

APPENDIX A

**ORDER FROM THE US DISTRICT COURT OF ABILENE DENYING WILLIAMS
PETITION FOR 28 U.S.C. 2255.**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

JEHONI KIERRE WILLIAMS,

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**Civil Action No. 1:17-cv-182-O
(Criminal No. 1:13-cr-080-O(2))**

UNITED STATES OF AMERICA,

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Respondent.

NoA

**ORDER DENYING MOTION TO VACATE UNDER 28 U.S.C. § 2255 and
DENYING CERTIFICATE OF APPEALABILITY**

Before the Court are Defendant Jehoni Kierre Williams's ("Williams") motion to vacate under 28 U.S.C. § 2255 (ECF No. 1), brief in support (ECF No. 3), the government's response (ECF No. 7), and Williams's reply (ECF No. 9). Williams separately filed a motion for leave to amend the § 2255 motion (ECF No. 12), to which the government filed a response (ECF No. 17), and Williams then filed a reply (ECF No. 18). After considering the § 2255 motion and separate motion for leave to amend, responses, replies, record, and applicable law, the Court **DENIES** the motion for leave to amend the § 2255 motion, and **DENIES** the motion to vacate under § 2255.

I. BACKGROUND

Williams was charged with one count of conspiracy to distribute cocaine base along with three substantive counts of possession with intent to distribute cocaine base. Superseding Indictment, *United States v. Williams*, No. 1:13-cr-080-O(2), ECF No. 26. After entering a written plea agreement, Williams pleaded guilty to one count (count two) of possession with intent to distribute cocaine base in exchange for the dismissal of additional counts and the government's promise to make a sentencing recommendation at the bottom of the guidelines. Original Plea Agreement 1-4, *United States v. Williams*, No. 1:13-cr-080-O(2), ECF No. 51. The government

breached the plea agreement by failing to make the requisite sentencing recommendation, and on direct appeal, the Fifth Circuit therefore vacated the conviction and remanded with instructions that Williams could elect his remedy—he could rescind the entire plea agreement or be sentenced again by a different judge. *See United States v. Williams*, 821 F.3d 656, 658-59 (5th Cir. 2016), *reh'g denied*, 833 F.3d 449 (5th Cir. 2016).

On remand, Williams was appointed new counsel, Peter Smythe. Appointment Form (CJA 20), *United States v. Williams*, No. 1:13-cr-080-O(2), ECF No. 111. After a short period, Williams successfully sought Smythe's removal, and attorney Jeffrey Probst was appointed. Mot. Dismiss Counsel 1, *United States v. Williams*, No. 1:13-cr-080-O(2), ECF No. 121. Williams initially sought to have a trial, and the parties began working toward that end consistent with the Court's scheduling order. Scheduling Order, Designation of Experts, Mot. Suppress, Mot. In Limine, *United States v. Williams*, No. 1:13-cr-080-O(2), ECF Nos. 126, 127, 137, 139, 138. The Court held pretrial hearings on Williams's motions, including -his motion to suppress evidence. Minute Order, *United States v. Williams*, No. 1:13-cr-080-O(2), ECF No. 168. Williams's jury trial was re-set for December 14, 2016. Order, *United States v. Williams*, No. 1:13-cr-080-O(2), ECF No. 136.

Rather than going to trial on that date, however, Williams entered a new plea agreement with the government. December 14, 2016 Plea Agreement 1-6, *United States v. Williams*, No. 1:13-cr-080-O(2), ECF No. 169. Under the terms of the new plea agreement, Williams pleaded guilty to one count (count four) of distribution and possession with intent to distribute cocaine base. *Id.* at 1. That offense carried a maximum penalty of 20 years' imprisonment. *Id.* at 2. In exchange, the government expressly agreed under Federal Rule of Criminal Procedure 11(c)(1)(C) that a sentence of 151 months' imprisonment—i.e., the same sentence it neglected to recommend before—was the appropriate sentence. *Id.* at 2. That agreement also provided that Williams waived

his right “to seek any future reduction in his sentence (e.g., based on a change in sentencing or statutory law.”) *Id.* at 5. Williams’s plea agreement also contained an extensive waiver of his right to appeal and seek post-conviction relief, but ineffective-assistance claims were excepted from the waiver. *Id.* The Court accepted the plea agreement. Rearraignment Tr. 13, *United States v. Williams*, No. 1:13-cr-080-O(2), ECF No. 191.

An addendum to the presentence report was prepared. PSR Addendum 1-4, *United States v. Williams*, No. 1:13-cr-080-O(2), ECF No. 174-1. The PSR Addendum again recommended that Williams’s sentence should be enhanced as a career offender, as was previously determined in the original presentence report. PSR Addendum at 3-4; PSR ¶¶ 45, 51-52, *United States v. Williams*, No. 1:13-cr-080-O(2), ECF No. 174-1; ECF No. 71-1. Williams had two prior Texas state convictions for possession of cocaine with intent to deliver in violation of Texas Health and Safety Code section 481.112. PSR at ¶¶ 45, 51-52; (Attached Judgments) 23, 27, *United States v. Williams*, No. 1:13-cr-080-O(2), ECF No. 71-1. Those two convictions were determined to be controlled substance offenses to qualify Williams for the enhanced career offender offense level under U.S.S.G. § 4B1.1. *Id.* On December 16, 2016, in accordance with the terms of the re-entered plea agreement, the Court resentenced Williams to 151 months in prison in a Judgment entered on December 20, 2016. J. 2, *United States v. Williams*, No. 1:13-cr-080-O(2), ECF No. 178.

Williams’s conviction became final 14 days later on January 3, 2017. *See* Fed. R. App. P. 4(b)(1)(A)(i). Several months later, Williams sought appointment of counsel, which this Court denied because his conviction was already final. Order, *United States v. Williams*, No. 1:13-cr-080-O(2), ECF No. 185. Williams then filed a notice of appeal from that order denying appointment of counsel. Notice of Appeal, *United States v. Williams*, No. 1:13-cr-080-O(2), ECF No. 186. On February 26, 2018, that appeal was dismissed for want of prosecution. *United States*

v. *Williams*, No. 17-10788 (5th Cir. Feb. 26, 2018). On November 28, 2017, while the second appeal was still pending, Williams filed the instant § 2255 motion. Mot. Vacate 12, ECF No. 1.

II. GROUNDS FOR RELIEF

Williams lists one ground for relief in his § 2255 motion, that his attorney provided ineffective assistance of counsel. Mot. Vacate 4, ECF No. 1. In support, Williams recited that counsel was ineffective in:

- “Failing to challenge the career offender enhancement at sentencing and on appeal when it would have been cognizable”;
- “Failing to cite a directly controlling precedent during sentencing and on appeal”;
- “Failing to keep abreast of legal developments related to defendant’s case”; and
- “Failing to consult with petitioner about available options on appeal so petitioner can make informed and conscious choices.”

Mot. Vacate 4, ECF No. 1. Although Williams’s supporting brief argues alleged ineffective assistance at the plea, sentencing, and appeal stages, his arguments essentially present a single ground for relief—that counsel performed deficiently by failing to raise challenges to the sentence imposed in December 2016, based on the Supreme Court’s decision in *Mathis v. United States*, 136 S. Ct. 2243 (2016), and the decisions of the Fifth Circuit in *United States v. Hinkle*, 832 F.3d 569 (5th Cir. 2016), and *United States v. Tanksley*, 848 F.3d 347 (5th Cir. 2017). Brief 4-10, ECF No. 3.

III. APPLICABLE LAW and ANALYSIS

A. Standard of Review

Under 28 U.S.C. § 2255, a prisoner may move the convicting court to vacate, set aside, or correct his conviction or sentence on four grounds: “(1) the sentence was imposed in violation of the Constitution or laws of the United States; (2) the court was without jurisdiction to impose the sentence; (3) the sentence exceeds the statutory maximum sentence; or (4) the sentence is

APPENDIX B

ORDER FROM FIFTH CIRCUIT COURT OF APPEALS DENYING REQUEST FOR COA

20-11156

Mr. Jehoni Kierre Williams
#47922-177
FCI Bastrop
1341 Highway 95 N., P.O. Box 1010
Bastrop, TX 78602-1010

Done at Embargo for P

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1 First Street NE
Washington DC 20543

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

August 05, 2021

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 20-11156 USA v. Williams
USDC No. 1:17-CV-182

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

Laney Lampard

By: Laney L. Lampard, Deputy Clerk
504-310-7652

Ms. Karen S. Mitchell
Ms. Leigha Amy Simonton
Mr. Jehoni Kierre Williams

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 5, 2021

Lyle W. Cayce
Clerk

No. 20-11156

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JEHONI KIERRE WILLIAMS,

Defendant—Appellant.

Application for a Certificate of Appealability from the
United States District Court for the Northern District of Texas
USDC No. 1:17-CV-182

ORDER:

Jehoni Kierre Williams, federal prisoner number # 47922-177, was convicted of one count of possession of cocaine base with intent to distribute following a guilty plea and was sentenced to 151 months in prison. He did not appeal but filed a timely motion to vacate pursuant to 28 U.S.C. § 2255, asserting claims of ineffective assistance of counsel. He later sought leave to amend with additional claims. The district court denied the motion, denied leave to amend, and denied a certificate of appealability (COA). He now seeks a COA to appeal that ruling.

To obtain a COA, a defendant must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). When the

district court has denied claims on the merits, he must show “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong,” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), “or that the issues presented were adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). To obtain a COA as to the denial of leave to amend, he must show reasonable jurists would debate whether the district court abused its discretion when it denied his motion to amend. *United States v. Riascos*, 76 F.3d 93, 94 (5th Cir. 1996).

Williams has failed to make the required showing. Thus, his motion for a COA is DENIED. His motions for appointment of counsel and to dismiss the indictment are also DENIED.



GREGG COSTA
United States Circuit Judge

APPENDIX C

LETTER FROM COUNSEL JEFFREY PROST REFUSING TO FILE NOTICE OF APPEAL
REQUESTED BY WILLIAMS DUE TO HIS LIMITED APPELLATE RIGHTS APPEAL
WAIVER.

KEITH & PROPST

A PROFESSIONAL LIMITED LIABILITY COMPANY

Attorneys and Counselors at Law

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August 22, 2017

Jehoni Kierre Williams, 47922-177
Federal Correctional Institution
1900 Simler Ave.
Big Spring, Texas 79720

RE: No. 1:13-CR-080-O; United States of America v. Jehoni Kierre Williams; In the
United States District Court for the Northern District of Texas, Abilene Division

Dear Mr. Williams:

I have reviewed your case and your concerns. The prior offenses that were used to enhance your sentencing guideline range under the "career offender" enhancement were for "possession of a controlled substance with intent to deliver." It is the *Tanksley* case, and not the *Hinkle* case, that addresses the use of prior convictions such as yours to enhance defendants under the "career offender" guidelines. *Hinkle* has to do with prior convictions for actual delivery, which you did not have. The *Tanksley* case was first decided on August 16, 2016, at which time the Fifth Circuit said that prior convictions for "possession with intent to deliver" could be used for "career offender" purposes, re-affirming what had been the law since the *Ford* case in 2007. It was not until January 18, 2017, about a month after the judgment in your case, that the Fifth Circuit changed its opinion in *Tanksley*. In other words, you were sentenced under the law in effect at the time of your sentencing.

You were sentenced according to the 11(c)(1)(C) agreement on December 16, 2016. I came to the jail on December 20, 2016, and visited with you about your limited appellate rights. You did not have a right of direct appeal as to the calculation of the guidelines, because it was given up as part of the plea agreement. You only had the limited rights of appeal as were contained in your plea agreement, and you did not wish to appeal on any of those limited matters. We agreed that the sentence of 151 months was in your best interest, and under the law existing at the time, it was in your best interest, because it guaranteed you a sentence at the bottom of the applicable guidelines. There was a significant risk that you would receive a higher sentence. I understand that, in light of the *Tanksley* decision of January 18, 2017, you now view the 151-month sentence as being too high, and I sympathize with you, but the *Tanksley* case was decided after you were sentenced. We did not have the benefit of the second *Tanksley* decision at the time of the plea agreement.

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July 24, 2017

Jehoni Kierre Williams, 47922-177
Federal Correctional Institution
1900 Simler Ave.
Big Spring, Texas 79720

RE: 1:13-CR-080-O; USA v. Jehoni Kierre Williams; In the United States District
Court for the Northern District of Texas, Abilene Division

Dear Mr. Williams:

Thank you for your recent letter. I received it about 30 minutes ago. I have read through it, and I have read through the *Hinkle* case. At this point, it is difficult for me to tell if you have a good *Hinkle* claim. I need to do a little more research.

At the moment, I am preparing for a trial and have a couple of other deadlines looming. If you can give me a few weeks, I would like to look into a couple of things before I answer the questions in your letter.

I just wanted to get you a quick letter to let you know that I understand what your concern is, and I am looking into it. Please feel free to write me in the meantime.

Sincerely,



Jeffrey A. Propst
Email: jeff@keithandpropst.com

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September 7, 2017

Jehoni Kierre Williams, 47922-177
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1900 Simler Ave.
Big Spring, Texas 79720

RE: No. 1:13-CR-080-O; United States of America v. Jehoni Kierre Williams; In the
United States District Court for the Northern District of Texas, Abilene Division

Dear Mr. Williams:

Enclosed are the requested documents.

Sincerely,



Jeffrey A. Propst
Email: jeff@keithandpropst.com