IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 21-10734-J

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EUGENE WILLIS,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

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ORDER:

Eugene Willis moves for certificate of appealability in order to appeal the denial of his motion to vacate sentence, pursuant to 28 U.S.C. § 2255. His motion is DENIED because he had failed to make a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). His motion for leave to proceed in forma pauperis is DENIED AS MOOT.

/s/ Andrew L. Brasher
UNITED STATES CIRCUIT JUDGE

**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**TAMPA DIVISION**

EUGENE WILLIS,

Petitioner,

v.

Case No: 8:20-cv-969-JSM-AAS
Crim. Case No: 8:16-cr-453-JSM-AAS

UNITED STATES OF AMERICA,

Respondent.

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**ORDER**

THIS CAUSE comes before the Court upon the motion of Eugene Willis under 28 U.S.C. § 2255 to vacate, set aside or correct his sentence (Civ. Dkt. 1[1]), the Government's response (Civ. Dkt. 3), and Willis's reply (Civ. Dkt. 4). The Court, having reviewed the pleadings of the parties, the record, and the relevant case law, concludes that the motion should be denied.

**PROCEDURAL HISTORY AND TIMELINESS**

A Grand Jury indicted Eugene Willis ("Willis") and two others with carjacking two vehicles, brandishing a firearm, and aiding and abetting others in doing so. Specifically, Willis was charged in: Count One with carjacking a 2012 Dodge Charger, Count Two with brandishing a firearm in carjacking the Dodge, Count Three for carjacking a 2013 Kia Optima, and Count Four with brandishing a firearm in carjacking the Kia. Each of these counts include aiding and abetting others in accomplishing the crimes. A jury found

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[1] Case No.: 8:20-cv-969-T-30AAS.

Willis guilty of both carjacking charges (Counts One and Three) and the second firearm charge (Count Four).

Willis appealed arguing that the Government had not presented sufficient evidence to support the guilty verdicts. *See United States v. Willis*, 769 F. App'x 863 (11th Cir. 2019) (unpublished). The 11th Circuit affirmed on April 25, 2019. Willis had ninety days to seek certiorari with the U.S. Supreme Court. He did not do so. Therefore, the judgment of the 11th Circuit became final on July 24, 2019. Willis had one year thereafter to file his § 2255 motion with this Court, and he did so on April 28, 2020. His motion is timely.

Willis asserts three claims of ineffective assistance of counsel to vacate his conviction. In Grounds One and Two, Willis argues his counsel failed to argue at trial and on appeal that the Government did not prove Willis intended to cause death or serious bodily harm as required by 18 U.S.C. § 2119(a). In Ground Three, he asserts that his counsel failed to properly explain to this Court that there was no evidence that Willis displayed a firearm in order to intimidate the driver of the Kia.

**FACTUAL BACKGROUND**

The following facts are taken from Willis's Presentence Report (Crim. Dkt. 150[2]). At sentencing, Willis did not admit the facts, but the Court found them to be consistent

[2] Case No.: 8:16-cr-453-T-30AAS

with the testimony at trial and adopted them as its findings of fact (Sentencing Transcript, Criminal Dkt. 182, p. 50):

> On the morning of October 8, 2016, J.C. was driving his 2012 Dodge Charger SRT to his apartment complex in Brandon (Hillsborough County), Florida, when he noticed that he was being followed by a suspicious vehicle, a 2016 Nissan Altima, which was stolen from Orlando, Florida, a few days earlier. The Nissan Altima was being driven by Sedrick Lamar Hamilton ("Hamilton"), with **Eugene Willis ("Willis")** and Justine Deontae Crumpton ("Crumpton") as passengers. Hamilton followed J.C. for approximately 20 minutes when he drove to his apartment complex. Minutes later, Willis and Hamilton exited the Nissan Altima, while Crumpton remained inside, and approached J.C. as he exited his Dodge Charger in a detached apartment garage. Both **Willis** and Hamilton were armed with black semi-automatic pistols (Count Two). One of them racked their handgun causing a round to eject onto the floor of the garage where it was found by law enforcement. At gunpoint, J.C. was forced to put his hands up and turn over the keys to his car. **Willis** and Hamilton tried to remove a bag from J.C.'s shoulder, but were unsuccessful. They then took J.C.'s wallet and cell phone from his belt, and went into his pocket and removed his car keys. **Willis** and Hamilton then fled in J.C.'s Dodge Charger, which was being driven by Hamilton (Count One). J.C. then called 911.
>
> Crumpton followed the Dodge Charger in the Nissan Altima, which he eventually abandoned. Crumpton wiped down the Nissan Altima where his fingerprints could be located before he entered the Dodge Charger. A Rossi Lever action rifle, .45 caliber Colt Hartford pistol, serial number 182376 loaded with rounds of .45 caliber ammunition was already in the Dodge Charger when Crumpton entered. J.C. later confirmed to law enforcement the rifle did not belong to him.
>
> A short time later, deputies with the Hillsborough County Sheriff's Office (HCSO) arrived at J.C.'s apartment. The deputies obtained a description of **Willis** and Hamilton, as well as the stolen vehicle. Additionally, J.C.'s cell phone was tracked via a computer application. The deputies relayed this information to law enforcement in several jurisdictions. Other deputies with the HCSO were on routine patrol in a marked unit when they observed the Dodge Charger on Interstate 4. After Hamilton spotted the marked unit, he sped off and drove at speeds in excess of 100 mph while weaving in and out of traffic. The deputies followed the Dodge Charger with assistance from the HCSO aviation unit. Sometime later, the Dodge Charger was involved in an accident at County Line Road and Frontage Road South near Lakeland (Polk County), Florida. When deputies arrived at that location,

the Dodge Charger was unoccupied, but still in drive and coasting down the road. In the Dodge Charger, law enforcement found the Rossi S.A. lever action rifle.

**Willis**, Hamilton, and Crumpton exited the Dodge Charger near a McDonalds' restaurant in Lakeland. They tried carjacking a vehicle in the McDonald's drive-thru line, but they were unsuccessful because the driver had a firearm. They then approached C.A., age 64, in her 2013 Kia Optima that was also in the drive-thru line. C.A. locked her car doors when she observed **Willis**, Hamilton, and Crumpton acting suspiciously. **Willis**, Hamilton, and Crumpton approached C.A.'s car, and Hamilton pointed a handgun at her, and demanded that she exit her car (Counts Three and Four). C.A. opened her car door and was pulled from her car, thrown to the ground, kicked repeatedly, and punched in the abdomen. As C.A. laid on the ground, her Kia Optima crashed into a pole. C.A. later advised that she sustained "minor abrasions."

**Willis**, Hamilton, and Crumpton entered C.A.'s car, but quickly exited when it hit the pole. At least one of them then entered another car in the drive-thru line, climbed through it and into the McDonald's through the drive-thru window. The other two also entered the McDonald's through the drive-thru window. Hamilton had a handgun in his hand as he entered the drive-thru window, but did not point it at anyone. The customers, and all but two, D.A. and K.L., of the approximately 16 employees ran from the restaurant as **Willis**, Hamilton, and Crumpton entered the restaurant and employees yelled for everyone to exit. One of **Willis**, Hamilton, or Crumpton knocked down T.D., who was 26 weeks pregnant. T.D. fell into a rack, bruising her abdominal area. T.D. went to the hospital and was told there were no apparent injuries to the fetus.

D.A. was standing in the "crew room" of the restaurant and walked to the drive-thru window where K.L. was standing. When they saw **Willis**, Hamilton, and Crumpton enter the restaurant through the drive-thru window, they ran to the "crew room" and took cover underneath a table. D.A. and K.L. later reported that they feared for their lives and believed they would be hurt if they tried to leave. Crumpton also entered the room and began pacing back and forth saying, "Fuck, oh fuck." Crumpton stayed in the room for the majority of the incident while Hamilton and **Willis**, armed with a handgun, entered and exited the room periodically. At no time did **Willis**, Hamilton, or Crumpton threaten them or point the handgun at them, nor did they talk to D.A. and K.L. Hamilton or **Willis** took D.A.'s car keys from her. At some point, Crumpton urinated into a bucket in the "crew room" with the two women, D.A. and K.L., present, and told them not to tell law enforcement about him urinating.

> While in the "crew room," Crumpton telephoned his girlfriend and mother from a cell phone that **Willis** or Hamilton had given him and told them that he was going to jail, he had messed up, and he loved them. Crumpton gave K.L. $45 in cash because he felt bad about what was happening. Crumpton urged D.A. and K.L. to stand in front of windows in an effort to show law enforcement that he was unarmed. Crumpton also told D.A. and K.L. that he did not want to leave without them because he did not want to be shot. At some point, K.L. made contact with a hostage negotiator who negotiated her release and the release of D.A., and Crumpton's surrender. Crumpton told D.A. and K.L. to stand up and made them exit through the drive-thru window, where he also exited, and surrendered. Dozens of officers from HCSO, as well as the Polk County Sheriff's Office, had gathered outside of the McDonald's. Investigators used a public address system to advise **Willis** and Hamilton of law enforcement's presence and to instruct them to surrender. After several hours of unsuccessful negotiations, the decision was made for SWAT members to enter the restaurant. After SWAT members made entry into the McDonald's, Hamilton dropped from the ceiling and was taken into custody. **Willis** refused to comply with law enforcement's commands to exit the ceiling until they deployed a flash-bang device, at which time he dropped from the ceiling and was taken into custody.
>
> Witnesses advised that one of the assailants had dropped an item outside the northwest corner of the restaurant. In a grassy area, investigators found a polymer, Kel Tec, Model PSAT, .380 caliber pistol, serial number JSZ19, loaded with five rounds, including one in the chamber, similar to one of the firearms described by J.C. Based on the information of a McDonalds' employee that one of the intruders was armed, investigators conducted a thorough search of the restaurant and found a Sturm Ruger, Model SR9C, 9mm pistol, serial number 334-21355, with a laser, and an extended magazine loaded with 18 rounds of ammunition, including one in the chamber, hidden in racks of bread in the freezer. This handgun was reported stolen in May 2016 and similar to one of the firearms described by J.C.

(Crim. Dkt. 150, pp. 5- 7).

## DISCUSSION

All of Willis's claims are based on ineffective assistance of counsel. Ineffective-assistance-of-counsel claims are cognizable under § 2255. *Lynn v. United States*, 365 F.3d 1225, 1234 n.17 (11th Cir. 2004) (per curiam). In *Strickland v. Washington*, 466 U.S. 668

(1984), the Supreme Court set forth a two-part test for analyzing ineffective-assistance-of-counsel claims:

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

466 U.S. at 687. *Strickland* requires proof of both deficient performance and consequent prejudice. *Id.* at 697 ("[T]here is no reason for a court deciding an ineffective assistance claim . . . to address both components of the inquiry if the defendant makes an insufficient showing on one."); *Sims v. Singletary*, 155 F.3d 1297, 1305 (11th Cir. 1998) ("When applying *Strickland*, we are free to dispose of ineffectiveness claims on either of its two grounds." (internal quotation marks omitted)). "[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Strickland*, 466 U.S. at 690. "[A] court deciding an actual ineffectiveness claim 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." *Id.*

**Claims One and Two**

In his first two claims, Willis contends his counsel was ineffective for failing to argue before the jury that the Government did not prove Willis intended to cause death or serious bodily harm under 18 U.S.C. § 2119(a) in either of the two carjackings.

In support of these claims, Willis argues:

> "A defendant's intent is to be judged objectively, "from the visible conduct of the actor and what one in the position of the victim might reasonably conclude." In looking at the Government's evidence at trial, it failed to prove that anyone of the Defendant's charged in the indictment (aiding and abetting) had the intent the moment Sgt. Casaquit's keys was taken or Dodge Charger was taken control over – possessed the intent to cause death or seriously harm. Therefore, since record is void of such, Counsel was ineffective for failing to present this to the jury, and before the Eleventh Circuit.

(Attachment A, Crim Dkt. 1-1).

In his reply brief, Willis acknowledges that the Government presented the following evidence as to the Dodge:

> "The men pointed the guns at Casaquit, saying, "Where are the keys at?" Doc. 178 at 104-105. The keys were in Casaquit's left front pocket, and, as he slowly reached from them, one of the men stepped forward and ripped the keys from Casaquit's keychain. Doc. 178 at 105. The men then demanded Casaquit's wallet, and the same man took that from him too. Doc. 178 at 105. Casaquit's cellphone was attached to one his belt loops and one of the men grabbed it. Doc. 178 at 105. The men then told Casaquit to face away from them. Doc. 178 at 105-06. When he complied, the men got in Casaquit's Dodge Charger and drove away with Hamilton driving and Willis in the passenger's seat. Doc. 178 at 106; Doc. 179 at 50-51."

(Civ. Dkt. 4, p. 2). Willis then argues that "simply saying 'where are the keys at?' and 'face away from them' does not satisfy the plain wording of 'intent to seriously harm or kill the driver if necessary to steal the car.'"

Of course, Willis overlooks that Willis and Hamilton were pointing guns at the victim when they made those statements. He also ignores the wording of the statute itself. 28 U.S.C § 2119 provides in pertinent part:

> Whoever, with the intent to cause death or serious bodily harm, takes a motor vehicle ... from the person or presence of another by force and violence or by intimidation ...

The text of the statute includes the taking of a vehicle by force or by intimidation. And as Willis has acknowledged, this is to be viewed objectively from the viewpoint of a reasonable victim.

Pointing a gun at someone constitutes both force and intimidation. The victim, Airforce Staff Sergeant Justin Casaquit, thought the guns were real and was afraid Willis and Hamilton would shoot him if he did not give up his keys:

> **Q.** And describe the firearms that you saw?
> **A.** Both of them had a handgun, black.
> **Q.** In your -- in your employment are you familiar with firearms?
> **A.** Yes.
> **Q.** How so?
> **A.** I did security forces for almost eight years.
> **Q.** How many years?
> **A.** Almost eight years.
> **Q.** And in that course of your employment did you encounter firearms?
> **A.** Yes. You are pretty much like the law enforcement for the Air Force.
> **Q.** The two firearms that you saw these men have, did you believe that they were real?
> **A.** Yes.
> **Q.** And what were they doing with the firearms when they were speaking to you?
> **A.** They had it pointed right at me.
> **Q.** And what was going through your mind?
> **A.** Um, don't shoot me.

(Casaquit testimony, Crim Dkt. 178, p. 104).

As to the carjacking of the Kia, Willis zeroes in on the Government's statement that "One of the men pulled her out of the car and threw her to the ground, after which all three of the men go into Austin's car. Willis was not that man. Therefore, in looking at the

Government's evidence is lacked showing of Willis's intent to cause death or serious bodily harm." (Reply brief, Civ. Dkt. 4, p. 3).

Again, Willis ignores the fact that Hamilton had a gun (see the facts explained above) and that the victim, Austin, was panic stricken and afraid. As she described it:

> **Q.** Explain to me specifically what the three men were doing when you first laid eyes on them?
> **A.** Well, like I said, they were bobbing up and down. At first I thought they were playing Pokemon because that's when that was so big. Then I kind of looked down and I thought, "no, that doesn't make sense," and I got nervous. So I rolled my window up because it was down from placing my order.
> **Q.** And the three men that you saw, did you -- can you -- could you describe them?
> **A.** They were young. I remember thinking to myself they were so young. They were black. It seemed like one was of small stature.
> **Q.** And so you saw them. You rolled your window up. Did anything else happen that morning?
> **A.** Yeah. I remember thinking to myself, "don't make eye contact." So I was looking straight ahead at the time not looking at them.
> **Q.** And at some point did you end up making eye contact with one or more of those individuals?
> **A.** Well, yeah, when one of them came to my car.
> **Q.** Tell me about that.
> **A.** Um, one of them, I don't know which of the three, came to my car and started pulling on the door handle to open the door. He was screaming, "Get out of the car. Open the door." Something to that effect, and at first I didn't do anything. I was shocked or panic stricken, and then I said, "I better open my door because I don't know what he's going to do if I don't." I unlocked my door because it automatically locks when the engine is on. He grabbed the door open and started to try to pull me out of the car and I couldn't be pulled out because I still had my seat belt on. I realized why he couldn't pull me out. It was because I had my seat belt on. I was screaming, "What do you want," and he pulled me out of the car and threw me onto the ground.
> **Q.** Let me ask you this, during this -- during this altercation with the guy at your window did you ever see a firearm?
> **A.** I thought I did. I don't know for sure. I was -- I was afraid he had one. I was afraid he was going to shoot me.

(Austin testimony, Crim Dkt. 178, pp. 173-175).

Both carjackings involved the presence of firearms and the use of force. For Willis's counsel to have argued otherwise would have risked losing credibility with the jury. Most reasonable attorneys would have made the same strategic decision. Had such an argument been made to the jury, this Court, or on appeal, there is no showing that the outcome could have been different. Therefore, Claims One and Two fail the *Strickland* standard on both prongs – there was no deficient performance and no prejudice.

**Claim Three**

In Claim Three, Willis argues that his counsel was ineffective for failing to properly explain that he was entitled to a judgment of acquittal on Count Four because none of the defendants brandished a firearm in the carjacking of the Kia. Specifically, Willis states:

> The Indictment chargers Willis with a Brandishing a Firearm in Furtherance of a Crime of violence as it relates to Count 3 (Kia Optima). The evidence at trial does not prove beyond a reasonable doubt that Willis or anyone of his co-defendant brandish a firearm when taken custody of the Kia Optima. The Government only prove Grand Theft of a Vehicle. See Trial Testimony of Candida Austin: Austin saw three black men who were very young, when one came up to her car, started pulling on her locked door handle, and screaming for her to "get out of the car." Shocked or panic stricken, Austin unlocked the door, and the person at the door reached in and eventually pulled her out of the car and pulled her to the ground. After being thrown to the ground the next thing Austin remembers seeing or hearing was a deputy behind her with his gun drawn and asking, "where did they go?" Without a firearm being displayed, there was insufficient evidence to convict Willis on a crime that he actual innocent on. Willis avers, had counsel explained this argument to the District Court and move for a Judgment of Acquittal, there is a great probability the Curt would have granted the acquittal. Nevertheless, because of Counsel's error, Willis was convicted and sentence to a consecutive 84 months. Therefore, based on the aforementioned, Willis is entitled to have his conviction and sentence vacated for not only was there insufficient evidence of brandishing but is actual innocent of this crime.

(Motion, Civ. Dkt. 1, pp. 6-7, and Attachment A, Civ. Dkt. 1-1, p.1)

First, the Court notes that this argument at bottom is that the evidence was insufficient to support a conviction under Count Four, an argument Willis has already made and lost on direct appeal. Second, the evidence in the record is sufficient to support the conviction. A reasonable jury could conclude that one of the three defendants displayed a firearm while carjacking the Kia. The victim, Austin, thought she saw a firearm and was afraid. Other witnesses in the drive-thru lane testified that one or more of the individuals possessed a firearm. And firearms were later found, one on the ground near the Kia carjacking and one inside the McDonald's where the three defendants had hidden.

Claim Three fails to meet the *Strickland* standard for showing ineffective assistance of counsel. Willis shows neither deficient performance on the part of his counsel nor prejudice as to the outcome of the proceeding.

**CONCLUSION**

Since all three claims fail to meet the *Strickland* standard for ineffective assistance of counsel, the motion will be denied. It is therefore ORDERED AND ADJUDGED that:

1. The Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 (Civ. Dkt. 1) is denied.
2. The Clerk is directed to close this case.
3. The Clerk is also directed to terminate Dkt. 191 in Petitioner's criminal case, 8:16-cr-453-JSM-AAS.

**CERTIFICATE OF APPEALABILITY AND LEAVE TO APPEAL IN FORMA PAUPERIS DENIED**

IT IS FURTHER ORDERED that Petitioner is not entitled to a certificate of appealability. A prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition. 28 U.S.C. § 2253(c)(1). A district court must first issue a certificate of appealability ("COA"). *Id.* "A [COA] may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." *Id.* at § 2253(c)(2). To make such a showing, Petitioner "'must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong,'" *Tennard v. Dretke*, 542 U.S. 274, 282 (2004) (quoting *Slack v. McDaniel*, 529 U.S. 473, 7 484 (2000)), or that "the issues presented were adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotation marks omitted). Petitioner has failed to meet this burden.

Finally, because Petitioner is not entitled to a certificate of appealability, he is not entitled to appeal in forma pauperis.

**DONE** and **ORDERED** in Tampa, Florida, this 4th day of February, 2021.

**JAMES S. MOODY, JR.**
**UNITED STATES DISTRICT JUDGE**

Copies furnished to:
Counsel/Parties of Record