

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 20-1975

APPENDIX-C

Justin Lee Sanders

Petitioner - Appellant

v.

United States of America

Respondent - Appellee

Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:20-cv-00141-JAJ)

JUDGMENT

Before GRUENDER, WOLLMAN, and GRASZ, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

June 30, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

APPENDIX-D

JUSTIN LEE SANDERS,

Petitioner.

vs.

UNITED STATES OF AMERICA,

Respondent.

No. 4:20cv00141-JAJ

ORDER

This matter comes before the court pursuant to petitioner's April 30, 2020 Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence. [Dkt. No. 1] Pursuant to Rule 4 of the Rules Governing § 2255 Proceedings, the court conducts the following initial review to determine whether the claim in the petition has arguable merit. Finding that it does not, the court summarily dismisses the petition and denies a certificate of appealability.

I. Procedural History

On June 19, 2018 the grand jury for the Southern District of Iowa returned a one count indictment charging the petitioner and another with possession with intent to distribute fifty grams and more of actual methamphetamine. 21 U.S.C. § 841(a)(1), (b)(1)(A). On May 30, 2019, the petitioner pleaded guilty to the one count indictment. At sentencing he was determined to be a career offender by reason of convictions in 2003 for possession of a precursor (pseudoephedrine) with intent to manufacture, in violation of Iowa Code § 124.401(4)(b), conspiracy to manufacture and distribute methamphetamine in 2004 in violation of 21 U.S.C. § 846, and possession of precursor (pseudoephedrine) with intent to manufacture methamphetamine in 2013, again in violation of Iowa Code § 124.401(4)(b). In his 2013 state court case, he was also guilty of possession lithium with intent to manufacture.

United States v. Apfel, 97 F.3d 1074, 1076 (8th Cir. 1996) (“Relief under 28 U.S.C. § 2255 is reserved for transgressions of constitutional rights and for a narrow range of injuries that could not have been raised for the first time on direct appeal and, if uncorrected, would result in a complete miscarriage of justice.”) (citing *Poor Thunder v. United States*, 810 F.2d 817, 821 (8th Cir. 1987)). A § 2255 claim is a collateral challenge and not interchangeable for a direct appeal, *see United States v. Frady*, 456 U.S. 152, 165 (1982), and an error that could be reversed on direct appeal “will not necessarily support a collateral attack on a final judgment.” *Id.*

C. Ineffective Assistance of Counsel Standard

The Sixth Amendment right to counsel exists “in order to protect the fundamental right to a fair trial.” *Strickland v. Washington*, 466 U.S. 668, 684 (1984). The United States Supreme Court reformulated the *Strickland* test for constitutionally ineffective assistance of counsel in *Lockhart v. Fretwell*:

[T]he right to effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial. Absent some effect of challenged conduct on the reliability of the trial process, the Sixth Amendment guarantee is generally not implicated.

506 U.S. 364, 369 (1993) (*quoting United States v. Cronic*, 466 U.S. 648, 658 (1984)).

The Eighth Circuit Court of Appeals applies the *Lockhart* test:

Counsel is constitutionally ineffective . . . when: (1) counsel’s representation falls below an objective standard of reasonableness; and (2) the errors are so prejudicial that the adversarial balance between defense and prosecution is upset, and the verdict is rendered suspect.

English v. United States, 998 F.2d 609, 613 (8th Cir. 1993) (citing *Lockhart*, 506 U.S. at 364). Where conduct has not prejudiced the movant, the court need not address the reasonableness of that conduct. *United States v. Williams*, 994 F.2d 1287, 1291 (8th Cir. 1993); *Siers v. Weber*, 259 F.3d 969, 984 (8th Cir. 2001) (citing *Strickland*, 466 U.S. at

reasonable jurist would find the district court ruling on the constitutional claim debatable or wrong. *Winfield v. Roper*, 460 F.3d 1026, 1040 (8th Cir. 2006) (citing *Tennard v. Dretke*, 542 U.S. 274, 276, 124 S.Ct. 2562, 159 L.Ed.2d 384 (2004)); *see also Randolph v. Kemna*, 276 F.3d 401, 403 (8th Cir. 2002) (“the petitioner must ‘demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further.’” (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.1, 103 S.Ct. 3383, 77 L.Ed.2d 1090 (1983)) (alteration in original)). A “substantial showing” must be made for each issue presented. *See Parkus v. Bowersox*, 157 F.3d 1136, 1140 (8th Cir. 1998). The certificate of appeal will then contain “an overview of the claims in the habeas petition and a general assessment of their merits.” *Miller-el v. Cockrellu*, 537 U.S. 322, 336 (2003). “This threshold inquiry does not require full consideration of the factual or legal bases adduced in support of the claims. In fact, the statute forbids it.” *Id.* Thus, a district court may issue a certificate of appeal even if the court is not certain that “the appeal will succeed . . . [because a certificate of appealability] will issue in some instances where there is no certainty of ultimate relief.” *Id.* at 336-37 (citing *Slack v. McDaniel*, 539 U.S. 473, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000)).

Here, petitioner cannot show that reasonable jurists would disagree or debate whether the issues presented should have had a different outcome, and whether the issues are adequate to deserve encouragement to proceed further. *See Barefoot*, 463 U.S. at 893 n.4. The court denies a certificate of appealability.

IV. Conclusion

The court finds that petitioner is not entitled to relief pursuant to 28 U.S.C. § 2255.

Upon the foregoing,

IT IS ORDERED that the petitioner’s April 30, 2020 Petition for Writ of Habeas Corpus [Dkt. No. 1] is dismissed in its entirety. The Clerk of Court shall enter judgment in favor of the respondent.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 20-1975

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APPENDIX-B

Appellant

v.

United States of America

Appellee

Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:20-cv-00141-JAJ)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

August 07, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans