IN THE

SUPREME COURT OF THE UNITED STATES

DAN KENNY DELVA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

APPENDIX A - G

Dan Kenny Delva, pro-se.
Reg. No. 10150-104
FCI Williamsburg
P.O. Box 340
Salters, SC 29590

IN THE

SUPREME COURT OF THE UNITED STATES

DAN KENNY DELVA,

Petitioner,

v.

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UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
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APPENDIX A

Opinion of the U.S. Court of Appeals

DAN KENNY DELVA, Movant-Appellant, versus UNITED STATES OF AMERICA, Respondent-Appellee.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
2021 U.S. App. LEXIS 8721
No. 20-10542 Non-Argument Calendar
March 25, 2021, Decided

Notice:

PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Editorial Information: Prior History

{2021 U.S. App. LEXIS 1}Appeal from the United States District Court for the Southern District of Florida. D.C. Docket Nos. 0:20-cv-60106-WPD; 0:15-cr-60209-WPD-2.

Disposition:

AFFIRMED.

Counsel For DAN KENNY DELVA, Petitioner - Appellant: Dan Kenny Delva, FCI Williamsburg - Inmate Legal Mail, SALTERS, SC.

For UNITED STATES OF AMERICA, Respondent - Appellee: Brandy Brentari Galler, Emily M. Smachetti, U.S. Attorney's Office, MIAMI, FL; Andrea G. Hoffman, U.S. Attorney Service - Southern District of Florida, U.S. Attorney Service - SFL, MIAMI, FL.

Judges: Before MARTIN, NEWSOM and BRANCH, Circuit Judges.

Opinion

PER CURIAM:

Dan Delva, proceeding *pro se*, appeals the district court's order denying his motion to vacate his sentence and conviction under 28 U.S.C. § 2255. He raises four issues on appeal. First, Delva argues that his trial counsel was ineffective for failing to file a motion to sever his trial from that of his brother and co-defendant, Bechir. Second, he asserts that his trial counsel was ineffective for failing to file a motion to suppress evidence seized during a search of a residence and vehicle. Third, he argues that his 84-month sentence is unreasonable and that his counsel was ineffective for failing to object to his sentencing enhancement. Fourth,**{2021 U.S. App. LEXIS 2}** he asserts that his counsel was ineffective for advising him to proceed to trial instead of pleading guilty in exchange for 24 months' imprisonment. For the reasons explained below, we affirm.

I

A

The underlying facts and procedural history of this case are thoroughly described in this Court's previous opinion dealing with Delva's direct appeal, ***United States v. Delva*, 922 F.3d 1228** (11th

Cir. 2019). We will therefore only briefly describe the events relevant to Delva's § 2255 motion to vacate.

A Florida grand jury charged Delva and his brother Bechir with multiple counts related to an identity-theft and tax-fraud scheme. Following an undercover operation targeting Delva and Bechir, federal agents interviewed Bechir after giving him a *Miranda* warning. During that interview, Bechir told agents that (1) he had obtained all of the personal identifying information (PII) of numerous individuals found by law enforcement during the investigation; (2) he had used the PII to file fraudulent tax returns; (3) he would receive the tax refunds from the fraudulent returns on debit cards; (4) firearms found during a search of a residence that Delva and Bechir were using to carry out their activities belonged to Delva; and (5) the brothers kept the firearms for**{2021 U.S. App. LEXIS 3}** their own protection. To avoid prejudicing Delva at trial, the government agreed to redact Bechir's statement by removing any reference to Delva from the statement. At trial, before Bechir's statements to law enforcement were introduced, Delva's counsel said he didn't have any objection to the redaction.

Delva and Bechir were tried together. Prior to trial, there was a suppression hearing based on Bechir's motion to suppress physical evidence that had been seized from Bechir's car, including credit cards and the PII of numerous individuals. The court concluded that there was sufficient probable cause to search the car and denied the motion.

At trial, Bechir testified in his own defense. As relevant for our purposes, Bechir testified that (1) the townhouse at which he and Delva were arrested didn't belong to either of them, but rather to an out-of-town relative; (2) all of the PII that the agents found belonged to a confidential informant that police had used in the operation targeting him and Delva; (3) he and Delva didn't own any of the PII; and (4) Delva's firearms were purchased for recreational use at a shooting range, not to protect the PII or tax-fraud proceeds. Delva's counsel**{2021 U.S. App. LEXIS 4}** was offered the opportunity to cross-examine Bechir but chose not to, while the government did cross-examine him. A jury found Delva and Bechir guilty of all charges.

At the sentencing phase, the court adopted the recommendations of Delva's presentence investigation report (PSI). The PSI recommended a 14-level sentencing enhancement pursuant to U.S.S.G. § 2B1.1(b)(1)(H) because the total loss amount from Delva's crimes was between $550,000 and $1,500,000. The court adopted the PSI's loss-enhancement calculation, considered the 18 U.S.C. § 3553(a) factors and the guidelines, and sentenced Delva to a total of 84 months' imprisonment.

This Court affirmed Delva's and Bechir's convictions and sentences on direct appeal. *See* ***United States v. Delva*, 922 F.3d 1228**, 1257 (11th Cir. 2019).

B

Delva filed a motion to vacate his conviction pursuant to 28 U.S.C. § 2255, which the district court denied. A member of this Court granted Delva a certificate of appealability on four issues:

1. Whether trial counsel was ineffective for failing to file a motion to sever Delva's trial from his brother Bechir's trial;

2. Whether trial counsel was ineffective for failing to file a motion to suppress evidence seized during a search of a vehicle and residence;

3. Whether Delva's 84-month sentence was unreasonable, and his trial counsel**{2021 U.S. App. LEXIS 5}** was ineffective for failing to object to the sentencing enhancement for the loss amount; and

4. Whether trial counsel was ineffective for advising Delva to proceed to trial instead of pleading guilty in exchange for 24-months' imprisonment.1

II

A

We'll begin with Delva's first ineffective-assistance-of-counsel claim. Delva argues that his counsel was ineffective for failing to file a motion to sever his trial from Bechir's because Bechir made statements to law enforcement officers directly implicating Delva in the tax-fraud scheme. In connection with his ineffective-assistance claim, Delva also asserts that Bechir's testimony violated his Fifth and Sixth Amendment rights because *Bruton v. United States*, 391 U.S. 123, 88 S. Ct. 1620, 20 L. Ed. 2d 476 (1968), bars the admission of a co-defendant's confession inculpating the defendant unless that co-defendant is subject to cross-examination.

To succeed on an ineffective-assistance claim, a defendant must show both that (1) his counsel's performance was deficient, and (2) the deficient performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Under the first prong, counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Id.* at 690. Counsel's performance is deficient**{2021 U.S. App. LEXIS 6}** only if it falls below the wide range of competence demanded of attorneys in criminal cases. *Id.* at 687-89. As to the prejudice prong, the movant must 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. A "reasonable probability" has been defined as one sufficient to undermine confidence in the outcome. *Id.* Further, "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 112, 131 S. Ct. 770, 178 L. Ed. 2d 624 (2011). Failure to establish either prong is fatal. *Strickland*, 466 U.S. at 697.

Here, Delva has failed to show that his counsel's performance fell below an objective standard of reasonableness or that prejudice resulted from his counsel's actions such that the outcome of his trial would have been different. *Strickland*, 466 U.S. at 694. First, on performance, to the extent that Delva argues that his counsel was ineffective for failing to move to sever the trials because Bechir's statement caused a *Bruton* violation, this argument fails. No *Bruton* violation arose even though Bechir's unredacted statement was introduced at trial during Bechir's testimony because Delva's counsel was offered the opportunity to cross-examine Bechir but chose not to do so. *See Nelson v. O'Neil*, 402 U.S. 622, 627, 91 S. Ct. 1723, 29 L. Ed. 2d 222 (1971) ("The Constitution**{2021 U.S. App. LEXIS 7}** as construed in *Bruton*, in other words, is violated only where the out-of-court hearsay statement is that of a declarant who is unavailable at the trial for 'full and effective' cross-examination."); *United States v. Clemons*, 32 F.3d 1504, 1510 (11th Cir. 1994) (finding no *Bruton* violation where a defendant had an opportunity to cross-examine a co-defendant).2

Second, on prejudice, Delva has failed to show a reasonable probability that, but for counsel's alleged errors, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 694. Here, for a motion to sever to have succeeded, Delva's trial counsel would have had to overcome the general presumption that defendants indicted together will be tried together, particularly in conspiracy cases. *United States v. Francis*, 131 F.3d 1452, 1459 (11th Cir. 1997); *United States v. Cassano*, 132 F.3d 646, 651 (11th Cir. 1998). This would have required showing that Delva wouldn't receive a fair trial without severance. *Cassano*, 132 F.3d at 651. It's unlikely that his trial counsel would have been able to show that Delva wouldn't be able to receive a fair trial because the government would have introduced the same evidence whether or not Bechir and Delva were tried together. Even if the trials had been severed, the government likely would have called Bechir to

testify, and the same testimony and evidence regarding Delva's ownership of the firearms likely would{2021 U.S. App. LEXIS 8} have been introduced.

B

Delva next claims that his trial counsel was ineffective for failing to move to suppress evidence found during the search of a residence and vehicle. He argues that law enforcement used a confidential source to gain access to the residence and that doing so violated his Fourth Amendment rights because the officers did not first receive authorization for a recording that the confidential informant took inside the residence that showed signs of tax-fraud activities and that was later used as the basis for a search warrant for the residence.

Again, under *Strickland*, Delva has failed to show either deficient performance or prejudice. First, counsel was not ineffective for failing to challenge the search of the residence because Delva had no reasonable expectation of privacy in it. *See Kimmelman v. Morrison*, 477 U.S. 365, 375, 106 S. Ct. 2574, 91 L. Ed. 2d 305 (1986) ("Where defense counsel's failure to litigate a Fourth Amendment claim competently is the principal allegation of ineffectiveness, the defendant must also prove that his Fourth Amendment claim is meritorious[.]"). Bechir testified that the residence was not Delva's but a relative's and that the confidential source was staying there. Because Delva had no reasonable expectation of privacy in someone else's home, he could not successfully{2021 U.S. App. LEXIS 9} challenge the search of the residence. *Minnesota v. Carter*, 525 U.S. 83, 90, 119 S. Ct. 469, 142 L. Ed. 2d 373 (1998) ("Thus, an overnight guest in a home may claim the protection of the Fourth Amendment, but one who is merely present with the consent of the householder may not.").

Second, counsel was not deficient for not challenging the search of the vehicle. As Delva admitted in his original § 2255 motion, the court denied his co-defendant Bechir's motion to suppress evidence obtained from the vehicle, determining that officers had probable cause to search it. Delva's counsel could not have been ineffective for failing to file a motion to suppress evidence when his co-defendant's counsel's motion challenging the same search was determined to be meritless, and, for the same reason, there is no reasonable probability that, in the absence of the alleged error, the result would have been different.

Consequently, Delva hasn't shown that his counsel's performance fell below an objective standard of reasonableness or that there was a substantial probability that a motion to suppress the evidence obtained from either the residence or vehicle would have been granted.

C

Next, Delva argues that his total 84-month sentence is procedurally and substantively unreasonable and that his counsel was{2021 U.S. App. LEXIS 10} ineffective because he failed to object to a 14-level enhancement pursuant to U.S.S.G. § 2B1.1(b)(1)(H). He also contends that when the district court enhanced his sentence on the ground that a weapon was found in the residence, it violated his constitutional right to have a jury determine all facts essential to his sentence.

As an initial matter, Delva's challenge to his 84-month sentence isn't cognizable on collateral review. Section 2255 does not provide a remedy for every alleged sentencing error. *Spencer v. United States*, 773 F.3d 1132, 1138 (11th Cir. 2014). When a movant claims that his "sentence was imposed in violation of the Constitution or laws of the United States ... or is otherwise subject to collateral attack," 28 U.S.C. § 2255(a), he must show that the alleged error "constituted a fundamental defect which inherently results in a complete miscarriage of justice," *United States v. Addonizio*, 442 U.S. 178, 185, 99 S. Ct. 2235, 60 L. Ed. 2d 805 (1979) (quotation marks omitted). Here, Delva has failed to allege an error other than a guidelines miscalculation, which is not an error resulting in a "complete miscarriage of justice." *Spencer*, 773 F.3d at 1139 (noting that "[a] prisoner

may challenge a sentencing error as a 'fundamental defect' on collateral review when he can prove that he is either actually innocent of his crime or that a prior conviction used to enhance his sentence has been vacated").{2021 U.S. App. LEXIS 11}

Moreover, Delva's counsel was not ineffective for failing to object to the loss amount that led to his sentencing enhancement. Delva can't show a substantial probability that an objection to the sentencing enhancement for the loss amount would have been successful. *Harrington*, 562 U.S. at 111-12. The government produced evidence that Delva received $186,997 from fraudulent tax returns and that Delva possessed the social security numbers of 1,656 other individuals. In cases involving "unauthorized access devices" such as social security numbers, the commentary to the guidelines says that the loss amount calculated shall be not less than $500 per access device. U.S.S.G. § 2B1.1 cmt. n.3(F)(i).3 Therefore, the loss amount for the social security numbers was calculated to be $828,000, bringing the total loss amount, along with the $186,997 from fraudulent tax returns, to $1,014,697. That loss amount fell well within the range for the § 2B1.1(b)(1)(H) enhancement. Delva has failed to explain how that loss amount was incorrectly calculated, such that his attorney should have objected or that such an objection would have been successful.

Finally, to the extent that Delva challenges the firearm-possession enhancement to his sentence, this Court can't review the claim{2021 U.S. App. LEXIS 12} because it is beyond the issues specified in the certificate of appealability granted by this Court. *See Murray v. United States*, 145 F.3d 1249, 1251 (11th Cir. 1998) (holding that the scope of review in a § 2255 motion is limited to the issues specified in the certificate of appealability).

D

Finally, Delva claims that his counsel was ineffective for advising him to go to trial instead of accepting a plea agreement for a 24-month sentence. He argues that the counsel advised him to go to trial because his brother would testify that he had nothing to do with the crime and, more generally, that his counsel pushed him into going to trial.

To establish the prejudice prong of the *Strickland* test for ineffective assistance of counsel for the allegedly improvident rejection of a guilty plea, the movant must show that (1) but for the ineffective advice of counsel, there is a reasonable probability that the plea offer would have been presented to the court; (2) the court would have accepted its terms; and (3) that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed. *Lafler v. Cooper*, 566 U.S. 156, 164, 132 S. Ct. 1376, 182 L. Ed. 2d 398 (2012). A defendant's "wholly speculative" claims about what might have happened are insufficient to satisfy{2021 U.S. App. LEXIS 13} *Lafler*'s three-pronged test. *See Osley v. United States*, 751 F.3d 1214, 1225 (11th Cir. 2014) (rejecting § 2255 movant's argument on *Lafler*'s second prong because his counterfactual claim was "wholly speculative"); *id.* at 1224 ("Osley's declaration that his plea deal would have resulted in a fifteen-year sentence is wholly speculative since it is unclear what plea terms the prosecution would have offered . . .."). Conclusory allegations unsupported by specifics regarding ineffective-assistance-of-counsel claims are insufficient to warrant § 2255 relief. *Rosin v. United States*, 786 F.3d 873, 879 (11th Cir. 2015) (rejecting a movant's "conclusory assertion" that his failure to accept a guilty plea and his insistence on going to trial were caused by his trial counsel's ineffective assistance).

Here, Delva's allegations about the supposed plea deal were conclusory because they did not (1) state when the plea deal was offered, (2) allege that the court would have accepted the plea deal, and (3) assert what the exact terms of the plea deal would have been. Consequently, Delva failed to show prejudice for this claim, as he did not show that there was a reasonable probability that the court would have accepted his plea deal. *See Strickland*, 466 U.S. at 694.

III

To recap-we affirm the district court's denial of Delva's § 2255 motion because (1) Delva's counsel was{**2021 U.S. App. LEXIS 14**} not ineffective for failing to move to sever his trial from that of his co-defendant's; (2) Delva's counsel was not ineffective for failing to move to suppress evidence from the search of the residence or vehicle; (3) Delva can't collaterally challenge his sentence in his § 2255 motion and his trial counsel wasn't ineffective for failing to object to the 14-level sentencing enhancement; and (4) Delva can't show that his counsel's advice led to the improvident rejection of a guilty plea. Accordingly, we affirm.

AFFIRMED.

Footnotes

1

For § 2255 proceedings, we review a district court's legal conclusions de novo and its factual findings for clear error. *Rhode v. United States*, 583 F.3d 1289, 1290 (11th Cir. 2009). *Pro se* pleadings are held to a less stringent standard than counseled pleadings and, consequently, must be construed liberally. *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998).

2

Delva also argues in his reply brief that his trial counsel was ineffective for failing to object to Bechir's testimony at trial. However, our review is "limited to the issues specified in the [certificate of appealability]." *Murray v. United States*, 145 F.3d 1249, 1251 (11th Cir. 1998). We cannot consider Delva's claim that his trial counsel was ineffective for failing to object to Bechir's testimony at trial because it was not an issue specified in the certificate of appealability.

3

An "access device" is "any card, plate, code, account number, electronic serial number, mobile identification number, personal identification number, or other telecommunications service, equipment, or instrument identifier, or other means of account access that can be used ... to obtain money, goods, services, or any other thing of value[.]" 18 U.S.C. § 1029(e)(1).

APPENDIX B

Opinion of U.S. District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

DAN KENNY DELVA,

Movant,

vs.

UNITED STATES OF AMERICA,

Respondent.
_____/

CASE NO. 20-60106-CIV-DIMITROULEAS
(15-60209-CR-DIMITROULEAS)

FINAL JUDGMENT AND ORDER DENYING MOTION TO VACATE

THIS CAUSE is before the Court on Movant Dan Kenny Delva's January 12, 2020, Motion to Vacate and his unsworn[1] Memorandum [DE-1]. The Court has considered the Court file and Pre-Sentence Investigation Report (PSIR), and having presided over the trial of this cause, finds as follows:

1. On August 27, 2015, Dan Kenny Delva was charged by Indictment, along with his brother, Becher Delva, with Conspiracy to possess Fifteen (15) or More Unauthorized Access Devices, Possession of Fifteen (15) or more Unauthorized Access Devices and five (5) counts of Aggravated Identity Theft. [CR-DE-3].

2. Dan Kenny Delva was arrested on November 16, 2015. [CR-DE-34], [CR-DE-111, p. 5].

3. On January 21, 2016, Co-Defendant Bechir Delva filed a Motion to Suppress evidence found in a vehicle. [CR-DE-60]. It was denied on January 28, 2016. [CR-DE-67].

[1] The facts are contained in an unsworn memorandum. Normally, the court would give Delva an opportunity to swear to the facts, but given the futility of doing so, the court will proceed with an assumption that Delva would swear to the facts.

4. After a five (5) day jury trial, both defendants were found guilty of all seven (7) counts. [CR-DE-97].

5. On September 11, 2016, Dan Kenny Delva was sentenced to 84 months in prison. [CR-DE-119].

6. On April 29, 2019, the Eleventh Circuit Court of Appeals affirmed. [CR-DE-191]. *U.S. v. Delva*, 922 F. 3d 1228 (11th Cir. 2019). The appellate court found that Dan Kenny Delva had not demonstrated that his 84 month sentence was substantially unreasonable.

7. In this timely collateral attack, Dan Kenny Delva complains that counsel was ineffective in not filing a motion for severance and in not filing a motion to suppress. He also complains that his 84 month sentence was unreasonable. Finally, he contends that he was offered a 24 month sentence through counsel.

8. First, Dan Kenny Delva complains that a severance should have been requested. He contends that his brother's statement incriminated him and that he could not call his bother as a witness in the joint trial. This allegation is somewhat confusing; Bechir Delva's statement was supposedly inculpatory, but Dan Kenny Delva still wanted to call him as a witness. First, the Government agreed to redact the statement of Bechir Delva, and Dan Kenny Delva's defense counsel agreed with that procedure. [CR-DE-149, pp. 4-5]. Therefore, there was no reason to request a severance. Moreover, strategically, defense counsel realized that the Government could introduce the same evidence through another witness. Therefore, there was no basis to sever the trials. Finally, Bechir Delva testified and was subject to cross examination by Dan Kenny Delva's counsel, but there was no need to question him, as he testified that he, not Dan Kenny Delva, brought gun to the apartment. [CR-DE-151, p. 65]. Second, Bechir Delva did testify; so there was no reason to sever the trials to obtain Bechir Delva's testimony. Bechir

Delva explained his prior statement by saying that the police told him what to say. [CR-DE-151, pp. 22-23]. Again, there was no reason to file a motion to sever. In his trial testimony, Bechir Delva exculpated his brother and inculpated McKenzie Francois [CR-DE-151, pp. 38-41]. There was no prejudice to Dan Kenny Delva because he could have cross-examined Bechir Delva [DE-151, pp. 23, 97]. No error has been shown. *See, Houston v. U.S.*, 2014 WL 585025*7 (M.D. Fla. 2017).

9. Second, Kenny Delva does not explain how a motion to suppress the search warrant would have been successful. *See Thompson v. Battaglia*, 458 F. 3d 614, 620 (7th Cir. 2006) *cert. denied,* 549 U.S. 1229 (2007). It was not Dan Kenny Delva's house. [CR-DE-151, pp. 59, 88]. It was based on a search warrant, and a good faith exception to the Fourth Amendment is hard to overcome. Moreover, a law enforcement agent's warrantless use of a concealed audio-video device in a home into which he/she has been invited does not violate the Fourth Amendment. *U.S. v. Wahchumwah*, 710 F. 3d 868 (9th Cir. 2013); *U. S. v. Thompson*, 811 F. 3d 944, 949 (7th Cir. 2016). No prejudice has been shown. Moreover, Jan Smith is an experienced federal public defender, and the presumption that his conduct was reasonable is even stronger. *Chandler v. U.S.*, 218 F. 3d 1305, 1316 (11th Cir. 2000).

10. Third, matters addressed on direct appeal should not be relitigated on a collateral attack. *See Stoufflet v. U.S.*, 757 F. 3d 1236, 1239 (11th Cir. 2014). As the Eleventh Circuit indicated, 84 months was a reasonable sentence. Dan Kenny Delva also complains about the guideline enhancement for loss. He does not explain how an objection would have changed the calculations. The PSIR accurately reflects that the IRS paid out $186,697 in fraudulent tax returns. [CR-DE-111, p. 5]. Moreover, 1656 social security numbers were seized, at a rate of

$500.00 per personal identification number, the intended loss was $828,000, for a total loss amount of $1,014,697. [CR-DE-111, p. 6]. No objection would have been sustained.

11. Fourth, contrary to Delva's contention, defense counsel cannot offer a 24 month sentence. It is possible, but highly unlikely, that the Government could have offered a plea to only one count of Aggravated Identify Theft, and no other counts. However, Delva's conclusory allegation does not merit any relief. Advice, although appearing incorrect in retrospect, does not rise to the level of ineffective assistance of counsel. *Mostowicz v. U.S.*, 625 Fed. Appx. 489, 494 (11th Cir. 2015).

Wherefore, Delva's Motion to Vacate [DE-1] is Denied.

The Clerk shall close this case and deny any pending motions as Moot.

The request for an evidentiary hearing is Denied.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 21st day of January, 2020.

WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:

Dan Kenny Delva, #10150-104
c/o FCI Williamsburg
PO Box 340
Salters, SC 29590

Maurice A. Johnson, AUSA

APPENDIX C

Order of Rehearing En Banc Per Curiam

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

June 30, 2021

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 20-10542-GG
Case Style: Dan Delva v. USA
District Court Docket No: 0:20-cv-60106-WPD
Secondary Case Number: 0:15-cr-60209-WPD-2

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Joseph Caruso, GG/lt
Phone #: (404) 335-6177

REHG-1 Ltr Order Petition Rehearing

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-10542-GG

DAN KENNY DELVA,

Petitioner - Appellant,

versus

UNITED STATES OF AMERICA,

Respondent - Appellee.

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

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: MARTIN, NEWSOM, and BRANCH, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. (FRAP 35, IOP2)

ORD-42

APPENDIX D

Extension of Time Granted

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

April 16, 2021

Dan Kenny Delva
FCI Williamsburg - Inmate Legal Mail
8301 HWY 521
PO BOX 340
SALTERS, SC 29590

Appeal Number: 20-10542-GG
Case Style: Dan Delva v. USA
District Court Docket No: 0:20-cv-60106-WPD
Secondary Case Number: 0:15-cr-60209-WPD-2

The following action has been taken in the referenced case:

Your motion for extension of time, up to and including May 10, 2021, to file a request for rehearing is granted.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Joseph Caruso, GG
Phone #: (404) 335-6177

EXT-1 Extension of time

APPENDIX E

Petition for Rehearing

Additional material from this filing is available in the Clerk's Office.