Appendix A

Samuels v. United States

United States Court of Appeals for the Sixth Circuit

August 27, 2021, Filed

No. 21-1312

Reporter
2021 U.S. App. LEXIS 26073 *

DERRICK GARRELL SAMUELS, Petitioner-Appellant, v. UNITED STATES OF AMERICA, Respondent-Appellee.

Counsel: [*1] DERRICK GARRELL SAMUELS, Petitioner - Appellant, Pro se, Pekin, IL.

For UNITED STATES OF AMERICA, Respondent - Appellee: Paul D. Lochner, Assistant U.S. Attorney, Office of the U.S. Attorney, Marquette, MI.

Judges: Before: MOORE, Circuit Judge.

Opinion

ORDER

Derrick Garrell Samuels, a federal prisoner proceeding pro se, appeals from the district court's judgment denying his motion to vacate, set aside, or correct his sentence filed under 28 U.S.C. § 2255. Samuels has moved for a certificate of appealability ("COA"). *See* Fed. R. App. P. 22(b).

In 2018, a jury convicted Samuels on one count of conspiracy to distribute and to possess with intent to distribute heroin, in violation of 21 U.S.C. §§ 846, 841(a)(1) and (b)(1)(C); three counts of distribution of heroin, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C); and one count of attempted distribution of heroin, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C). The district court sentenced Samuels to 240 months' imprisonment—a below-guidelines sentence—and six years' supervised release.

On appeal, Samuels questioned the procedural and substantive reasonableness of his sentence, challenged the sufficiency of the evidence on which the conspiracy charge was based, asserted that the prosecutor engaged in prejudicial misconduct by improperly immunizing and bolstering witnesses, and claimed [*2] that the district court violated circuit precedent in admitting a co-conspirator's hearsay statement. *United States v. Samuels*, 781 F. App'x 454, 455-63 (6th Cir. 2019). We affirmed his convictions and sentence. *Id.* at 463.

Samuels then filed a § 2255 motion on the grounds that he received ineffective assistance of both trial and appellate counsel. Specifically, Samuels faulted his trial counsel for failing to object to the government's opening statement and the opinion testimony of a government witness, and he faulted his appellate counsel for failing to appeal the magistrate judge's denial of his motion to change venue. The district court denied the motion on the merits and declined to issue a COA. Samuels timely appealed.

In his COA application in this court, Samuels makes arguments with respect to his ineffective-assistance claims concerning trial counsel only. By failing to raise his ineffective-assistance-of-appellate-counsel claim in his application, Samuels has forfeited review of that claim. *See Jackson v. United States*, 45 F. App'x 382, 385 (6th Cir. 2002) (per curiam); *Elzy v. United States*, 205 F.3d 882, 886 (6th Cir. 2000).

In order to obtain a COA, a movant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Miller-El v.*

Cockrell, 537 U.S. 322, 336, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003). Where the district court has rejected a constitutional claim on the merits, a movant must show that reasonable jurists could debate whether [*3] the matter should have been resolved in a different manner. *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000). A movant is not required to demonstrate that the appeal will succeed in order to be granted a COA, and a court should not deny a COA merely because it believes the movant fails to show an entitlement to relief. *Miller-El*, 537 U.S. at 337.

To prevail on an ineffective-assistance claim, a movant must demonstrate that counsel's performance was "so defective that he ceased functioning as counsel under the Sixth Amendment," *Phillips v. White*, 851 F.3d 567, 576 (6th Cir. 2017) (citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)), and that, but for counsel's errors, there is a reasonable probability that the result of the proceeding would have been different, *Loza v. Mitchell*, 766 F.3d 466, 488 (6th Cir. 2014). In assessing such claims, "courts must 'judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct,' and '[j]udicial scrutiny of counsel's performance must be highly deferential.'" *Roe v. Flores-Ortega*, 528 U.S. 470, 477, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000) (alteration in original) (citations omitted) (quoting *Strickland*, 466 U.S. at 689-90).

Samuels first argues that his trial counsel should have objected to what he characterizes as the government's assertion, in its opening statement, that he would testify. Samuels contends that, as a result of that assertion, the jury inferred guilt from his silence when he elected not to testify. [*4] But Samuels's trial counsel reasonably could have interpreted the statement in question differently, and the district court noted that the statement was "at worst, an imprecise statement, and far from an assertion by the government alerting the jury that [Samuels] would testify, much less a statement shifting the burden onto the defense." Furthermore, the district court noted no fewer than five times to the jury that Samuels bore no obligation to present a case and that the government was required to carry the burden of proof.

Samuels next argues that trial counsel should have objected to the opinion testimony of a government witness who was not qualified as an expert under Federal Rule of Evidence 702. The witness in question, however, was not offered as an opinion witness nor did the government elicit opinion testimony from him. Rather, the witness—a police officer—was offered as a fact witness and testified on direct examination as to his participation in controlled narcotics buys and his role in the search of Samuels's home. Only during cross-examination was the witness questioned as to his opinion on the meaning of a text message found on Samuels's phone. Reasonable jurists would not debate the district court's [*5] rejection of Samuels's ineffective-assistance-of-trial-counsel claims because he has failed to show any prejudice resulting from counsel's decision not to object on either occasion.

Accordingly, Samuels's motion for a COA is **DENIED**.

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Appendix B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DERRICK GARRELL SAMUELS,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.
_____/

CASE NO. 2:20-CV-209

HON. ROBERT J. JONKER

OPINION AND ORDER

This matter is before the Court on Movant Derrick Samuels' motion under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence (ECF No. 1), as amplified in a supporting brief.[1] The government has responded to the motion (ECF No. 11), and Movant has replied. (ECF No. 12). The Court determines that an evidentiary hearing is unnecessary to the resolution of this case. *See* Rule 8, RULES GOVERNING 2255 PROCEEDINGS; see also *Arredondo v. United States*, 178 F.3d 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). For the following reasons, the Court denies the Section 2255 motion.

BACKGROUND

A grand jury charged Movant in a Superseding Indictment with a count of conspiracy to distribute and possess with intent to distribute heroin; three counts of distribution of heroin; and a

[1] The Court grants Movant's motion for permission to file an oversize brief (ECF No. 2).

count of attempted distribution of heroin. (Crim. ECF No. 36).[2] The matter proceeded to a jury trial, and Movant was found guilty on all five counts. The Sixth Circuit Court of Appeals summarized the government's proofs and Movant's subsequent sentencing as follows:

> Samuels spent years dealing heroin in the Upper Peninsula of Michigan. Some of his purchasers re-sold the heroin they bought from him, drove him to Chicago to pick up more heroin, and cleaned his house after it was searched by the police. These co-conspirators testified against Samuels at his trial. All indicated they would assert their Fifth Amendment rights if asked questions about drugs, and so all were given use immunity. The jury found Samuels guilty on all five counts. At sentencing, Samuels argued to the district court that, despite the fact that the career offender Guidelines applied to him, he should be sentenced as though they did not because his predicate offenses and offense of conviction were all free of weapons or overt violence and involved relatively small amounts of drugs. The district court sentenced Samuels to 240 months incarceration, a below-Guidelines sentence.

United States v. Samuels, 781 F. App'x 454, 455 (6th Cir. 2019) (internal citations omitted).

Movant's appellate counsel raised five arguments before the Court of Appeals: (1) the procedural and substantive reasonableness of his sentence; (2) the sufficiency of the evidence with respect to the conspiracy charge; (3) prosecutorial misconduct through the manner in which witnesses were immunized; (4) prosecutorial misconduct through witness bolstering; and (5) an *Enright* violation. The Court of Appeals determined all arguments failed on the merits and affirmed Movant's convictions and sentence. *Id.*

Movant filed the instant motion to vacate, set aside, or correct his sentence on October 13, 2020. (ECF No. 1). The motion, as further detailed in the supporting brief, contains three grounds for relief consisting of two claims of ineffective assistance of trial counsel, and one claim of

[2] "Crim. ECF" refers to the docket in the underlying criminal case, *United States v. Samuels*, No. 2:17-CR-24.

ineffective assistance of appellate counsel. The government responds that there is no merit in the grounds for relief raised by Movant. (ECF No. 11). The matter is ready for decision.

LEGAL STANDARDS AND DISCUSSION

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 movant 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). As a general rule, a claim not raised on direct review is procedurally defaulted and may not be raised on collateral review absent a showing of either (1) cause and actual prejudice; or (2) actual innocence. *Massaro v. United States*, 538 U.S. 500, 504 (2003); *Bousley v. United States*, 532 U.S. 614, 621-22 (1998); *United States v. Frady*, 456 U.S. 152, 167-68 (1982). A motion to vacate under Section 2255 is not a substitute for direct appeal. *United States v. Duhart*, 511 F.2d 7 (6th Cir. 1975); *DiPiazza v. United States*, 471 F.2d 719 (6th Cir. 1973).

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

I. Ineffective Assistance of Trial Counsel

Movant presents two bases for ineffective assistance of trial counsel: (1) failure to object to the government's comment, made during opening statements, that Movant would testify; and (2) failure to object to the opinion testimony of Detective Hanes under Rule 702. Both of these arguments lack merit.

A. Government's Opening Statement

Movant first argues his attorney was ineffective by failing to object to what he says was the government's assertion, made during opening statements, that Movant would testify. Movant directs the Court to the follow portion of the government's statement:

> Good morning, ladies and gentlemen. As you're going to hear in this case, this is a case about bonds between people but not bonds of friendship or bonds of love or of family but an entirely different kind of bond: Bonds of heroin. That's what this case is about.

> You're going to hear an awful lot about all of these people: Mr. Samuels, Ms. Amanda Rush, Julaine Mankowski, Sara Turner, Katie Seymour, Russell Gustafson. You're going to hear more about them. They are all going to testify. And what you're going to hear is there's a difference between them and Mr. Samuels.

(Trial Tr. Vol. II at 163:6-17, Crim. ECF No. 121, PageID.657).

Movant argues that in making these statements the government shifted its burden to him. Because of the government's comments, the jury anticipated his testimony, and when he ultimately elected not to testify, the jury inferred guilt from his silence. (ECF No. 2-1, PageID.29). He contends his trial counsel was ineffective for failing to object on this basis.

Trial counsel was not ineffective in failing to object to this isolated remark. Viewed under a narrow lens, the government's reference to "they" could have included Movant because the plural pronoun was preceded by a list of several individuals including Movant. But the next sentence following the complained of wording immediately separates Movant from this group. The government specifically mentioned Mr. Samuels apart from the pronoun "them," that is, the group of government witnesses the government anticipated would testify. So, if there was any question about it, this subsequent wording clarified the matter. Indeed, trial counsel avers that he did not interpret the governments' statement to mean that the government was asserting, or even implying, that Movant would testify. (Numinen Aff., ECF No. 8). The Court is satisfied that this was, at worst, an imprecise statement, and far from an assertion by the government alerting the jury that Movant would testify, much less a statement shifting the burden onto the defense.

But even assuming the government's statement was improper under the interpretation that Movant advances here, the stray comment does not rise to the level of prosecutorial misconduct so as to violate Movant's constitutional rights. Applying the four-factor test of *United States v. Carroll*, 26 F.3d 1380, 1385 (6th Cir. 1994), the Court finds that none of the factors weighs in

Movant's favor.[3] With respect to the first two factors, there was little risk of juror confusion or prejudice to the defendant from this single, isolated comment. At the outset of the case, the Court made it clear as part of the jury selection process that the defense had no obligation to present a case. (Trial Tr. Vol. I, at 49, Crim. ECF No. 120, PageID.543). The Court added that it was the government and only the government, that had a burden of proof to carry. (Trial Tr. Vol. II at 159, Crim. ECF No. 121, PageID.653). Then at the close of the government's case, the Court instructed the jury before a break that they would next determine whether the defense would put on a case, noting that the jury could not hold any decision by a defendant not to put on a case or not to testify against the defense. (Trial Tr. Vol. III at 817, Crim. ECF No. 122, PageID.1311). Thereafter the defense did put on a case, but Movant did not testify, and the Court reiterated to the jury that was Movant's absolute right. (Trial Tr. Vol. III at 888, Crim. ECF No. 122, PageID.1382). The Court emphasized that point in instructing the jury using pattern instruction 7.02A as part of its final instructions. (Trial Tr. Vol. III at 904-905, Crim. ECF No. 122, PageID.1398-1399). When weighed against the entirety of the record, the lone ambiguous comment did not tend to mislead the jury. For the same reason, it did not tend to prejudice the defendant. Juries are presumed to follow the court's instructions, and Movant's conclusory assertion the jury held his failure to testify against him does not provide a basis to believe the jury in this case did otherwise. *See United*

[3] The Sixth Circuit Court of Appeals applies a two-part test for determining whether prosecutorial misconduct violates a defendant's due process rights. At the first step, the reviewing court must determine whether the remarks were improper. *See Macias v. Makowski*, 291 F.3d 447, 452 (6th Cir. 2002). If the court determines the prosecutor's remarks are improper, the court proceeds to determine "whether the impropriety was flagrant" so as to violate the Defendant's due process rights. *Id.* (quoting *United States v. Carter*, 236 F.3d 777, 783 (6th Cir. 2001)). At this second step, courts consider: "(1) whether the conduct and remarks of the prosecutor tended to mislead the jury or prejudice the defendant; (2) whether the conduct or remarks were isolated or extensive; (3) whether the remarks were deliberately or accidently made; and (4) whether the evidence against the defendant was strong." *Id.* (quoting *Carter*, 236 F.3d at 783).

States v. Cunningham, 679 F.3d 335, 383 (6th Cir. 2012) (citing *Richardson v. Marsh*, 481 U.S. 200, 211 (1987)).

The remaining factors also augur against Movant. The record discussed above provides a strong inference that the government's remarks were accidental. Nowhere else did the government suggest Movant would testify, and the comments immediately following the complained of statement distinguished Movant from the other witnesses whom the government anticipated would testify, suggesting the government's comment was, at most, an inadvertent slip of the tongue. The last factor also weighs against Movant. As the Sixth Circuit observed in denying Movant's challenge to the sufficiency of the evidence on the conspiracy charge, "[t]he evidence that Samuels knowingly entered into and participated in this conspiracy was plentiful." *Samuels*, 781 F. App'x at 458. The evidence on the other charges was strong too. These convictions were based on controlled buys with Ms. Rush. Ms. Rush was a reluctant witness, to be sure, but there was evidence corroborating her testimony too, and the jury obviously credited it.

Given all the above, trial counsel was not ineffective in failing to object to the government's opening statement. Even if there was some basis on which to object, counsel avers that he would not have done so based on the facts as they stood. Counsel states that in his experience, jurors do not appreciate attorneys that interrupt opposing counsel, especially during opening statements, and that he knew the Court would instruct the jury about the defendant's right not to testify. Furthermore, counsel adds that to the extent the government promises something, and it fails to deliver, that usually augurs in the favor of the defense. (Numinen Aff., ECF No. 8, PageID.57). Counsel's decision not to object amounted to reasonable trial strategy. *Washington v. Hofbauer*, 229 F.3d 689, 702 (6th Cir. 2000).

For all the above reasons, Movant's first ground for relief fails because it is without merit.

B. Defendant Hanes

In his second ground for relief, Movant avers counsel was ineffective for failing to the object to the opinion testimony of Detective Hanes when the detective had not been qualified as an expert under FED. R. EVID. 702.

Under Federal Rule of Evidence 702, a person with "specialized knowledge" qualified by his or her "knowledge, skill, experience, training or education" may give "expert" opinion testimony if it "will help the trier of fact to understand the evidence or to determine a fact in issue." FED. R. EVID. 702. Movant argues the government failed to meet its burden of establishing that the detective was qualified under the rule.

Movant's argument misses the mark. The government did not offer Detective Hanes as an opinion witness, nor did it elicit opinion testimony from the detective. Rather the government offered the detective as a fact witness only. During the government's examination, the detective testified about his participation in the controlled buys of narcotics in this case, as well as his role in the execution of the search warrant at the Movant's residence. The detective also testified about a search of Movant's phone, and specifically recited a text message from the phone that read: "1/2 I am still at work. Kelly is at work too. Front me one till tomorrow. Kelly got his." (Trial Tr. Vol. II at 395-396, Crim. ECF. No. 121, PageID.889-890). This was purely fact testimony; the officer rendered no opinion about what the contents of the message meant. It was not until the cross-examination that the detective's testimony touched on an opinion about the meaning of the message. During cross-examination, Movant's counsel asked the detective to confirm that the message did not say anything about heroin. The detective disagreed, stating that in his training and experience the message was referring to heroin. (Trial Tr. Vol. II at 419-420, Crim. ECF No.

121, PageID.913-914). This much is confirmed in Movant's brief, which cites only the transcript from the detective's cross-examination.

Accordingly, there was nothing for Movant's trial counsel to object to during the government's examination, and counsel was not deficient in failing to object, since the testimony Movant's complains about was elicited by Movant's trial counsel, not the government. For this reason, Movant's second ground of relief fails.[4]

II. Appellate Counsel

In his third and final ground for relief under Section 2255, Movant faults his appellant counsel for failing to appeal the Magistrate Judge's denial of his motion to change venue. He surmises that consideration "could have rendered a different result." (ECF No. 2-1, PageID.37). But "[a]ppellate attorneys are not required to raise every 'colorable' claim." *Richardson v. Palmer*, 941 F.3d 838, 858 (6th Cir. 2019) (quoting *Jones v. Barnes*, 463 U.S. 745, 754 (1983)). And so "[d]eclining a raise a claim on appeal . . . is not deficient performance unless that claim was plainly stronger than those actually presented to the appellate court." *Id.* (quoting *Davila v. Davis* 137 S. Ct. 2058, 2067 (2017)). Accordingly, to show ineffective assistance of his appellate counsel Movant must show "a reasonable probably that, but for his counsel's unreasonable failure to raise [an] issue on appeal, he would have prevailed." *Dufresne v. Palmer*, 876 F.3d 248, 257 (6th Cir. 2017) (internal quotation marks omitted). Movant's speculation that including this argument in his appeal could have led to a different result fails to meet this standard.

[4] To the extent Movant might argue his counsel should have questioned the detective's qualifications to render an opinion, Movant's counsel gives a reasonable explanation as to why he did not. He was familiar with the detective's extensive qualifications, and he knew that if he questioned the detective about the qualifications, he would open the door to for the government to establish the witness's bona fides and bolster the detective's credibility during its redirect examination. (Numinen Aff., ECF No. 8, PageID.58). This was an eminently reasonable strategic decision.

Movant does not, furthermore, identify any flaw in the Court's order denying his motion for change of venue that would indicate a reasonable probability of success had he raised it on appeal, rather he merely repeats arguments that were thoughtfully considered and rejected by the Magistrate Judge. The Magistrate Judge determined that:

> [Movant] failed to present any evidence to establish that he cannot receive a fair trial in the Northern Division. At the hearing, [Movant] conceded that is not challenging whether the jury pool would represent a fair cross-section of the community. *See Duren v. Missouri*, 439 U.S. 357, 364 (1979). Moreover, [Movant] acknowledged that there has been no pretrial publicity of this case that would prejudice him. Instead, [Movant's] argument is based solely on conclusory allegations of racial bias in the Northern District. Although the Court recognizes that racial bias exists, there is no evidence that a jury pool in the Northern Division would be more racially prejudiced that a jury pool in the Southern Division. As the Government correctly points out, [Movant] is essentially seeking "a jury of a specific racial composition." (PageID.99) However, it is well-established that "Defendants are not entitled to a jury of any particular composition[.]" *Taylor v. Louisiana*, 419 U.S. 522, 538 (1975) (citations omitted); *see also United States v. Vela-Salinas*, 2014 WL 3555972, at *6 (M.D. Tenn. July 18, 2014) ("A defendant is not entitled to trial in a venue where the racial composition of the jury pool is more favorable to the defendant.").

(Crim. ECF No. 61, PageID.124-125).

Movant did not appeal the Magistrate Judge's decision to a district judge. Nor does he argue how these arguments would have fared any better before the Court of Appeals. They would not, for the very reasons recited by the Magistrate Judge. As the Magistrate Judge acknowledged, racial bias exists, and the Court explored this matter—thoroughly—with the venire. (Trial Tr. Vol. I at 69-70, Crim. ECF No. 120, PageID.563). At the conclusion of jury selection, the Court was satisfied that the jury that was seated could decide Movant's case fairly and impartially. Movant fails to identify any error here.

For all these reasons, Movant's third and final claim for relief is without merit.

CONCLUSION

For these reasons, the grounds for relief in the motion fail on the merits. The Court concludes that Movant's motion under Section 2255 must be dismissed.

Before Movant may appeal the Court's dismissal of his Section 2255 motion, 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," Petitioner "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 Movant's claims debatable or wrong.

ACCORDINGLY, IT IS ORDERED:

1. Movant's Motion for Leave to File an Oversize Brief (ECF No. 2) is **GRANTED.**
2. Movant's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (ECF No. 1) is **DENIED**.
3. Movant's request for a certificate of appealability is **DENIED.**

Dated: March 4, 2021

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