"Appx. B"

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No 20-11259-D

RODANE LAMB,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

Before: WILSON and NEWSOM, Circuit Judges.

BY THE COURT:

Rodane Lamb has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's August 3, 2020, order denying a certificate of appealability and leave to proceed *in forma pauperis* in his appeal from the denial of his 28 U.S.C. § 2255 motion to vacate. Upon review, Lamb's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

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FOR THE ELEVENTH CIRCUIT

No. 20-11259-D

RODANE LAMB,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

ORDER:

Appellant's motion for a certificate of appealability, as construed from his notice of appeal, is DENIED because he has failed to make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2). His motion for leave to proceed *in forma pauperis* on appeal is DENIED AS MOOT.

/s/ Charles R. Wilson
UNITED STATES CIRCUIT JUDGE

Appx. "A"

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

RODANE LAMB,

Petitioner,

v.

Case No: 5:18-cv-438-Oc-41PRL
(5:15-cr-41-Oc-37PRL-5)

UNITED STATES OF AMERICA,

Respondent.
_____/

ORDER

THIS CAUSE is before the Court on Petitioner Rodane Lamb's Motion to Vacate, Set Aside, or Correct Sentence ("Motion to Vacate," Doc. 1) filed under 28 U.S.C. § 2255 and Petitioner's Memorandum of Law ("Memorandum," Doc. 2). Respondent filed a Response to the Motion to Vacate ("Response," Doc. 7) in compliance with this Court's instruction. Petitioner filed a Reply to the Response ("Reply," Doc. 11).

Petitioner asserts seven grounds for relief. For the following reasons, the Motion to Vacate will be denied.

I. PROCEDURAL HISTORY

The Assistant United States Attorney for the Middle District of Florida, Ocala Division, charged Petitioner by Second Superseding Indictment with conspiring to distribute five or more kilograms of cocaine (Count One) in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), and 846. (Criminal Case No. 5:15-cr-41-Oc-37PRL, Doc. 124).[1] On September 28, 2016, a jury convicted Petitioner as charged. (Criminal Case, Doc. 241). The Court sentenced Petitioner to a 144-month

[1] Criminal Case No. 5:15-cr-41-Oc-37PRL will be referred to as "Criminal Case."

term of imprisonment. (Criminal Case, Doc. 317). Petitioner appealed his conviction and sentence to the United States Court of Appeals for the Eleventh Circuit ("Eleventh Circuit") who affirmed on August 21, 2017. (Criminal Case, Doc. 361); *United States v. Lamb*, 704 F. App'x 845 (11th Cir. 2017). Petitioner did not file a petition for writ of certiorari with the United States Supreme Court.

II. LEGAL STANDARD

Section 2255 allows federal prisoners to obtain collateral relief under limited circumstances.

> A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

28 U.S.C. § 2255(a). To obtain this relief, a petitioner must "clear a significantly higher hurdle than would exist on direct appeal." *United States v. Frady*, 456 U.S. 152, 166 (1982) (rejecting the plain error standard as not sufficiently deferential to a final judgment). "[I]f the petitioner 'alleges facts that, if true, would entitle him to relief, then the district court should order an evidentiary hearing and rule on the merits of his claim.'" *Aron v. United States*, 291 F.3d 708, 714–15 (11th Cir.]2002) (quoting *Holmes v. United States*, 876 F.2d 1545, 1552 (11th Cir. 1989)). In the event a claim is meritorious, the court "shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate" 28 U.S.C. § 2255(b).

The Supreme Court of the United States in *Strickland v. Washington*, 466 U.S. 688 (1984), established a two-part test for determining whether a convicted person is entitled to relief on the

ground that his counsel rendered ineffective assistance: (1) whether counsel's performance was deficient and "fell below an objective standard of reasonableness," and (2) whether the deficient performance prejudiced the defense. *Id.* at 687-88. A court must adhere to a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. *Id.* at 689-90. "Thus, a court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." *Id.* at 690; *Gates v. Zant*, 863 F.2d 1492, 1497 (11th Cir. 1989).

As observed by the Eleventh Circuit Court of Appeals, the test for ineffective assistance of counsel:

> has nothing to do with what the best lawyers would have done. Nor is the test even what most good lawyers would have done. We ask only whether some reasonable lawyer at the trial could have acted, in the circumstances, as defense counsel acted at trial. Courts also should at the start presume effectiveness and should always avoid second guessing with the benefit of hindsight. *Strickland* encourages reviewing courts to allow lawyers broad discretion to represent their clients by pursuing their own strategy. We are not interested in grading lawyers' performances; we are interested in whether the adversarial process at trial, in fact, worked adequately.

White v. Singletary, 972 F.2d 1218, 1220-21 (11th Cir. 1992) (citation omitted). Under those rules and presumptions, "the cases in which habeas petitioners can properly prevail on the ground of ineffective assistance of counsel are few and far between." *Rogers v. Zant*, 13 F.3d 384, 386 (11th Cir. 1994).

III. ANALYSIS

A. Ground One

Petitioner asserts counsel rendered ineffective assistance due to the cumulative effect of counsel's failure to object to the admission of certain testimony and physical evidence. (Doc. 2 at 2-5). Petitioner states that counsel failed to raise any of these errors on direct appeal. (*Id.* at 7). The

testimony and evidence that Petitioner claims counsel should have objected to was presented to establish Petitioner's participation in a conspiracy to traffic in cocaine in excess of five kilograms: the introduction of a package addressed to him in California, the introduction of testimony regarding other intercepted packages, the introduction of testimony regarding statements made by the petitioner to other co-conspirators, the introduction of testimony from a co-conspirator regarding the co-conspirator's participation in the crime that did not directly involve the petitioner, and the introduction of physical evidence of cocaine in excess of what the petitioner personally handled.

The Government argues that counsel had no basis to object because the testimony and evidence at issue was introduced to establish the existence of, and Petitioner's participation in, a conspiracy to distribute five or more kilograms of cocaine. (Doc. 7 at 7-9). The Court agrees with the Government's argument.

To prove participation in a conspiracy to distribute drugs, evidence must establish beyond a reasonable doubt that a conspiracy existed between two or more persons to distribute drugs, that the accused knew of the conspiracy, and, with this knowledge, the accused voluntarily became a part of the conspiracy. *United States v. Green*, 40 F.3d 1167, 1173 (11th Cir. 1994). Proof may be established through circumstantial evidence or from inferences drawn from the conduct of an individual or confederates. *Id.* The government does not have to prove that the alleged conspirator knew all of the details of the conspiracy or that he participated in every phase of the scheme. *United States v. Guerrero*, 935 F.2d 189, 192 (11th Cir. 1991). A common purpose and plan may be inferred from the circumstances. *United States v. McDowell*, 250 F.3d 1354, 1365 (11th Cir. 2001).

According to the co-conspirators' trial testimony, they worked with Petitioner, they shared money with Petitioner, they jointly participated in shipping money back and forth between Florida and California, Petitioner assisted in packaging cocaine for sale, and Petitioner bought cocaine for

his own use and on behalf of others. Petitioner has not demonstrated that counsel was ineffective because he has not shown that counsel's objections to this testimony and evidence would have had any effect on the outcome of his trial.[2] Petitioner has not met his burden of demonstrating prejudice.

Further, no Supreme Court authority recognizes ineffective assistance of counsel "cumulative error" as a separate violation of the Constitution, or as a separate ground for habeas relief. *See Lorraine v. Chyle*, 9 F.3d 416, 447 (6th Cir.) (stating "The Supreme Court has not held that distinct constitutional claims can be cumulated to grant habeas relief."), *amended on other grounds*, 307 F.3d 459 (6th Cir. 2002), *cert. denied*, 538 U.S. 947 (2003); *Forrest v. Fla. Dep't of Corr.*, 342 F. App'x 560, 565 (11th Cir. 2009), *cert. denied*, 555 U.S. 1114 (2009). The Supreme Court has stated that "there is generally no basis for finding a Sixth Amendment violation unless the accused can show how specific errors of counsel undermined the reliability of the finding of guilt." *United States v. Cronic*, 466 U.S. 648, 659, fn. 26 (1984). Further, in *Spears v. Mullin*, 343 F.3d 1215, 1251 (10th Cir. 2003), the court stated, "[b]ecause the sum of various zeroes remains zero, the claimed prejudicial effect of their trial attorneys' cumulative errors does not warrant habeas relief." Accordingly, Ground One will be denied.

B. Ground Two

In Ground Two, Petitioner asserts his counsel was ineffective for not challenging the expert testimony offered by DEA Special Agent Doug Griffith. (Doc. 2 at 5-9). Petitioner claims Agent Griffith was neither presented as, nor qualified to testify as an expert regarding extracting data from cell phones.

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[2] An attorney is not ineffective for failing to raise or preserve a meritless issue. *Ladd v. Jones*, 864 F.2d 108, 109-10 (11th Cir. 1989); *United States v. Winfield*, 960 F.2d 970, 974 (11th Cir. 1992).

Co-defendant Terrell Brown testified that on the day he was arrested he had communicated with Petitioner by telephone via text and call. (Criminal Case, Doc. 276 at 106-07). The phone Mr. Brown was using was seized when he was arrested. (*Id.*). The Government's Exhibit 22A, a printout of the text messages between Petitioner and Mr. Brown from August 4-5, 2015, was introduced and admitted. (*Id.* at 108-09). The transcript described the planning of a cocaine transaction. (*Id.* at 109-18). Mr. Brown authenticated the transcript as an accurate transcription of the communications he personally had with Petitioner. (*Id.* at 108-09).

Agent Griffith testified after Mr. Brown. (Criminal Case, Doc. 277 at 12-79). Agent Griffith testified that investigators applied for and received "a federal search warrant to get into the phones and manually extracted the information." (*Id.* at 27). To "extract" the information, Agent Griffith "went into the original log of the phones, the transcript of the phones from the text messages, and pulled out those and put them into a new Word document." *Id.* The Word document was Government's Exhibit 22A, and Agent Griffith explained how it was created:

> 22A was prepared from the original transcription of the text messages that were in this cellular phone.
>
> This being a flip phone style phone, it's not your typical smart phone where - - most people have these days where you have the message from somebody else and then your message returned, and you can see the conversation going.
>
> Unfortunately in this phone you have an inbox and a sent folder. So we had to go in and manually look at all the inbox and write all those down and then go back and forth because you could only get one part of the conversation. And then go into the sent folder and put - - and then we had a section that was all the sent messages.
>
> And then what we had to do was go and find all of the - - basically narrow down the conversations between these two phone numbers and the time frames that they occurred and which, put onto this document, created 22A.

(*Id.* at 28). The Government agrees that Agent Griffith "testified to matters that are arguably within the province of expert testimony, that is, the extraction of data from electronic sources." (Doc. 7

at 9). However, Petitioner has failed to meet his burden of demonstrating prejudice because the substance of the testimony Petitioner alleges counsel should have objected to was already presented to the jury through a prior witness. Accordingly, Ground Two will be denied.

C. Ground Three

In Ground Three, Petitioner asserts counsel rendered ineffective assistance by failing to challenge his participation in and the existence of the conspiracy by arguing that Petitioner was only involved in a buyer-seller relationship. (Doc. 2 at 9-11). Petitioner claims "the evidence arguably would have only established that Petitioner was involved in a buyer-seller relationship with co-defendant Huerta rather than a conspiracy with which Petitioner was charged." (*Id.* at 9).

At trial, counsel moved for a judgment of acquittal based on insufficient evidence to establish Petitioner trafficked more than five kilograms of cocaine. (Criminal Case, Doc. 277 at 81-82). On appeal, counsel raised a similar argument, "whether [Petitioner's] specific involvement in the charged conspiracy exceeded the five kilogram limit." (Doc. 7-1 at 20). The Eleventh Circuit rejected this argument, and reviewed and rejected the argument that the evidence was insufficient to establish a conspiracy:

> Regardless of the standard we apply, however, we can find no error, much less plain error. According to the co-conspirators' trial testimony, they worked with Lamb, they split money with Lamb, they jointly participated in shipping money back and forth between Florida and California, Lamb assisted in packaging cocaine for sale, and Lamb bought cocaine for his own use and on behalf of others. For instance, Terrell Brown described Lamb as his partner, and explained that Lamb purchased cocaine for both of them, and "with that agreement," they both sold their own cocaine. Cherish Brown testified that Lamb visited her house several times in 2013 and 2014 to count cash, package cocaine, and receive shipments of cocaine. Jose Huerta testified that he, Lamb, and Terrell Brown rented a California apartment to facilitate their drug sales. Huerta also said that in California in 2014, he witnessed John Luckett and Lamb split money that had come in the mail, with Lamb receiving about $70,000 or $80,000. In addition, postal employees testified that large sums of money were sent between Florida and California,

> some of it was addressed to Lamb, some of it was to and from Terrell Brown or other people with the last name Brown, and a person identifying himself as Lamb called about one of the packages.
>
> As the record reveals, the testimony of government witnesses and Lamb's co-conspirators was sufficient for a reasonable juror to determine beyond a reasonable doubt that: (1) a conspiracy to distribute cocaine existed between Lamb, Huerta, Terrell Brown, Cherish Brown, and Luckett; (2) Lamb knew of the conspiracy; and (3) with that knowledge, he voluntarily became part of the conspiracy. *See* [*United States v. Green*, 40 F.3d 1167, 1173 (11th Cir. 1994)]. Moreover, based on this testimony, the jury could infer that Lamb knew sufficient details of the conspiracy to indicate that he was voluntarily a part of it, and not just a customer of Huerta or Terrell Brown or an independent drug seller. And, as we've said, the government did not need to prove that Lamb was the leader or knew every detail of the conspiracy. [*United States v. Guerrero*, 935 F.2d 189, 192 (11th Cir. 1991)]. Thus, the government presented sufficient evidence of the conspiracy, and the district court did not commit error, much less plain error, by denying Lamb's motion for judgment of acquittal.

(Criminal Case, Doc. 361 at 3-5). Petitioner has failed to meet his burden of demonstrating prejudice. Accordingly, Ground Three will be denied.

D. Ground Four

Petitioner asserts counsel rendered ineffective assistance by failing to object to the admission of a package intercepted by the United States Postal Service despite the lack of evidence linking Petitioner to the package. (Doc. 2 at 11-14). The package was addressed to Petitioner at a Chula Vista, California address, but Petitioner's fingerprints were never found on the package and the postal inspector testified that a package could be mailed to any address with any addressee, including fake or improper names. Petitioner claims counsel also failed to object to the introduction of five additional packing slips that were alleged to be similar to the intercepted package, without any proof of the contents of those packages.

Under Federal Rule of Evidence 401, the trial court is granted broad discretion both in determining the relevance of the evidence to be admitted and in determining whether the probative

value of such evidence outweighs any inherent prejudice to the defendant. *U.S. v. Hernandez-Cuartas*, 717 F.2d 552, 554 (11th Cir. 1983). Evidence is relevant if "(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Fed. R. Evid. 401. "Irrelevant evidence is not admissible," Fed. R. Evid. 402, and relevant evidence may be excluded "if its probative value is substantially outweighed by a danger of ... unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403.

The intercepted package was relevant to establish Petitioner's participation in the conspiracy. According to co-conspirators' testimony, they jointly participated in shipping money back and forth between Florida and California, they rented an apartment in California, and while in California Petitioner received and split money that was sent in the mail. *See* Criminal Case, Doc. 361 at 3-4. Trial counsel cannot be found ineffective for failing to raise a meritless argument. *See, e.g.*, *Chandler v. Moore*, 240 F.3d 907, 917 (11th Cir. 2001) (holding that counsel was not ineffective for failing to raise a meritless argument); *United States v. Winfield*, 960 F.2d 970, 974 (11th Cir. 1992) (same). Petitioner has failed to meet his burden of demonstrating prejudice. Accordingly, Ground Four will be denied.

E. Ground Five

Petitioner asserts counsel rendered ineffective assistance by failing to object to the admission of the testimony of Jeff Bairstow. (Doc. 2 at 14-15). Petitioner claims Bairstow's testimony was never connected to him but involved a "resident" in Ocala. (*Id.* at 14). Petitioner lived in Gainesville. (*Id.*).

K-9 Officer Jeff Bairstow testified to the interception of packages in Ocala, Florida, related to the conspiracy to distribute cocaine involving Petitioner. (Criminal Case, Doc. 275 at 72-78). The packages were related to the scheme to distribute by date, location, and contents. (*Id.* at 74-

78). The packages were shipped during the period of the charged conspiracy; to and from identified cities of distribution; and contained contents described by Bairstow and several other witnesses involved in the conspiracy. (*Id.* at 76-77). Bairstow's testimony was relevant as to the charged conspiracy. Petitioner has failed to meet his burden of demonstrating prejudice. Accordingly, Ground Five will be denied.

F. Ground Six

Petitioner asserts counsel rendered ineffective assistance by failing to object to the court's alleged use of erroneous jury instructions. (Doc. 2 at 15-17). Petitioner claims that instructions given in this case did not comport with the pattern jury instructions. (*Id.* at 15-16). Specifically, Petitioner claims the jury instructions regarding the conspiracy count "contained elements different from both pattern instructions 19-3 and 19-3s[3] (pattern instructions on conspiracy)." (*Id.* at 16).

Though they are not binding, the pattern jury instructions are a valuable resource. *See United States v. Dohan*, 580 F.3d 989, 994 (11th Cir. 2007) (per curiam). "District courts have broad discretion in formulating jury instructions provided that the charge as a whole accurately reflects the law and the facts." *United States v. Arias*, 984 F.2d 1139, 1143 (11th Cir. 1993) (citation and internal quotation marks omitted). The relevant Eleventh Circuit Pattern Jury Instruction states:

> The Defendant can be found guilty only if all the following facts are proved beyond a reasonable doubt:
>
> (1) two or more people in some way agreed to try to accomplish a shared and unlawful plan to possess or import [substance];
>
> (2) the Defendant, knew the unlawful purpose of the plan and willfully joined in it; and

[3] In his Reply, Petitioner writes this as pattern jury instruction 19-35. (Doc. 11 at 9-10).

> (3) the object of the unlawful plan was to [possess with the intent to distribute] [import] more than [threshold] of [substance].

Eleventh Circuit Pattern Jury Instructions (Criminal Cases) Controlled Substances: Conspiracy O100 (2016). The following instructions were given at the trial:

> What the evidence in the case must show beyond a reasonable doubt is: First, that two or more persons, in some way or manner, come to a mutual understanding to try to accomplish a common and unlawful plan, as charged in the indictment; Second, that the defendant, knowing the unlawful purpose of the plan, intentionally joined in it; and Third, that the object of the unlawful plan was to distribute more than 5 kilograms of cocaine, as charged.

(Criminal Case, Doc. 366 at 74). The given jury instruction was substantially similar to the Pattern Jury Instruction for controlled substances conspiracies, contained the necessary elements, and accurately reflected the law and the facts. Further, the jury instructions listed by Petitioner - 19-3, 19-3s, 19-35, do not exist. Petitioner has failed to meet his burden of demonstrating prejudice. Accordingly, Ground Six will be denied.

G. Ground Seven

Petitioner asserts counsel rendered ineffective assistance by failing to challenge the all-white jury panel. (Doc. 2 at 18-19). Petitioner claims that he, an African-American, was denied his constitutional right to an impartial jury because the jury pool did not include any African-Americans. (*Id.* at 18). Petitioner states he suffered "racial discrimination" that "led directly to Petitioner's conviction." (*Id.* at 19).

Petitioner presents no evidence of entitlement to relief. *See Hill v. Lockhart*, 474 U.S. 52 (1985) (conclusory allegations presented in support of an ineffective assistance of counsel claim are insufficient to raise a constitutional issue); *Tejada v. Dugger*, 941 F.2d 1551, 1559 (11th Cir. 1991) (vague, conclusory, or unsupported allegations cannot support an ineffective assistance of counsel claim). An all-white jury is not inconsistent with federal law. *See, e.g., Taylor v. Louisiana*,

419 U.S. 522, 538 (1975) (While "petit juries must be drawn from a source fairly representative of the community ... [there is] no requirement that petit juries actually chosen must mirror the community and reflect the various distinctive groups in the population. Defendants are not entitled to a jury of any particular composition, ... but the jury wheels, pools of names, panels, or venires from which juries are drawn must not systematically exclude distinctive groups in the community and thereby fail to be reasonably representative thereof.") (internal citations omitted).

Petitioner's Sixth Amendment right is limited to "the presence of a fair cross-section of the community on venire panels, or lists from which grand and petit juries are drawn." *Usher v. Mortin*, 165 F. App'x 789, 792 (11th Cir. 2006) (quoting *United States v. Henderson*, 409 F.3d 1293, 1305 (11th Cir. 2005)). To establish a prima facie violation of this right, Petitioner must prove (1) that African-Americans are a "distinctive" group in the community, (2) that the representation of African-Americans in venires is not fair and reasonable in relation to the number of such persons in the community, and (3) that this under-representation is due to systematic exclusion of African-Americans in the jury selection process. *Duren v. Missouri*, 439 U.S. 357, 364 (1979); *United States v. Henderson*, 409 F.3d at 1305.

Petitioner fails to offer evidence showing systematic exclusion of African-Americans from jury selection. Consequently, Petitioner cannot establish a violation of the Sixth Amendment with respect to the composition of the jury or the venire. *See Usher v. Mortin*, 165 F. App'x at 792. Petitioner has failed to show that counsel performed deficiently by not objecting to the venire. Accordingly, Ground Seven will be denied.

Any of Petitioner's allegations not specifically addressed herein have been found to be without merit.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** as follows:

1. Petitioner's Motion to Vacate, Set Aside, or Correct Sentence (Doc. 1) is **DENIED,** and this case is **DISMISSED** with prejudice.
2. The Clerk of the Court shall enter judgment accordingly and is directed to close this case.
3. The Clerk of the Court is directed to file a copy of this Order in criminal case number 5:15-cr-41-Oc-37PRL-5 and to terminate the motion (Criminal Case, Doc. 370) pending in that case.
4. This Court should grant an application for certificate of appealability only if the Petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Petitioner has failed to make a substantial showing of the denial of a constitutional right.[4] Accordingly, a Certificate of Appealability is **DENIED** in this case.

DONE and **ORDERED** in Orlando, Florida on March 17, 2020.

CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Party

[4] "The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." *Rules Governing Section 2255 Proceedings for the United States District Courts*, Rule 11(a).

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

Rodane Lamb,

Petitioner,

v. **Case No: 5:18-cv-438-Oc-CEMPRL**

Criminal Case No. 5:15-cr-41-Oc-10PRL

UNITED STATES OF AMERICA,

Respondent.

JUDGMENT

IT IS ORDERED AND ADJUDGED that pursuant to the Court's Order entered March 17, 2020, the Defendant's motion to vacate, set aside or correct sentence, is hereby denied.

ELIZABETH M. WARREN, CLERK

By: L.Kirkland, Deputy Clerk

Date: March 18, 2020

Copies furnished to:

Counsel of Record
Unrepresented Parties

CIVIL APPEALS JURISDICTION CHECKLIST

1. Appealable Orders: Courts of Appeals have jurisdiction conferred and strictly limited by statute:

(a) **Appeals from final orders pursuant to 28 U.S.C. Section 1291**: Only final orders and judgments of district courts, or final orders of bankruptcy courts which have been appealed to and fully resolved by a district court under 28 U.S.C. Section 158, generally are appealable. A final decision is one that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Pitney Bowes, Inc. V. Mestre, 701 F.2d 1365, 1368 (11th Cir. 1983). A magistrate judge's report and recommendation is not final and appealable until judgment thereon is entered by a district court judge. 28 U.S.C. Section 636(c).

(b) **In cases involving multiple parties or multiple claims**, a judgment as to fewer than all parties or all claims is not a final, appealable decision unless the district court has certified the judgment for immediate review under Fed.R.Civ.P. 54(b), Williams v. Bishop, 732 F.2d 885, 885-86 (11th Cir. 1984). A judgment which resolves all issues except matters, such as attorneys' fees and costs, that are collateral to the merits, is immediately appealable. Budinich v. Becton Dickinson & Co., 486 U.S. 196, 201, 108 S. Ct. 1717, 1721-22, 100 L.Ed.2d 178 (1988); LaChance v. Duffy's Draft House, Inc., 146 F.3d 832, 837 (11th Cir. 1998).

(c) **Appeals pursuant to 28 U.S.C. Section 1292(a)**: Appeals are permitted from orders "granting, continuing, modifying, refusing or dissolving injunctions or refusing to dissolve or modify injunctions..." and from "[i]nterlocutory decrees...determining the rights and liabilities of parties to admiralty cases in which appeals from final decrees are allowed." Interlocutory appeals from orders denying temporary restraining orders are not permitted.

(d) **Appeals pursuant to 28 U.S.C. Section 1292(b) and Fed.R.App.P.5:** The certification specified in 28 U.S.C. Section 1292(b) must be obtained before a petition for permission to appeal is filed in the Court of Appeals. The district court's denial of a motion for certification is not itself appealable.

(e) **Appeals pursuant to judicially created exceptions to the finality rule:** Limited exceptions are discussed in cases including, but not limited to: Cohen V. Beneficial Indus. Loan Corp., 337 U.S. 541,546,69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); Atlantic Fed. Sav. & Loan Ass'n v. Blythe Eastman Paine Webber, Inc., 890 F. 2d 371, 376 (11th Cir. 1989); Gillespie v. United States Steel Corp., 379 U.S. 148, 157, 85 S. Ct. 308, 312, 13 L.Ed.2d 199 (1964).

2. Time for Filing: The timely filing of a notice of appeal is mandatory and jurisdictional. Rinaldo v. Corbett, 256 F.3d 1276, 1278 (11th Cir. 2001). In civil cases, Fed.R.App.P.4(a) and (c) set the following time limits:

(a) **Fed.R.App.P. 4(a)(1)**: A notice of appeal in compliance with the requirements set forth in Fed.R.App.P. 3 must be filed in the district court within 30 days after the entry of the order or judgment appealed from. However, if the United States or an officer or agency thereof is a party, the notice of appeal must be filed in the district court within 60 days after such entry. **THE NOTICE MUST BE RECEIVED AND FILED IN THE DISTRICT COURT NO LATER THAN THE LAST DAY OF THE APPEAL PERIOD - no additional days are provided for mailing.** Special filing provisions for inmates are discussed below.

(b) **Fed.R.App.P. 4(a)(3)**: "If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later."

(c) **Fed.R.App.P.4(a)(4)**: If any party makes a timely motion in the district court under the Federal Rules of Civil Procedure of a type specified in this rule, the time for appeal for all parties runs from the date of entry of the order disposing of the last such timely filed motion.

(d) **Fed.R.App.P.4(a)(5) and 4(a)(6)**: Under certain limited circumstances, the district court may extend the time to file a notice of appeal. Under Rule 4(a)(5), the time may be extended if a motion for an extension is filed within 30 days after expiration of the time otherwise provided to file a notice of appeal, upon a showing of excusable neglect or good cause. Under Rule 4(a)(6), the time may be extended if the district court finds upon motion that a party did not timely receive notice of the entry of the judgment or order, and that no party would be prejudiced by an extension.

(e) **Fed.R.App.P.4(c)**: If an inmate confined to an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely if it is deposited in the institution's internal mail system on or before the last day for filing. Timely filing may be shown by a declaration in compliance with 28 U.S.C. Section 1746 or a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

3. Format of the notice of appeal: Form 1, Appendix of Forms to the Federal Rules of Appellate Procedure, is a suitable format. See also Fed.R.App.P. 3(c). A pro se notice of appeal must be signed by the appellant.

4. Effect of a notice of appeal: A district court loses jurisdiction (authority) to act after the filing of a timely notice of appeal, except for actions in aid of appellate jurisdiction or to rule on a timely motion of the type specified in Fed.R.App.P. 4(a)(4).

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

Golden-Collum Memorial Federal Building & U.S. Courthouse
207 NW Second Street
Ocala, Florida 34475
(352) 369-4860

Elizabeth M. Warren
Clerk of Court

Lisa Fannin
Division Manager

DATE: April 1, 2020

TO: Clerk, U.S. Court of Appeals for the Eleventh Circuit

RODANE LAMB,

Petitioner,

v. **Case No: 5:18-cv-438-Oc-CEMPRL**

UNITED STATES OF AMERICA

Respondent.

U.S.C.A. Case No.: **NEW APPEAL**

Enclosed are documents and information relating to an appeal in the above-referenced action. Please acknowledge receipt on the enclosed copy of this letter.

- Honorable Carlos E. Mendoza, United States District Judge appealed from.
- Appeal filing fee was not paid. Upon filing a notice of appeal, the appellant must pay the district clerk all required fees. The district clerk receives the appellate docket fee on behalf of the court of appeals. If you are filing informa pauperis, a request for leave to appeal in forma pauperis needs to be filed with the district court.
- Certificate of Appeal ability was denied. Order enclosed.
- Certified copy of Notice of Appeal, docket entries, judgment and/or Order appealed from. Opinion was not entered orally.

ELIZABETH M. WARREN, CLERK

By: s/L. Kirkland, Deputy Clerk