to call Kelsey to the stand. Kelsey was a conflicted witness involved in murder, and his testimony may have done more to harm Defendant's case then help. Kelsey's refusal to testify at trial, and refusal to be investigated by Messrs. Signet and Nichols, indicated that, if Mr. Nichols had put Kelsey on the stand, Mr. Nichols would have been unprepared for what may happen. This could have been disastrous: the government could have impeached Kelsey and rendered his testimony worthless, and possibly even implicated Defendant further. Just as in *Ready*, the Court finds that Kelsey's theoretical testimony is too speculative to find prejudice.

Therefore, because there is no allegation that would warrant a hearing pursuant to § 23-110, the motion is denied.

IV. CONCLUSION

Defendant has failed to show any constitutional infirmaries which must be addressed at a § 23-110 hearing. Many of the grievances are vague and conclusory, while others are palpably incredible or, even if true, would merit no relief. *See Lopez*, 801 A.2d at 42.

It is **THEREFORE** by this Court this 18 day of August, 2012,

ORDERED, that Defendant Steven T. Robinson's Motion to Vacate Conviction and Sentence Pursuant to § 23 D.C. Code Section 110 is **DENIED**.

SO ORDERED.

ERIK P. CHRISTIAN
JUDGE
(Signed-in-Chambers)

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Appendix # 5

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 10-CO-277

STEVEN T. ROBINSON,
A/K/A MICHAEL MOORE,
APPELLANT,

v.

No. CF1-2942-06

UNITED STATES,
APPELLEE.

Appeal from the Superior Court of the
District of Columbia,
Criminal Division

(Hon. Erik P. Christian, Trial Judge)

(Submitted March 9, 2011 Decided June 22, 2011)

Before RUIZ, GLICKMAN, and THOMPSON, *Associate Judges*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: This is an appeal from the denial of a § 23-110 motion to set aside appellant's criminal convictions for murder and obstruction of justice. Appellant's sole claim is that the trial court should have permitted him to withdraw his guilty plea to those offenses because he tendered it in the mistaken belief that the government would prosecute his wife on obstruction of justice charges, "during his murder trial as opposed to in a separate proceeding," if he rejected the government's plea offer.[1] We conclude that appellant has waived this claim.

I.

Appellant originally was charged by indictment with first-degree murder while armed and related offenses committed in connection with the shooting of John Allen, Jr. On August 16, 2007, the day of trial, appellant pleaded guilty to one count of second-degree murder while armed and one count of obstruction of justice. (Appellant had not (yet) been indicted on the obstruction charge; he waived indictment on that count as part of his plea.) In exchange, the government dismissed the other charges against appellant and agreed not to prosecute his wife for her obstructionist actions relating to appellant's case. After conducting a thorough Rule 11 inquiry, the trial court found that appellant tendered his plea knowingly, intelligently, and voluntarily.

[1] Brief for Appellant at 5.

Five days later, however, on August 21, 2007, appellant moved to withdraw his guilty plea, claiming that it was coerced by the government's threat to prosecute his wife. The trial court denied the motion and sentenced appellant on October 19, 2007. (The court set forth its reasons in a written order issued on July 31, 2008.) Appellant filed an untimely notice of appeal in March 2008, together with a motion for leave to file out of time.[2] This court dismissed the appeal as untimely but permitted appellant to move to reinstate it in the event the Superior Court granted him leave to file out of time. Appellant did not pursue that avenue of relief. Instead, in October 2008, he filed the instant § 23-110 motion, and thereafter sent a letter to the Clerk of the Superior Court asking that his motion for leave to file his appeal out of time be dismissed due to the fact that the "matter was never ruled upon."

Appellant raised several new grounds for relief in his § 23-110 motion, including ineffective assistance of counsel, and he reasserted his claim that the prosecutor coerced him into pleading guilty by threatening to prosecute his wife for obstruction of justice. The latter claim was omitted, however, from the statement of issues to be addressed at the hearing on the § 23-110 motion, which the government had prepared after discussions with appellant's attorney handling the motion. The only issues identified in that statement related to whether appellant's trial counsel had rendered ineffective assistance – specifically, in failing to investigate and discover exculpatory evidence, and in failing to perfect a timely appeal from the denial of appellant's plea withdrawal motion. At the outset of the September 10, 2009, hearing on the § 23-110 motion, the trial court asked appellant's counsel whether the government's statement of issues was "consistent" with his "understanding of the outline and the boundaries of th[e] hearing." Appellant's counsel responded in the affirmative, explaining that appellant "understands that the Court has previously ruled on whether [his] plea can be withdrawn." Thus, the focus of the ensuing evidentiary hearing, at which appellant testified, was on the alleged deficiencies in the performance of appellant's trial counsel and their prejudicial impact– not on whether the trial court should have granted appellant's motion to withdraw his plea because it was involuntary.

In the course of his testimony at the hearing, appellant professed his innocence and blamed his decision to plead guilty on his defense counsel's deficient investigation and inadequate advice. With respect to the threatened prosecution of his wife for obstruction of justice, appellant testified that on the morning trial was set to start, he did not see his wife and asked his attorney where she was. His attorney allegedly told him, erroneously, that she "may" have been arrested already because appellant had rejected the government's plea offer. Appellant claimed he then agreed to plead guilty, despite his innocence, in order to protect his wife from prosecution, and that he "never" would have pleaded guilty "[h]ad my lawyer not informed me that the Government arrested my wife because I denied the Government plea offer." Appellant further asserted he would not have taken the plea had he been informed that the obstruction charges against his wife (and himself) would have been brought in a proceeding *separate from* – i.e., subsequent to – his prosecution for murder.

[2] Appellant claimed that he had deposited a timely notice of appeal in the mail depository at the D.C. Jail (which was either mis-addressed or somehow went awry), and further that he had asked his attorney to note a timely appeal.

At the conclusion of the § 23-110 hearing, appellant's counsel argued trial counsel's ineffectiveness. Among other things, he blamed trial counsel for misleading appellant into thinking his wife had been arrested; contended that counsel "improperly represented" appellant "because he was not given an explanation as to the probable outcomes with his wife threatening to be charged with an obstruction of justice"; and argued that "entering a plea to prevent her from being prosecuted was not a plum for [appellant]," in essence because the government would have been unlikely to pursue the obstruction charges if it succeeded at trial in convicting appellant of murder. Counsel reiterated these and other claims of ineffective assistance in proposed findings of fact and conclusions of law.

The trial court denied the § 23-110 motion in a written order on December 30, 2009. The court found "no support for [appellant's] claims alleging ineffective assistance of counsel." To the contrary, the court found that trial counsel's efforts "were complete and thorough."

II.

Appellant does not argue that the trial court erred in rejecting his ineffective assistance of counsel claims. Indeed, appellant's brief barely mentions those claims. Instead, the sole claim appellant raises on appeal is that the trial court erred in denying his motion to withdraw his guilty plea prior to sentencing.[3] In support of that contention, appellant argues that the government coerced his guilty plea by threatening to prosecute his wife and failing to apprise him of the timing of the charges against her, and that the trial court did not adequately probe and discover why he decided to plead guilty in its Rule 11 inquiry.

Appellant waived these arguments by declining to pursue them in a direct appeal following his sentencing and then expressly abandoning them in the § 23-110 proceedings below.[4] And by failing to argue his ineffective assistance claim in his brief on appeal, appellant has abandoned that claim as well.[5] Appellant therefore is not entitled to relief in this court.

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[3] Brief for Appellant at 5-6.

[4] *See United States v. Zubia-Torres*, 550 F.3d 1202, 1205 (10th Cir. 2008) ("We typically find waiver in cases where a party has invited the error that it now seeks to challenge, or where a party attempts to reassert an argument that it previously raised and abandoned below."). We also could find a forfeiture of the claim in this case. *See D.D. v. M.T.*, 550 A.2d 37, 48 (D.C. 1988) ("Questions not properly raised and preserved during the proceedings under examination, and points not asserted with sufficient precision to indicate distinctly the party's thesis, will normally be spurned on appeal." (quoting *Miller v. Avirom*, 127 U.S. App. D.C. 367, 369-70, 384 F.2d 319, 321-22 (1967))).

[5] Appellant's mere allusion to his counsel's ineffectiveness, devoid of any supporting argumentation, does not preserve the issue for our consideration. *See Bardoff v. United States*, 628

(continued...)

For the foregoing reasons, the judgment of the Superior Court denying appellant's motion to set aside his conviction is hereby affirmed.

ENTERED BY DIRECTION OF THE COURT:

Julio A. Castillo

JULIO A. CASTILLO
Clerk of the Court

Copies to:

Honorable Erik P. Christian

Kevin McCants, Esquire
1100 New York Avenue, NW
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Roy W. McLeese, III, Esquire
Assistant United States Attorney

A true Copy
Test:

Julio Castillo
Clerk of the District of Columbia Court of Appeals

BY Rosa W. Lee
DEPUTY CLERK

Julio Castillo
Clerk of the District of Columbia
Court of Appeals

[5](...continued)
A.2d 86, 90 n.8 (D.C. 1993) (citing D.C. App. R. 28(a)(5)).

Appendix # 6

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION - FELONY BRANCH

UNITED STATES OF AMERICA	:	Case No. 2006 CF1 002942
	:	
v.	:	JUDGE ERIK P. CHRISTIAN
	:	
STEVEN ROBINSON A.K.A. MICHAEL MOORE	:	Closed

ORDER

This matter comes before the Court upon defendant's November 17, 2009 letter and treated as a pro se Motion to Vacate, Set Aside, or Correct Sentence Pursuant to D.C. Code § 23-110. Upon consideration of the defendant's Motion, the Motion is denied for the reasons set forth herein.

On October 9, 2008, the defendant filed a pro se "Motion to Vacate, Set Aside, or Correct Sentence" pursuant D.C. Code § 23-110 alleging ineffective assistance of counsel. An evidentiary hearing was held on September 10, 2009 in which defense witnesses provided testimony. One defense witness, Mr. Robert Kelsey, was present for the hearing but asserted his Fifth Amendment privilege against self-incrimination. Moreover, defense counsel testified that his predecessor attempted to interview co-defendant Robert Kelsey. Those efforts were thwarted by Mr. Kelsey's counsel however.

A defendant's motion claiming ineffective assistance of counsel, must meet the test established in Strickland v. Washington, 466 U.S. 668 (1984). The standard governing claims of ineffective assistance of counsel requires the defendant to show that counsel's performance was deficient and that the deficient performance prejudiced the defense. This requires a showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Strickland v. Washington, 466

U.S. 668, 687 (1984). "The proper measure of attorney performance remains simply reasonableness under prevailing professional norms." Id., at 688. The defendant must show that counsel's representation fell below an objective standard of reasonableness in light of all the circumstances. Id.

This Court finds no support for defendant's claims alleging ineffective assistance of counsel. Robert Kelsey was present for the September 10, 2009 hearing but asserted his Fifth Amendment privilege against self-incrimination. Defense counsel testified that his predecessor attempted to interview Mr. Kelsey however those efforts were thwarted by Mr. Kelsey's counsel. Based upon this testimony, this Court finds that defense counsel's efforts were complete and thorough.

Accordingly, defendant's claim of ineffective assistance of counsel is denied as unsupported.

THEREFORE, it is this 30 day of December, 2009,

ORDERED, that the defendant's pro se Motion to Vacate, Set Aside, or Correct Sentence pursuant to D.C. Code § 23-110 is **DENIED**.

SO ORDERED.

ERIK P. CHRISTIAN
Judge
(Signed in Chambers)