

No. 20-1912

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

FILED  
Jan 04, 2021  
DEBORAH S. HUNT, Clerk

MICHAEL NATHANIEL BOYD,

)

Petitioner-Appellant,

)

v.

)

UNITED STATES OF AMERICA,

)

Respondent-Appellee.

)

ORDER

Before: SILER, Circuit Judge.

Michael Nathaniel Boyd, a federal prisoner proceeding pro se, appeals a district court judgment denying his motion to vacate, set aside, or correct his sentence filed pursuant to 28 U.S.C. § 2255. Boyd requests a certificate of appealability. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

In 2017, Boyd pleaded guilty to possession with intent to distribute controlled substances, in violation of 21 U.S.C. § 841(a)(1), and possession of firearms in furtherance of a drug trafficking offense, in violation of 18 U.S.C. § 924(c)(1)(A)(i). He was sentenced to serve a total of 240 months in prison, followed by five years of supervised release, and fined \$2,000. Boyd appealed the denial of his motions to suppress evidence seized during a search of his home, and this court affirmed. *United States v. Boyd*, 735 F. App'x 202 (6th Cir. 2018).

In 2019, Boyd filed a motion to vacate, alleging that: (1) trial counsel was ineffective for failing “to investigate the authenticity of the search warrant affidavit”; (2) trial counsel was ineffective for filing a motion to suppress “without submitting proof/affidavit”; (3) his sentencing guidelines range was incorrectly calculated; and (4) the district court erroneously construed his pro se motion challenging the validity of the search warrant as a motion for reconsideration of the denial of his previous motions to suppress. Boyd subsequently filed a motion to amend his motion

“Appendix A”

to vacate to allege four additional claims: (5) trial and appellate counsel were ineffective because they did not “investigate the search warrant” and “discover that the state court had no record of [it]” and did not argue that all evidence seized was subject to suppression because it was fruit of the poisonous tree and “obtained through fraud”; (6) “the prosecutor engaged in misconduct when he knew or should have known that the warrant was bogus”; (7) he was denied effective assistance of appellate counsel because counsel failed to challenge his obstruction-of-justice sentence enhancement and the jury did not determine the obstruction issue; and (8) the district court erroneously failed to take judicial notice that his search warrant was signed by Judge Westra, not Judge Santoni, and he was denied effective assistance of appellate counsel because counsel failed to raise the issue. The district court denied Boyd’s motion to vacate and denied a certificate of appealability. Boyd’s motions for reconsideration were also denied.

A certificate of appealability may issue only if a petitioner makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). A certificate of appealability analysis is not the same as “a merits analysis.” *Buck v. Davis*, 137 S. Ct. 759, 773 (2017). Instead, the certificate of appealability analysis is limited “to a threshold inquiry into the underlying merit of [the] claims,” and whether “the District Court’s decision was debatable.” *Id.* at 774 (quoting *Miller-El*, 537 U.S. at 327, 348).

As background, attorney David Kaczor was initially appointed to represent Boyd in his criminal case. Kaczor filed a motion to suppress, challenging the search warrant in Boyd’s case on grounds that the warrant and supporting affidavit lacked probable cause. Following a hearing, the district court denied Boyd’s motion to suppress. Shortly thereafter, the district court granted Kaczor’s motion to withdraw and attorney Scott Graham was appointed to represent Boyd. Graham filed a second motion to suppress, requesting a *Franks v. Delaware*, 438 U.S. 154 (1978), hearing and claiming that the affidavit supporting the search warrant contained material misstatements, that the warrant lacked a nexus between the contraband sought and Boyd’s home,

and that the good-faith exception did not apply to save the evidence seized from suppression. Following a non-evidentiary hearing, the district court denied Boyd's second motion to suppress. Boyd's guilty plea was conditioned on his ability to challenge the denial of his motions to suppress on appeal.

To establish ineffective assistance of counsel, a defendant must show deficient performance and resulting prejudice. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The performance inquiry requires the defendant to "show that counsel's representation fell below an objective standard of reasonableness." *Id.* at 688. Strategic decisions made after a thorough investigation by counsel "are virtually unchallengeable." *Id.* The prejudice inquiry requires the defendant to "show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694.

"[I]neffective assistance of appellate counsel claims are governed by the same *Strickland* standard as claims of ineffective assistance of trial counsel." *Shaneberger v. Jones*, 615 F.3d 448, 452 (6th Cir. 2010). An attorney is not required "to raise every non-frivolous issue on appeal." *Caver v. Straub*, 349 F.3d 340, 348 (6th Cir. 2003). Indeed, "'winnowing out weaker arguments on appeal and focusing on' those more likely to prevail, far from being evidence of incompetence, is the hallmark of effective appellate advocacy." *Smith v. Murray*, 477 U.S. 527, 536 (1986) (quoting *Jones v. Barnes*, 463 U.S. 745, 751-52 (1983)). Where, as here, appellate counsel "presents one argument on appeal rather than another . . . the petitioner must demonstrate that the issue not presented 'was clearly stronger than issues that counsel did present'" to establish that counsel was ineffective. *Caver*, 349 F.3d at 348 (quoting *Smith v. Robbins*, 528 U.S. 259, 288 (2000)).

In his first claim, Boyd alleged that trial counsel was ineffective for failing to investigate the affidavit supporting the search warrant in his case. He argued that the search warrant and supporting affidavit were not authentic because they lacked a state seal, a notarial certification, a legible magistrate signature, a bar number for the signing magistrate, a time-of-issue stamp, and a case number. He also noted that a state-court manager advised him that the state-court case file does not include the search warrant. In his fifth claim, Boyd alleged that trial and appellate counsel were ineffective because they did not "investigate the search warrant" and "discover that the state

court had no record of [it]" and did not argue that all evidence seized was subject to suppression because it was fruit of the poisonous tree and "obtained through fraud." Boyd relied on the state court docket, which does not indicate that a search warrant was filed in his case, and a letter from a state-court case manager, advising him that his state-court case file does not include the search warrant.

Boyd stated that he asked Kaczor and Graham to find out from the state-court clerk if a search warrant had been issued in his case, if Judge Santoni had signed the search warrant for his home, if the affidavit supporting the search warrant had different signatures on the pages, and if search warrants must have a time stamp when issued and a case number. According to Boyd, Kaczor addressed only the time-stamp issue but ignored the other issues he wanted Kaczor to investigate and raise with the district court. According to Boyd, Graham confirmed that Judge Santoni signed a search warrant on the day that Boyd's home was searched but Graham ignored the other issues that Boyd wanted Graham to address. Boyd claimed that Judge Westra, not Judge Santoni, signed the affidavit supporting the search warrant. And based on the state-court manager's statement that the state-court record did not contain the search warrant, Boyd deduced that "there was no record of the search warrant in this case being issued, or returned executed." Boyd also argued that appellate counsel refused to investigate the validity of the search warrant and supporting affidavit, specifically whether Judge Santoni signed the warrant and whether the state-court record included the warrant, and to present those issues on appeal.

The district court concluded that trial counsel were not ineffective for failing to investigate the search warrant. The district court pointed to Kaczor's and Graham's affidavits in which each stated that they investigated the search warrant in Boyd's case and found no grounds to challenge its processing in state court. Graham stated that, after investigation, he raised all issues involving the search of Boyd's home that he deemed meritorious. Kaczor stated that, after investigation, he concluded that the search warrant was properly processed in state court. The district court found that Boyd's disagreement with counsels' investigations of the search-warrant-validity issue failed to demonstrate the deficient performance and resulting prejudice required to establish an ineffective-assistance-of-trial-counsel claim. The district court also rejected Boyd's contention that the search of his home was unconstitutional because the state did not follow certain procedures

when processing and issuing the search warrant. The district court pointed to an affidavit submitted by Officer Aaron Ham, in which Ham stated that he saw Judge Santoni sign the search warrant in Boyd's case. The district court rejected Boyd's contention that the search warrant was signed by Judge Westra instead of Judge Santoni, noting that Boyd's evidence in support of his contention was not based on personal knowledge and implicitly admitted that the warrant was signed by a judge. Because the underlying search-warrant-validity issue lacked merit, the district court concluded that appellate counsel was not ineffective for failing to raise the issue on appeal.

Reasonable jurists would not debate the district court's conclusion that Boyd was not denied effective assistance of trial and appellate counsel. *See Miller-El*, 537 U.S. at 327. The district court's findings and conclusions are supported by the record, and Boyd has not presented any basis for debate. Boyd's ineffective-assistance-of-counsel claims are conclusory and either refuted, or unsupported, by the record. *See Wogenstahl v. Mitchell*, 668 F.3d 307, 335-36 (6th Cir. 2012); *Sutton v. Bell*, 645 F.3d 752, 755 (6th Cir. 2011). Boyd erroneously concludes that "a search warrant never existed in this case" because the state-court manager stated that the state-court record does not include the search warrant and the state-court docket reveals that the search warrant was not filed in his case. He faults trial counsel for failing to contact the state court and discovering "that the warrant was never issued." But the absence of the search warrant on the state-court docket does not mean that the search warrant was not issued. Rather, the search warrant, including all required information and signatures of the affiant and judge, was issued in his case. Boyd's conclusory arguments do not undermine the warrant's issuance.

In his sixth claim, Boyd alleged that "the prosecutor engaged in misconduct when he knew or should have known" that the search warrant was invalid. He argues that, because his attorneys expressed concern with the validity of the search warrant, the prosecutor should have, at the very least, contacted the state court and asked "when the warrant was actually issued, and which judge signed it" because the prosecutor knew or should have known that Officer Ham "was lying."

In rejecting this claim, the district court concluded that the government was not required to dismiss the case against Boyd because Boyd's attorneys questioned the validity of the search warrant through motions to suppress. The district court noted that Boyd's motions to suppress

were unsuccessful because he failed to show that the search warrant was invalid. The district court further noted that Boyd failed to show that the prosecutor knew that any testimony supporting the search warrant was false.

Reasonable jurists would not debate the district court's denial of Boyd's prosecutorial-misconduct claim. *See Miller-El*, 537 U.S. at 327. The district court's findings and conclusions are supported by the record, and Boyd has not presented any basis for debate. Boyd failed to set forth adequate facts to support this claim, and his contention that Officer Ham provided false testimony in support of the search warrant is conclusory and unsupported.

Boyd has abandoned his second, third, fourth, seventh, and eighth claims because he does not request a certificate of appealability for them. *See Jackson v. United States*, 45 F. App'x 382, 385 (6th Cir. 2002) (per curiam).

Accordingly, the application for a certificate of appealability is **DENIED**.

ENTERED BY ORDER OF THE COURT



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Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MICHAEL NATHANIAL BOYD,

Movant,

CASE No. 1:19-cv-447

v.

HON. ROBERT J. JONKER

UNITED STATES OF AMERICA,

Respondent.

*✓*  
Certified as a True Copy  
Deputy Clerk  
U.S. District Court  
Western Dist. of Michigan  
Date 8/6/20

**OPINION AND ORDER**

The matter is before the Court on Movant Michael Boyd's motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 (ECF No. 1), the motion to amend (ECF No. 15),<sup>1</sup> and Boyd's motion to expedite (ECF No. 35). The government has responded in opposition. (ECF No. 23). The Court determines that an evidentiary hearing is unnecessary to the resolution of this case. *See Rule 8, RULES GOVERNING 2255 CASES; see also Arredondo v. United States*, 178 F.3d 778, 782 (6th Cir. 1999) (holding that an evidentiary hearing is not required when the record conclusively shows that the petitioner is not entitled to relief).

Boyd primarily rests his argument on his assertion that his convictions stem from a bad warrant—a contention both this Court and the Sixth Circuit Court of Appeals rejected in his criminal case. Nothing in the instant motion persuades the Court that a different result must issue

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<sup>1</sup> The Court notes that the amendment is not on the Section 2255 form nor signed under the penalty of perjury. The filing itself, however, substantially overlaps with the original petition and largely expands on the arguments contained in that petition. The Court considers the motion to amend and the arguments made within it as part of its overall consideration of Boyd's request for relief under Section 2255.

here. For the following reasons, the Court finds no merit in Boyd's arguments and the motion is **DENIED.**

### **BACKGROUND**

The Sixth Circuit Court of Appeals summarized earlier the pertinent facts leading to Plaintiff's arrest:

Anonymous tipsters told the Kalamazoo police that Michael Boyd was selling drugs. The police enlisted an informant to confirm. The informant called Boyd and set up a sale in a parking lot behind Boyd's apartment. Police watched a person walk out of Boyd's apartment, approach the informant's car, and sell him drugs. The informant gave the drugs to the police and confirmed that Boyd sold them.

A state magistrate judge issued a warrant to search Boyd's apartment. The search uncovered drugs and guns.

*United States v. Boyd*, 735 F. App'x 202, 203 (6th Cir. 2018).

On September 29, 2016, a grand jury charged Boyd with distribution of methamphetamine (Count 1); possession with intent to distribute 50 grams or more of methamphetamine (Count 2); being a felon in possession of firearms (Count 3); and possession of firearms in furtherance of drug trafficking (Count 4). (ECF No. 12).

As the case progressed, Boyd went through multiple lawyers and multiple motions focused on the search warrant. On November 1, 2016, Attorney David Kaczor filed a motion to suppress all evidence obtained through the execution of the search warrant on the grounds that the search warrant and affidavit in support lacked the necessary probable cause. (Crim. ECF No. 21).<sup>2</sup> The Court heard argument on the motion in a non-evidentiary hearing on December 12, 2016 and

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<sup>2</sup> "Crim. ECF" refers to the docket in the underlying criminal case, *United States v. Boyd*, No. 1:16-CR-192.

thereafter denied the motion from the bench, finding that the affidavit established probable cause for the search. (Crim. ECF No. 24).

Attorney Kaczor then moved to withdraw, and Attorney Scott Graham was substituted as Boyd's counsel. (Crim. ECF No. 35). Attorney Graham filed a second motion to suppress the evidence obtained through the search warrant. The motion raised issues both with respect to the validity of the search warrant, as well as issues under *Franks v. Delaware*, 438 U.S. 154 (1978) regarding the truthfulness of the representations made in the warrant affidavit. (Crim. ECF No. 41). Among other things, the motion contended that the warrant affidavit contained a material misstatement because the affiant officer could not have viewed Boyd exit his residence as the affiant stated given the layout of the building and the officer's position. (*Id.*). The motion also argued there was an additional misstatement in the affidavit that the CI had no money on their person after the officer search the CI following the controlled by. Attorney Graham requested a *Franks* hearing to address the asserted misstatements and other omissions. The Court held a non-evidentiary hearing on the request on April 27, 2017. After hearing from the parties, the Court denied the request for a *Franks* hearing from the bench and denied the motion to suppress.

Thereafter Boyd elected to plead guilty to Count 2 and Count 4 of the Indictment under a conditional plea agreement that reserved Boyd's right to appeal. Following his guilty plea, however, Boyd filed a series of pro se motions seeking to fire Attorney Graham, recuse the undersigned from the criminal case, set aside his guilty plea, and schedule a new *Franks* hearing. Boyd further raised a number of complained of errors in the search warrant, including that the warrant had been signed by a different state court district judge, failed to document the time the warrant was issued, and that the document lacked a case number or bar number. (Crim. ECF Nos.

60, 61, 62, 68, 69). On July 26, 2017, the Court held a hearing on the motion to proceed pro se. During the hearing, Boyd told the Court that he believed that his attorney should have moved to disqualify the undersigned; that he wanted to withdraw his guilty plea; and that he believed the police had searched his residence without possessing a valid search warrant. After hearing from Boyd, Attorney Graham, and the government, the Court granted Boyd's request to proceed pro se. (Crim. ECF No. 67). Then, in a written Order, the Court denied the request for recusal and motion to withdraw plea. (Crim. ECF No. 76). To the extent Boyd had reiterated his request for a *Franks* hearing, the Court denied the request for the same reasons it provided from the bench earlier. (Crim. ECF No. 76, PageID.459).

On September 5, 2017, Plaintiff filed a document entitled "Defendant's Request of the Court to Take Notice of Plain Error, Admission of New Evidence and Court Rules in Support." (Crim. ECF No. 79). The document again took issue with the validity of the search warrant authorizing the search of Boyd's residence. It mainly reiterated the arguments Boyd had raised in his previous pro se motions. He claimed, among other things, the warrant failed to contain information pertaining to the time the warrant was issued, reference a case number, or reflect a legible signature from the issuing judge. (*Id.*). The Court construed the motion as one seeking reconsideration of Boyd's earlier motions and found that Boyd had failed to carry his burden of demonstrating that his motion for reconsideration should be granted. The Court therefore denied the motion. (Crim. ECF No. 80).

The matter proceeded to sentencing. The Final Presentence Report (PSR) determined that Boyd's base offense level on the drug charge was 32. Two points were then added under USSG §

3C1.1 for obstruction of justice. (PSR ¶ 31, ECF No. 75, PageID.435). The facts underlying the enhancement were detailed by the probation officer as follows:

Following the execution of the search warrant, Mr. Boyd was arrested on August 31, 2016, and transported to the Kalamazoo County Jail. He was temporarily placed in a holding cell to be booked into the jail. Also in the holding cell were inmates who were scheduled to be released. The defendant used the name and identification of an inmate set to be released and walked out of the jail. After determining what had happened, police apprehended Mr. Boyd a day later on September 1, 2016, by tracing him to a residence in Kalamazoo. He surrendered peacefully to the police and gave a post-Miranda statement admitted he used the name of another inmate to be released from the jail.

(PSR ¶ 19, ECF No. 75, PageID.433).

Boyd presented several objections. Relevant for purposes here, Boyd objected that the obstruction enhancement did not apply because the indictment did not charge him for escape and that he was not prosecuted for the events. The Court overruled that objection because it was undisputed that Boyd had impersonated someone else. Then, after proceeding through the remaining sentencing considerations, the Court imposed a total term two hundred forty months of custody, consisting of 180 months on Count 2, followed by a mandatory 60 months with respect to Count 4. (ECF No. 82).

Boyd, through appellate counsel, appealed the issues raised in the suppression motions filed by Attorney Kaczor and Attorney Graham. In an unpublished decision, the Sixth Circuit Court of Appeals affirmed the Court's decisions. *United States v. Boyd*, 735 F. App'x 202, 203 (6th Cir. 2018).

In his motion under 28 U.S.C. § 2255, as supplemented and amended, Movant asserts that he is entitled to habeas relief because (1) his trial and appellate counsel were ineffective for failing

to investigate the search warrant and (2) request a *Franks* hearing on the validity of the warrant; (3) the government engaged in misconduct by proceeding with the case despite knowing that the warrant was “bogus;” (4) Boyd was denied due process and his Sixth Amendment rights when he received a two-level enhancement for obstruction, and counsel was ineffective for failing to raise the matter to the Court of Appeals; and (5) Boyd was denied Due Process when the Court considered his September 5, 2017 motion as one seeking a motion for reconsideration, rather than a motion raising new arguments regarding the validity of the warrant.

#### **LEGAL STANDARD**

A federal prisoner may challenge his sentence by filing in the district court where he was sentenced a motion under 28 U.S.C. § 2255. A valid Section 2255 motion requires a petitioner to show that “the sentence was imposed in violation of the Constitution or laws of the United States, 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 collateral attack.” 28 U.S.C. § 2255(a). Section 2255 affords relief for a claimed constitutional error only when the error had a substantial and injurious effect or influence on the proceedings. *Watson v. United States*, 165 F.3d 486, 488 (6th Cir. 1999). Non-constitutional errors generally are outside the scope of Section 2255 relief, and they should afford collateral relief only when they create a “fundamental defect which inherently results in a complete miscarriage of justice, or, an error so egregious that it amounts to a violation of due process.” *Id.* (internal quotation marks omitted).

To establish a claim of ineffective assistance of counsel, a movant must prove that: (1) counsel’s performance fell below an objective standard of reasonableness; and (2) counsel’s deficient performance prejudiced the defendant in a way that led to an unreliable or fundamentally

unfair outcome. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). A court “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, and viewed as of the time of counsel’s conduct, and judicial scrutiny of counsel’s performance must be highly deferential.” *Roe v. Flores-Ortega*, 528 U.S. 460, 477 (2000) (internal quotation marks omitted). Counsel is not ineffective unless he or she “made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Strickland*, 466 U.S. at 687. To establish prejudice, a movant must show “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceedings would have been different.” *Id.* at 694; see also *United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992) (en banc) (“[T]he threshold issue is not whether [movant’s] attorney was inadequate; rather, it is whether he was so manifestly ineffective that defeat was snatched from the hands of probable victory.”).

## DISCUSSION

### 1. Processing of the Search Warrant

Boyd, first of all, contends that his trial attorneys were ineffective for failing to investigate the processing of the search warrant. Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. *Strickland v. Washington*, 466 U.S. at 691. “[A] particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” *Id.* The court should not consider if the choices were strategic, “but whether they were reasonable.” *Roe v. Flores-Ortega*, 528 U.S. 470, 481 (2000). Accordingly, “[c]ounsel’s failure to investigate a defense may constitute ineffective assistance.” *Cope v. United States*, 385

E. App'x 531, 533 (6th Cir. 2010) (citing *Rompilla v. Beard*, 545 U.S. 374, 387 (2005), and *Bigelow v. Haviland*, 576 F.3d 284, 287 (6th Cir. 2009)).

But this is not such a case. Both of Boyd's trial attorneys have submitted affidavits demonstrating that they did, in fact investigate the contentions Boyd says they should have investigated and determined that no issue existed regarding the manner of how the warrant was processed. (Graham Aff. ¶¶ 5-6, ECF No. 12, PageID.179-180; Kaczor Aff. ¶ 7A, ECF No. 13, PageID.182). While Boyd might disagree with the conclusions his attorneys reached after that investigation, he has not demonstrated a basis for finding deficient performance or prejudice. Boyd contends that certain state procedural requirements were not strictly followed when the warrant was issued, but he fails to demonstrate that this meant the search of his residence was constitutionally infirm.

The Fourth Amendment to the United States Constitution prohibits "unreasonable searches and seizures." U.S. Const. amend. IV. This right is enforced through the general requirement that searches be conducted under a warrant supported by probable cause issued by a detached and neutral magistrate. There is abundant record evidence to support the conclusion that the search of Boyd's residence was reasonable. Both this Court, and the Court of Appeals, previously determined that the warrant was supported by probable cause, a determination Boyd does not challenge here. The primary agent involved in the case, moreover, has submitted an affidavit stating he witnessed Judge Richard Santoni sign the warrant authorizing the search of Boyd's residence, and that the warrant was signed before the search was executed later that day. (Ham. Aff. ¶¶ 4-5, PageID.22). Thus Boyd's supposition that a different judge may have signed the

warrant is refuted by the record.<sup>3</sup> Nor has Boyd presented any evidence to demonstrate that the warrant was not issued until after the search of his residence had begun. And Attorney Graham in fact brought this up during the nonevidentiary hearing on the request for a *Franks* hearing, as Boyd admits.

Accordingly, any attempt by defense counsel to raise a Fourth Amendment defense along the lines Boyd lays out in his motion would have been frivolous. Boyd's claim fails to establish deficient performance. *See Mapes v. Coyle*, 171 F.3d 408, 413 (6th Cir. 1999) ("There can be no constitutional deficiency in . . . counsel's failure to raise meritless issues."). For the same reasons, appellate counsel was not ineffective for failing to raise the argument on appeal.

## **2. Request for Franks Hearing**

In Ground 2 of Boyd's motion, he contends that counsel was ineffective because he "submitted a brief for a motion to suppress pursuant to *Franks v. Delaware* without submitting proof / affidavit." (ECF No. 1, PageID.5). Boyd fails to meet his burden under *Strickland*.

Under *Franks*, a party may challenge the veracity of a search warrant affidavit only "if that party makes a 'substantial preliminary showing that a false statement knowingly and intentionally or with reckless disregard for the truth, was included by the affiant in the warrant affidavit,' and that the allegedly false statement was necessary for a finding of probable cause." *Mays v. City of Dayton*, 134 F.3d 809, 815 (6th Cir. 1998) (quoting *Franks v. Delaware*, 437 U.S. 154, 155-56 (1978)). If a court determines that the warrant affidavit establishes probable cause even if the

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<sup>3</sup> Boyd has submitted an affidavit from a cell mate that states the signature on Boyd's search warrant is not Judge Santoni's but rather Judge Westra's. There is no need for an evidentiary hearing here. The affidavit from the cell mate, for one thing, relies on representations made by the cell mate's attorney, not his personal knowledge. And even if a separate judge had signed the warrant, Boyd implicitly admits his warrant was signed by a judge.

allegedly false statement is excluded, then the inquiry ends there. *Id.* If a party makes the necessary substantial preliminary showing, then the party “is entitled to a hearing to determine if a preponderance of the evidence supports the allegations of lack of veracity.” *Id.* (citing *Franks*, 438 U.S. at 156).

This ground for relief fails. It merely repeats arguments that Boyd previously made, and lost on the merits, during his direct criminal case. Indeed, the arguments that Boyd highlights were actually made by his counsel in his brief supporting the motion to suppress. (See Crim. ECF No. 41). Boyd seems to believe that if his attorney had presented this argument in some other form, with supporting declarations and evidence for example, the Court would have granted the request for a *Franks* hearing. It is true that a substantial preliminary showing generally contemplates an offer of proof. *See United States v. Speer*, 419 F. App'x 562, 572 (6th Cir. 2011). But it is plain from a review of the motion that counsel understood this, and detailed what he would offer during the hearing in support of the motion. Moreover, even if counsel had furnished an offer of proof along the lines Boyd argues for here, Boyd has not demonstrated a different result would have issued. It was not the manner or lack of an offer of proof that led to the denial of the motion. Rather, as the Court explained during the evidentiary hearing, nothing in the arguments Boyd advanced would have made a preliminary showing of a deliberate falsehood to warrant an evidentiary hearing. Nothing in Boyd's Section 2255 motion disturbs this conclusion. Accordingly, this ground for relief fails.

### ***3. Prosecutor Misconduct***

Next, Boyd argues in his amended motion that the prosecutor committed prosecutorial misconduct “when he knew or should have known that the warrant was bogus.” Boyd reasons that

this is so because he, and his counsel “kept bringing up issues concerning the warrant[.]” (ECF No. 15-1, PageID.201). This argument has been procedurally defaulted. To the extent Boyd premises any claim of ineffective assistance of counsel on this issue, it also lacks merit.

The government had no obligation to dismiss Boyd’s criminal case merely because his counsel filed motions seeking to suppress the evidence. The motions, furthermore, were unsuccessful. This claim of prosecutorial misconduct also fails because Boyd failed to show that statements in the warrant affidavit were actually false, as explained above and in earlier orders of the Court. Finally, Boyd fails to show that the prosecutor knew the testimony to be false, nor could he give the record of the case. Accordingly, this ground for relief fails.

#### **4. Due Process Violation**

Boyd also claims that his rights to due process were violated when the Court construed his September 5, 2017 motion as one for reconsideration. As the government makes very clear in its brief, Boyd had raised his argument regarding the signature on his warrant before. (Crim. ECF No. 60). The Court considered the argument, and rejected it in a subsequent order, finding no basis for a *Franks* hearing on the matter. (Crim. ECF No. 76, PageID.459). Thus, when Boyd raised the argument again it was eminently reasonable for the Court to construe the motion as one for reconsideration. The Court was not bound by the characterizations in the heading of Boyd’s motion. Moreover, as the Court observed above, even if a different judicial officer had signed the warrant, Boyd fails to explain how that would render the warrant invalid. At bottom, Boyd filed a motion and the Court considered it, and found it without merit.

Accordingly, this claim is rejected.

**5. *Sentencing Enhancement***

Finally, Boyd argues he is entitled to relief because he was not indicted for the offenses underlying the two-level obstruction enhancement applied to his guidelines. In his amended Petition Boyd adds that since obstruction is a substantive criminal charge, he was denied his Due Process and Sixth Amendment rights when it had not been proven, and determined by a jury, that he was guilty of obstruction. He adds that appellate counsel was ineffective for failing to raise the argument.

This argument is meritless and appellate counsel was not ineffective for failing to raise it during Boyd's appeal. Boyd has never argued that he did not engage in the conduct detailed in the PSR that was used to enhance his sentence. As the Court observed when overruling Boyd's objection at sentencing, it did not matter that there was no federal charge pending when Boyd engaged in the conduct. Nor did it matter that Boyd was never indicted for that conduct. *See U.S.S.G. § 3C1.1 n.4; United States v. Tevepaugh*, 30 F. App'x 330, 332 (6th Cir. 2002); *United States v. Roberts*, 243 F.3d 235, 239-40 (6th Cir. 2001) (applying enhancement where obstructive conduct occurred during state, not federal, investigation, and finding "[t]he determinative factor was that both sets of charges, and the obstruction activity, were related to the same underlying activity."). Accordingly, this argument fails for the very reasons detailed by the Court during Boyd's sentencing.

To the extent Boyd presents new arguments that a jury was required to find him guilty of the conduct, this argument fails too, since the ultimate sentence was within the statutory range authorized by his offenses of conviction. *See United States v. Gates*, 461 F.3d 703, 708 (6th Cir. 2006) ("Therefore, we find that judicial fact-finding in sentencing proceedings using a

preponderance of the evidence standard post-*Booker* does not violate either Fifth Amendment due process rights, or the Sixth Amendment right to trial by jury."); *see also* U.S.S.G. § 6A1.3; *United States v. Goward*, 315 F. App'x 544, 549-550 (6th Cir. 2009) (finding no clear error when sentencing court applied obstruction enhancement under preponderance of the evidence standard for conduct the government did not charge).

### CONCLUSION

For these reasons, the Court concludes that Boyd is not entitled to the relief he seeks.

Before a movant may appeal the Court's dismissal of his Section 2255 petition, a certificate of appealability must issue. 28 U.S.C. § 2253(c)(1)(B); FED. R. APP. P. 22(b)(1). The Federal Rules of Appellate Procedure extend to district judges the authority to issue certificates of appealability. FED. R. APP. P. 22(b); *see also Castro v. United States*, 310 F.3d 900, 901-02 (6th Cir. 2002). Thus, the Court must either issue a certificate of appealability indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c)(3); FED. R. APP. P. 22(b)(1); *In re Certificates of Appealability*, 106 F.3d 1306, 1307 (6th Cir. 1997).

A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make the required "substantial showing," the movant must demonstrate that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). The Court does not believe that reasonable jurists would find the Court's assessment of the claims Boyd raised debatable or wrong.

**ACCORDINGLY, IT IS ORDERED:**

1. Boyd's Motion to Amend / Correct (ECF No. 15) is **GRANTED** to the extent Boyd wishes to amend his Section 2255 motion. It is **DENIED** in all other respects.
2. Boyd's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence (ECF No. 1) is **DENIED**.
3. Boyd's motion to expedite (ECF No. 35) is **DISMISSED AS MOOT**.
4. Boyd's request for a Certificate of Appealability is **DENIED**.

Dated: August 4, 2020

/s/ Robert J. Jonker  
ROBERT J. JONKER  
CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

MICHAEL NATHANIEL BOYD,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee,

**FILED**  
Apr 08, 2021  
DEBORAH S. HUNT, Clerk

**ORDER**

Before: DAUGHTREY, McKEAGUE, and THAPAR, Circuit Judges.

Michael Nathaniel Boyd petitions for rehearing en banc of this court's order entered on January 4, 2021, denying his application for a certificate of appealability. The petition was initially referred to this panel, on which the original deciding judge does not sit. After review of the petition, this panel issued an order announcing its conclusion that the original application was properly denied. The petition was then circulated to all active members of the court, none of whom requested a vote on the suggestion for an en banc rehearing. Pursuant to established court procedures, the panel now denies the petition for rehearing en banc.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

"Appendix C"

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MICHAEL NATHANIEL BOYD,

Movant,

File No: 1:19-CV-447

v.

HON. ROBERT J. JONKER

UNITED STATES OF AMERICA,

Respondent.

**ORDER DENYING MOTION FOR RECONSIDERATION**

This Court has reviewed Movant's motion to alter or amend judgment, which the Court is construing as a motion for reconsideration of the Court's denial of his motion under 28 U.S.C. §2255 (ECF No. 39).

Movant having raised no new issues not already considered by this Court, and having failed to convince the Court that its prior ruling was erroneous, the Court hereby **DENIES** Movant's motion for reconsideration and reaffirms its opinion and order of August 4, 2020.

Date: September 9, 2020

/s/ Robert J. Jonker

ROBERT J. JONKER

CHIEF UNITED STATES DISTRICT JUDGE

"Appendix D"

STATE OF MICHIGAN  
8<sup>th</sup> DISTRICT COURT

CASE NO.

SEARCH  
WARRANT

OFFICER AARON HAM, affiant states that:

**1. THE PERSON, PLACE OR THING TO BE SEARCHED IS DESCRIBED AS AND IS LOCATED AT:**

The residence located at [REDACTED] McCourtie St. Apt 2, City of Kalamazoo, County of Kalamazoo, State of Michigan. The residence is a two story multiple family building that contains two apartments. The building is brown with green trim exterior and is the third residence west of Oak St. on the north side of McCourtie St. The apartment is further described as being located on the second floor of the building which is accessed by a staircase on the north side of the building. The apartment door is white in color. Also to be searched are any grounds, rooms, closets, storage spaces, persons, vehicles and/or appurtenant structures located on the premise and in the control of the residents of [REDACTED] McCourtie St. Apt 2.

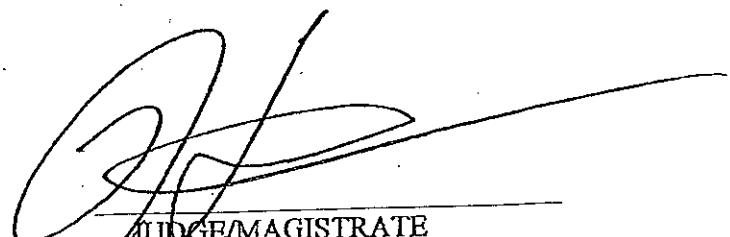
**2. THE PROPERTY TO BE SEARCHED FOR AND SEIZED, IF FOUND, IS SPECIFICALLY DESCRIBED AS:**

1. Any forms of methamphetamine and/or other controlled substances.
2. Any tools, equipment, records, notes, tabulations and U.S. currency believed to be the evidence and proceeds in manufacturing and/or trafficking of controlled substances.
3. Any paper, bills, receipts showing residency or control of the above premises.
4. Any and all firearms located in the aforementioned premises.

**IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN:**  
I have found that probable cause exists and you are commanded to make the search and seize the described property. You are further commanded to promptly return this warrant and tabulation to the Court.

ISSUED:

8/31/16

  
JUDGE/MAGISTRATE  
"Appendix E"

STATE OF MICHIGAN  
8<sup>TH</sup> DISTRICT COURT

CASE NO.

**AFFIDAVIT FOR SEARCH WARRANT**

OFFICER AARON HAM, affiant states that:

**1. THE PERSON, PLACE OR THING TO BE SEARCHED IS DESCRIBED AS AND IS LOCATED AT:**

The residence located at [REDACTED] McCourtie St. Apt 2, City of Kalamazoo, County of Kalamazoo, State of Michigan. The residence is a two story multiple family building that contains two apartments. The building is brown with green trim exterior and is the third residence west of Oak St. on the north side of McCourtie St. The apartment is further described as being located on the second floor of the building which is accessed by a staircase on the north side of the building. The apartment door is white in color. Also to be searched are any grounds, rooms, closets, storage spaces, persons, vehicles and/or appurtenant structures located on the premise and in the control of the residents of [REDACTED] McCourtie St. Apt 2.

**2. THE PROPERTY TO BE SEARCHED FOR AND SEIZED, IF FOUND, IS SPECIFICALLY DESCRIBED AS:**

1. Any forms of methamphetamine and/or other controlled substances.
2. Any tools, equipment, records, notes, tabulations and U.S. currency believed to be the evidence and proceeds in manufacturing and/or trafficking of controlled substances.
3. Any paper, bills, receipts showing residency or control of the above premises.
4. Any and all firearms located in the aforementioned premises.

**3. THE FACTS, ESTABLISHING PROBABLE CAUSE OR THE GROUNDS FOR SEARCH ARE:**

A. I am currently employed as a Police Officer with the Portage Department of Public Safety, and assigned to the Kalamazoo Valley Enforcement Team. My current duties include, but are not limited to investigating violations of City Ordinances and State Statutes including controlled substance violations. I have been a police officer for 17 years and during that time have been involved in the investigation of 1000+ cases involving controlled substances. I have received training related to the investigation of controlled substance activities from my time in training and on patrol at Portage Department Public Safety. This experience and training has made this officer knowledgeable in activities surrounding the packaging, sale and trafficking of controlled substances.

B. That MICHAEL NATHANIEL BOYD B/M DOB 6-15-82 has four outstanding warrants for his arrest at this time.

This affidavit consists of 4 pages.

Subscribed and sworn before me on: 8/31/16

Date

Exhibit A

Affiant

Judge Magistrate

**AFFIDAVIT FOR SEARCH WARRANT**

- 2 of 4 -

C. That in May of 2016 your affiant spoke with a subject, who wished to remain anonymous, who advised that BOYD lived at [REDACTED] McCourtie St. Apt 2. That this subject also stated that BOYD is selling illegal substances from his apartment and that there is a large amount of vehicle and foot traffic to and from BOYD'S apartment.

D. That on 5-11-16 your affiant and other KVET Investigators performed surveillance on BOYD at [REDACTED] McCourtie Street. Your affiant positively identified BOYD driving a vehicle from behind the residence onto McCourtie St. and out of the area. Later in the day your affiant observed BOYD entering the upstairs apartment of [REDACTED] McCourtie Street.

E. That in July 2016 KVET Inv. Wolbrink spoke with a subject who wished to remain anonymous who advised that MICHAEL BOYD, who lives on McCourtie St., is selling methamphetamine from his upstairs apartment.

F. That within the last 24 hours your affiant met with a confidential informant (CI) who provided information on a subject who the CI knows as MICHAEL BOYD. The CI advised that BOYD lives at [REDACTED] McCourtie St. Apt 2 and sells several illegal substances including methamphetamine. The CI advised your affiant that BOYD carries a pistol on his person at all times because he was recently robbed for his drugs and money. The CI indicated that he/she can purchase methamphetamine from BOYD.

G. That in the last 24 hours, your affiant utilized the same CI to conduct a controlled purchase of methamphetamine from BOYD.

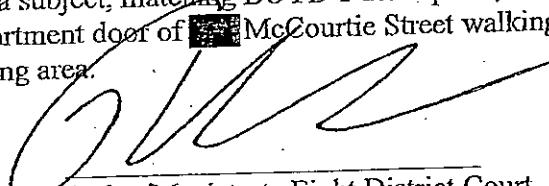
1. Your affiant strip searched the CI and didn't locate any contraband and/or US currency.
2. Your affiant searched the CI's vehicle and didn't locate any contraband and/or US currency.
3. Your affiant provided the CI with official KVET funds.
4. The CI called BOYD via cell phone number (269) 290-9782 and ordered the methamphetamine.
5. Your affiant observed a subject, matching BOYD's description, exiting the upstairs apartment door of [REDACTED] McCourtie Street walking towards the back parking area.



Affiant

5-31-16

Date



Judge/Magistrate Eight District Court

8/31/16

Date

Exhibit A

**AFFIDAVIT FOR SEARCH WARRANT**

**- 3 of 4 -**

6. Your affiant and Sgt. Ferguson kept the CI under constant surveillance while he/she drove to [REDACTED] McCourtie Street.
7. Your affiant observed the CI meeting with a subject in the back parking area in a white vehicle.
8. Your affiant and Sgt. Ferguson kept the CI under constant surveillance while returning to KVET Investigators.
9. The CI advised that he/she had made contact with MICHAEL BOYD.
10. The CI advised your affiant that BOYD had sold him/her methamphetamine.
11. The informant turned over the purchased methamphetamine.
12. The CI was strip searched again, revealing no other contraband and /or US Currency.
13. Sgt. Ferguson, Inv. Khillah, and Inv. Behnen searched the CI's vehicle again and did not locate any contraband and/or US currency.
14. Your affiant field tested the methamphetamine which gave positive results for the presence of methamphetamine.

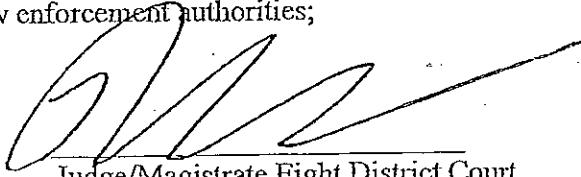
H. That based on your affiant's experience and participation in other drug Investigations, your affiant knows the following:

1. That drug traffickers maintain, on hand or nearby (including the possession of other individuals present) large sums of U.S. currency in order to maintain and finance their on-going drug business.
2. That drug traffickers maintain books, notes, ledgers, records, receipts and other papers relating to the transportation, ordering, sale and distribution of controlled substances, and that these items are maintained where the traffickers have ready access to them;
3. That it is common for drug dealers to secrete contraband and proceeds of drug transactions and records of transactions in secure locations in their residences and/or they often utilize a second and separate location to conceal these items from law enforcement authorities;



Affiant

8-31-16  
Date



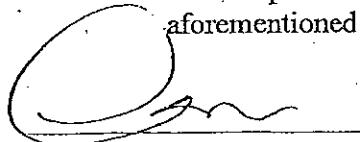
Judge/Magistrate Eight District Court

8/31/16  
Date  
Exhibit A

**AFFIDAVIT FOR SEARCH WARRANT**

**- 4 of 4 -**

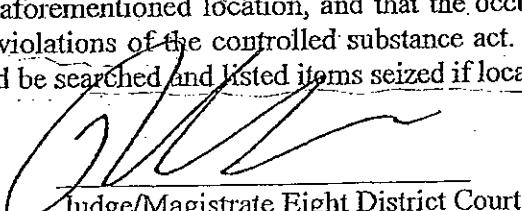
4. That these items concealed by persons engaged in drug trafficking are caches of drugs, large amounts of currency, financial instruments, precious metals, jewelry and other items of value and/or proceeds of drug transactions; evidence of financial transactions relating to obtaining, transferring, secreting or spending large sums of money made from engaging in drug trafficking activities;
5. That when drug traffickers amass proceeds from the sales of drugs, the drug traffickers attempt to legitimize these profits. To accomplish these goals, drug traffickers utilize, including but not limited to, banks and their attendant services, securities, cashiers checks, money drafts and real estate. These same traffickers will also put assets in the names of others, again to conceal from law enforcement authorities;
6. That drug traffickers take, or cause to be taken, photographs of themselves, Their associates, their property and their drugs;
7. That drug traffickers commonly maintain addresses or telephone numbers in books or papers, which reflect names, addresses and/or telephone numbers of their associates in the drug trafficking organization;
8. That drug traffickers commonly have in their possession, either on their person or at their residence, firearms. These firearms are used to protect and secure a drug trafficker's proceeds of drug trafficking, the drugs and themselves;
9. That drug traffickers maintain packaging materials, equipment and scales utilized in the packaging of their drugs at their residence.
10. That drug traffickers often store narcotics and other drug paraphernalia in garages, vehicles, and storage buildings and/or appurtenant structures located on the property of the residence.
11. That through your affiant's training, experience, and education, it is known that person who use, sell, and traffic illegal drugs will commonly carry and conceal drugs, paraphernalia, and/or weapons on their person.
- I. That your affiant states that based on the above listed information and other facts given that there is probable cause to believe that drug evidence and related items can be found at aforementioned location, and that the occupant there is partaking in ongoing violations of the controlled substance act. The aforementioned location should be searched and listed items seized if located.



Affiant

8-31-16

Date:



Judge/Magistrate Eight District Court

8/31/16

Date

Exhibit A

January 29, 2019

Michael Nathaniel Boyd  
15732-040  
Pekin FCI  
P.O. Box 5000  
Pekin, Illinois 61555

Clerk of the Court  
150 E. Crosstown Parkway  
Kalamazoo, Michigan 49001

RE: Case No. 16-13846 "Requesting Certified copies of documents"

Dear Sir or Ma'am,

I am requesting copies of the following documents that were filed or recorded for Case No. 16-13846; (1) The Docket Sheet, (2) The Search Warrant Affidavit and (3) The Search Warrant. In addition, I am requesting that the documents bear the signature of an employee who has a seal and official duties within the office to certify that the papers are genuine and copies of the true originals.

If there is a fee or another process I must take in locating the following documents, please send me a response letter with the details. I would like a response as soon as possible please and thank you so much for your time and help.

Sincerely Yours,

*Michael N. Boyd 15732 040*

"Appendix F"



STATE OF MICHIGAN

**8TH DISTRICT COURT**

150 E. CROSSTOWN PARKWAY, KALAMAZOO, MI 49001  
227 W. MICHIGAN AVENUE, KALAMAZOO, MI 49007  
TELEPHONE: (269) 384-8171  
[www.kalcoounty.com/courts/district](http://www.kalcoounty.com/courts/district)

3/27/19

MICHEL NATHANIEL BOYD  
15732-040; PEKIN FCI  
PO BOX 5000  
PEKIN IL 61555

Case/Ticket Number RECORDS

**The Court has received correspondence and/or a payment that is being returned to you for the following reason:**

We are unable to determine the ticket/case number. Please print clearly the name of the defendant and the ticket/case number for which the payment is intended. A telephone number would also be helpful.

Payment using your credit card requires the 3 or 4 digit code from the signature line on the back of the credit card. Please provide the information below and return for processing.

Card No. \_\_\_\_\_ Security Code \_\_\_\_\_ Expiration Date \_\_\_\_\_

Address \_\_\_\_\_

Credit card transaction has been declined.

The Court does not accept "counter" check issued by the bank for new accounts. Please remit with a printed check, money order or credit card.

Check or money order is not signed or the check was made out incorrectly. Please sign and return to the Court within 14 calendar days.

The matter has been closed and there is no balance due.

THE CASE YOU INQUIRED ABOUT (16-13846) HAS BEEN NOLLE PROSEQUI BY THE PROSECUTOR. ENCLOSED IS A COPY OF THE REGISTER OF ACTIONS. THE SEARCH WARRANT IS NOT INCLUDED IN THE CASE FILE.

**A balance remains due for the following reason:**

A \$25.00 late fee has been assessed.

The driver's license of the defendant has been suspended. A \$45.00 license reinstatement fee is due and must be paid in full. IT MAY NOT BE SATISFIED BY COMMUNITY SERVICE.

HON. TIFFANY A. ANKLEY, PROBATE JUDGE  
HON. KATHLEEN P. HEMINGWAY

HON. ANNE E. BLATCHFORD  
HON. RICHARD A. SANTONI

HON. CHRISTOPHER T. HAENICKE, CHIEF JUDGE  
HON. VINCENT C. WESTRA

COURT ADMINISTRATOR  
ANN E. FILKINS

*Mike Jones*  
Deputy Clerk *Court Manager*

STATE OF MICHIGAN 8TH JUDICIAL DISTRICT ORI390045J PIN: 16-013846	REGISTER OF ACTIONS	CASE NO: 161193FY D01 FY X-REFERENCE #: 1613846 STATUS: CLSD 09/21/16
--	---------------------	---

JUDGE OF RECORD: WESTRA, VINCENT C., P-35348  
JUDGE: WESTRA, VINCENT C., P-35348

STATE OF MICHIGAN v

BOYD/MICHAEL/NATHANIEL  
716 MCCOURTIE ST APT 2  
KALAMAZOO MI 49008

DOB: 06/15/1982 SEX: M RACE: U DLN: MI B300603622447 CDL: U  
VEH YR: VEH MAKE: VIN: PAPER PLATE:

DEFENSE ATTORNEY ADDRESS  
MCDONOUGH, WARD F., JR.  
137 N PARK ST  
STE 103  
KALAMAZOO MI 49007

BAR NO.  
P-17381 APPOINTED  
Telephone No.

OFFICER: DEPT: KVET  
PROSECUTOR: GETTING, JEFFREY S., P-43227  
VICTIM/DESC:

CNT: 01 C/M/F: F 33374012B1 PACC#333.74012B1  
CONT SUBS-DEL/MANUFACTURE METHAMPHETAMINE/ECSTASY  
ARRAIGNMENT DATE: 09/02/16 PLEA: EXAM DEMAND PLEA DATE: 09/02/16  
FINDINGS: NOLLE PROSEQ DISPOSITION DATE: 09/21/16  
SENTENCING DATE:

FINE	COST	ST.COST	CON	MISC.	REST	TOT FINE	TOT DUE
0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

JAIL SENTENCE:	PROBATION:
VEH IMMOB START DATE:	NUMBER OF DAYS:

BOND HISTORY:  
500,000.00 CASH OR SURETY BOND SET

CNT: 02 C/M/F: F 750227B-A PACC#750.227B-A  
WEAPONS-FELONY FIREARM  
ARRAIGNMENT DATE: 09/02/16 PLEA: EXAM DEMAND PLEA DATE: 09/02/16  
FINDINGS: NOLLE PROSEQ DISPOSITION DATE: 09/21/16  
SENTENCING DATE:

FINE	COST	ST.COST	CON	MISC.	REST	TOT FINE	TOT DUE
0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

JAIL SENTENCE:	PROBATION:
VEH IMMOB START DATE:	NUMBER OF DAYS:

CNT: 03 C/M/F: F 33374012A4 PACC#333.74012A4  
CONT SUBS-DELIVER/MANUF (NARCOTIC OR COCAINE) < THAN 50 GRAMS  
ARRAIGNMENT DATE: 09/02/16 PLEA: EXAM DEMAND PLEA DATE: 09/02/16  
FINDINGS: NOLLE PROSEQ DISPOSITION DATE: 09/21/16  
SENTENCING DATE:

FINE	COST	ST.COST	CON	MISC.	REST	TOT FINE	TOT DUE
0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

JAIL SENTENCE:	PROBATION:
----------------	------------

NAME: BOYD/MICHAEL/NATHANIEL

CASE NO: 161193FY

PAGE 2

VEH IMMOB START DATE:

NUMBER OF DAYS:

VEH FORFEITURE:

CNT: 04 C/M/F: F 750227B-A

PACC#750.227B-A

**WEAPONS-FELONY FIREARM**ARRAIGNMENT DATE: 09/02/16 PLEA: EXAM DEMAND PLEA DATE: 09/02/16  
FINDINGS: NOLLE PROSEQ DISPOSITION DATE: 09/21/16  
SENTENCING DATE:

FINE	COST	ST.COST	CON	MISC.	REST	TOT FINE	TOT DUE
0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

JAIL SENTENCE: PROBATION:

VEH IMMOB START DATE:

NUMBER OF DAYS:

VEH FORFEITURE:

CNT: 05 C/M/F: F 750224F

PACC#750.224F

**WEAPONS-FIREARMS-POSSESSION BY FELON**ARRAIGNMENT DATE: 09/02/16 PLEA: EXAM DEMAND PLEA DATE: 09/02/16  
FINDINGS: NOLLE PROSEQ DISPOSITION DATE: 09/21/16  
SENTENCING DATE:

FINE	COST	ST.COST	CON	MISC.	REST	TOT FINE	TOT DUE
0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

JAIL SENTENCE: PROBATION:

VEH IMMOB START DATE:

NUMBER OF DAYS:

VEH FORFEITURE:

CNT: 06 C/M/F: F 750227B-A

PACC#750.227B-A

**WEAPONS-FELONY FIREARM**ARRAIGNMENT DATE: 09/02/16 PLEA: EXAM DEMAND PLEA DATE: 09/02/16  
FINDINGS: NOLLE PROSEQ DISPOSITION DATE: 09/21/16  
SENTENCING DATE:

FINE	COST	ST.COST	CON	MISC.	REST	TOT FINE	TOT DUE
0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

JAIL SENTENCE: PROBATION:

VEH IMMOB START DATE:

NUMBER OF DAYS:

VEH FORFEITURE:

CNT: 07 C/M/F: F 750224F6

PACC#750.224F6

**WEAPONS - AMMUNITION - POSSESSION BY FELON**ARRAIGNMENT DATE: 09/02/16 PLEA: EXAM DEMAND PLEA DATE: 09/02/16  
FINDINGS: NOLLE PROSEQ DISPOSITION DATE: 09/21/16  
SENTENCING DATE:

FINE	COST	ST.COST	CON	MISC.	REST	TOT FINE	TOT DUE
0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

JAIL SENTENCE: PROBATION:

VEH IMMOB START DATE:

NUMBER OF DAYS:

VEH FORFEITURE:

DATE	ACTIONS, JUDGMENTS, CASE NOTES	INITIALS
08/31/16		
1	ORIGINAL CHARGE DEL/MANF DRG	AJC
2	ORIGINAL CHARGE WEAPONS	AJC
3	ORIGINAL CHARGE DEL/MAN DRUG	AJC
4	ORIGINAL CHARGE WEAPONS	AJC
5	ORIGINAL CHARGE POSS FELON	AJC
	COUNT 1: 2ND OR SUBSEQUENT OFFENSE NOTICE	AJC
	COUNT 3: 2ND OR SUBSEQUENT OFFENSE NOTICE	AJC
09/02/16		
	FILING DATE 090216	AJC
1	AUTHORIZATION OF COMPLAINT DATE	AJC

DATE	ACTIONS, JUDGMENTS, CASE NOTES	INITIALS
	PROS GETTING, JEFFREY S., COMPLAINT ISSUANCE DATE	P-43227 AJC
6	MISCELLANEOUS ACTION WEAPONS	AJC
	ADDED CHARGE WEAPONS	AJC
7	MISCELLANEOUS ACTION WEAPONS-AMMO	AJC
	ADDED CHARGE WEAPONS-AMMO	AJC
	PC HEARING HEARD: CT K - AEB	AJC
	MISCELLANEOUS ACTION ALL COUNTS	AJC
	JUDGE OF RECORD/MAGISTRATE CHANGED	AJC
	FROM: 00000 NO SPECIFIC JUDGE	AJC
	TO: 35348 WESTRA, VINCENT C.,	AJC
	SCHEDULED FOR ARRAIGNMENT 090216 130P JUDGE, ARRAIGNMENT, # 2084	AJC
	VERIFIED PRINTS TAKEN AND CCH FILED	AJC
	IN CUSTODY	AJC
	TCN ADDED	AJC
	MISCELLANEOUS ACTION ALL COUNTS	CKG
	SCHEDULED FOR PRELIMINARY EXAMINATION CONFERENCE HEARING	
	091416 830A KROPF, ROBERT C., P-16262 CKG	
	SCHEDULED FOR EXAMINATION 092116 130P WESTRA, VINCENT C., P-35348 CKG	
	NOTICE TO APPEAR GENERATED	
	ALL COUNTS	CKG
1	BAIL BOND GENERATED DEL/MANF DRG	DAB
	MISCELLANEOUS ACTION DEL/MANF DRG	DAB
	BOND PRINTED TO JAIL	DAB
	ARRAIGNMENT HELD ALL COUNTS	CKG
	JDG BLATCHFORD, ANNE E., P-44377 CKG	
	ATT FY-CT ATTY,/, # 9999 CKG	
	EXAMINATION DEMANDED CKG	
	CASH OR SURETY CKG	
	BOND SET \$ 500000.00 CKG	
	ORDER FOR COURT APPOINTED ATTORNEY FILED CKG	
	2,2A,11 RELEASE TO OCC TO BE PLACED ON GPS CKG	
	TETHER CKG	
	NTA TO DEF IN CUSTODY BY CT STAFF KLM	
	CAA PET TAKEN, SENT TO CC BY CT STAFF KLM	
	PT RELEASE & CAA PET FILED KLM	
	PT RELEASE TO OCC BY CT STAFF KLM	
09/06/16	NTA TO PROS OFF & AGENCY KLM	
09/07/16	PREV. 716 MCCOURTIE STREET BAM	
	ADDR: KALAMAZOO MI 49001 BAM	
	SOURCE: PER JUDGE ON ROA BAM	
09/08/16	MISCELLANEOUS ACTION ALL COUNTS JLA	
	ATT MCDONOUGH, WARD F., J P-17381 JLA	
09/14/16	PRE-EXAMINATION HEARING HELD MAR	
	ALL COUNTS MAR	
	EXAM STILL ON MAR	
1	BAIL BOND GENERATED DEL/MANF DRG MAR	
	PT RELEASE FILED KLM	
09/21/16		

DATE	ACTIONS, JUDGMENTS, CASE NOTES	INITIALS
	COPY OF NOLLE TO KCSD	DAV
	NOLLE FILED - SIGNED BY VCW	KLM
	COPIES OF NOLLE TO DEF, DEF ATTY, PROS OFF	KLM
	& AGENCY	KLM
	FILE TO DISPO	KLM
1	MISCELLANEOUS ACTION DEL/MANF DRG	BAM
	JDG WESTRA, VINCENT C.,	P-35348
	ORDER OF NOLLE PROSEQUI ENTERED	BAM
2	MISCELLANEOUS ACTION WEAPONS	BAM
	ORDER OF NOLLE PROSEQUI ENTERED	BAM
3	MISCELLANEOUS ACTION DEL/MAN DRUG	BAM
	ORDER OF NOLLE PROSEQUI ENTERED	BAM
4	MISCELLANEOUS ACTION WEAPONS	BAM
	ORDER OF NOLLE PROSEQUI ENTERED	BAM
5	MISCELLANEOUS ACTION POSS FELON	BAM
	ORDER OF NOLLE PROSEQUI ENTERED	BAM
6	MISCELLANEOUS ACTION WEAPONS	BAM
	ORDER OF NOLLE PROSEQUI ENTERED	BAM
	A FEDERAL ARREST WARRANT HAS BEEN ISSUED	BAM
	OUT OF THIS INCIDENT THEREFORE THE INTEREST	BAM
	OF JUSTICE ARE SERVED BY DISMISSAL OF CASE	BAM
7	MISCELLANEOUS ACTION WEAPONS-AMMO	BAM
	ORDER OF NOLLE PROSEQUI ENTERED	BAM
	MISCELLANEOUS ACTION WEAPONS-AMMO	BAM
	CASE CLOSED	BAM
09/23/16		
	CERT COPY OF ROA SENT TO OPA	BAM
03/26/19		
	EJUD COMPLETED PER MSP OPEN CASE REPORT.	RMS
02/13/20		
	REC LETTER FROM DEF STATING HE SENT IN PYMT	SPD
	IN DECEMBER. WE REC ENVELOPE FWD FROM XTOWN	SPD
	WITH NO CHECK/MONEY ORDER IN IT. VERIFIED	SPD
	WITH XTOWN THEY DID NOT RING IT IN. SINCE	SPD
	NO PYMT WAS RECEIVED, ROA WAS NOT SENT	SPD

STATE OF MICHIGAN  
COUNTY OF KALAMAZOO

I, ANN E. FILKINS, Clerk of the District  
Court of said County do hereby CERTIFY  
that the foregoing is a true and correct copy  
of the original thereof on file in said Court  
} ss

Signed and sealed at Kalamazoo, Michigan

This 29<sup>th</sup> day of June 20 20  
ANN E. FILKINS, CLERK OF THE COURT

By Lisa Jameson Deputy Clerk

No. 20-1912

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

MICHAEL NATHANIEL BOYD,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

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**FILED**  
Apr 08, 2021  
DEBORAH S. HUNT, Clerk

ORDER

Before: DAUGHTREY, McKEAGUE, and THAPAR, Circuit Judges.

Michael Nathaniel Boyd petitions for rehearing en banc of this court's order entered on January 4, 2021, denying his application for a certificate of appealability. The petition was initially referred to this panel, on which the original deciding judge does not sit. After review of the petition, this panel issued an order announcing its conclusion that the original application was properly denied. The petition was then circulated to all active members of the court, none of whom requested a vote on the suggestion for an en banc rehearing. Pursuant to established court procedures, the panel now denies the petition for rehearing en banc.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk