No. 21-5535

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MARK STINSON,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

ORDER

Before: NALBANDIAN, Circuit Judge.

Mark Stinson, a pro se federal prisoner, appeals the district court's judgment dismissing his motion to vacate, set aside, or correct his sentence filed pursuant to 28 U.S.C. § 2255. Stinson applies to this court for a certificate of appealability (COA). *See* Fed. R. App. P. 22(b)(2). He also moves to proceed in forma pauperis, for release on bail pending appeal, for the appointment of counsel, and for summary disposition.

In 2017, a jury found Stinson guilty of conspiring to defraud the United States, in violation of 18 U.S.C. § 371 (Count 1); five counts of failing to collect, truthfully account for, and pay over payroll taxes, in violation of 26 U.S.C. § 7202 (Counts 2 to 6); five counts of making false statements on a tax document, in violation of 26 U.S.C. § 7206(1) (Counts 7 to 11); theft of government funds, in violation of 18 U.S.C. § 641 (Count 12): and aggravated identity theft, in violation of 18 U.S.C. §§ 2 and 1028A(a)(1) (Count 13). The first eleven counts related to Stinson's failure to truthfully account for and pay over payroll taxes due from the staffing company operated by him and his wife, Jayton; Counts 12 and 13 related to Stinson's involvement in his son's false federal income tax return. The district court sentenced him to a total of 75 months of imprisonment, to be followed by two years of supervised release. This court affirmed. *United States v. Stinson*, 761 F. App'x 527, 528 (6th Cir. 2019).

Appendix A

In November 2018, Stinson retained counsel and filed a § 2255 motion, claiming that trial counsel performed ineffectively by: (1) failing to speak with the staffing company's employees, who could testify that the company was a sole proprietorship run by Jayton and that Stinson was only an employee; (2) failing to retain an expert witness to testify regarding documents that bore his signature but that he claims he did not sign; (3) failing to object to incorrect jury instructions; (4) failing to call an accountant to testify that Jayton made all the decisions for the company; (5) referring to the company as being co-owned; and (6) failing to call Corey Young as a witness to rebut Stinson's son's testimony. The district court denied the motion to vacate on the merits and declined to issue a COA.

Stinson, through his retained counsel, initially filed a motion to dismiss his appeal voluntarily, which this court granted. A little under two months later, Stinson, proceeding pro se, moved to reinstate the appeal, claiming that he had agreed to dismiss his appeal merely because of his mistrust for his retained counsel. This court granted the motion and reinstated the appeal.

In his applications for a COA, Stinson reiterates many of his underlying claims and raises some new ones. To the extent that Stinson seeks to raise claims that were not properly raised and considered by the district court, they are not within the scope of this appeal. *See Hall v. Warden, Lebanon Corr. Inst.*, 662 F.3d 745, 752-53 (6th Cir. 2011). Accordingly, this order is limited to the claims raised by counsel and adjudicated by the district court. Stinson must acquire leave from this court to file a second or successive § 2255 motion to raise his new claims. *See* 28 U.S.C. §§ 2244(b)(3)(A), 2255(h). Although Stinson raised some of his new claims in a pro se motion to vacate, the district court reasonably exercised its discretion and disregarded these pro se filings because Stinson was represented by retained counsel at the time and did not have a constitutional or statutory right to hybrid representation. *See Miller v. United States*, 561 F. App'x 485, 489 (6th Cir. 2014); *United States v. Flowers*, 428 F. App'x 526, 530 (6th Cir. 2011). Moreover, Stinson's pro se motion was filed beyond the one-year statute of limitations. *See* 28 U.S.C. § 2244(d)(1).

To obtain a COA, a petitioner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the denial of a motion is based on the merits,

"[t]he petitioner must demonstrate that 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). To satisfy this standard, the applicant must demonstrate "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

To show that counsel performed ineffectively, a defendant must establish that (1) counsel performed deficiently and (2) the deficient performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). There is a "strong presumption" that an attorney "render[s] adequate assistance and [makes] all significant decisions in the exercise of reasonable professional judgment." *Id.* at 689-90. Counsel's performance is considered deficient when "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 687. To establish prejudice, a defendant 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) Failure to Investigate and Call Witnesses. Stinson first claimed that trial counsel should have called unidentified staffing company employees to testify that Jayton was in total control of the company and that Stinson was merely an employee. The district court rejected this claim because Stinson did not state facts supporting it, did not identify or provide affidavits from the specific employees that he contended should have been called, and did not show a reasonable probability that the outcome of the trial would have been different if trial counsel had properly investigated. Nor did he identify a tax expert or explain how such an expert would have been able to provide testimony refuting his involvement in the tax fraud. And although he asserts that counsel should have cross-examined Tamika Martin to elicit testimony that Jayton was solely responsible for processing payroll, he did not provide an affidavit or any other evidence indicating that Martin would have been able to testify to that fact or that she would have testified differently

on cross-examination had trial counsel questioned her more effectively. Reasonable jurists could not debate the district court's determination that Stinson did not show prejudice on these claims.

Stinson also faulted trial counsel for failing to call accountant Melvin Travis to testify that Jayton made all of the decisions for the company and that Stinson was not a responsible party for tax purposes. But again, Stinson did not provide an affidavit from Travis explaining what his testimony would have been. Trial counsel also explained in his affidavit that he was reluctant to call Travis because Travis would have provided unfavorable testimony concerning why he stopped providing services for Stinson. What's more, trial counsel noted he was able to make the same points through cross examination of Travis's wife and through a stipulation. Again, reasonable jurists could not debate the district court's conclusion that Stinson did not show prejudice.

Stinson next claimed that trial counsel should have called a handwriting expert to testify concerning whether Stinson's signature was forged on various tax documents. In his affidavit, trial counsel indicated that he did consult a handwriting expert, but the expert informed him that his opinion would not be favorable to Stinson. In these circumstances, it was not deficient performance for trial counsel not to utilize the expert. Moreover, Stinson provided no evidence that a handwriting expert would have rendered an opinion in his favor. Accordingly, reasonable jurists could not debate the district court's determination that Stinson did not show deficient performance or prejudice.

Lastly, Stinson claimed that trial counsel should have presented testimony from Young, who was listed as the tax preparer for the fraudulent tax return submitted by Stinson's son, Abdual Scales. Recall that the fraudulent tax returns formed the basis for Counts 12 and 13. Scales testified that Stinson prepared the tax return with him and then went to consult with Young. When trial counsel indicated his intent to call Young, the government suggested that he be advised of his Fifth Amendment rights, after which trial counsel declined to call him. Stinson provided an affidavit from Young in support of his § 2255 motion, indicating that Young was willing to testify that Stinson did not help him prepare Scales's tax return. Trial counsel indicated in his affidavit that Stinson agreed not to call Young as witness because he did not want his son to "look like a

liar." Assuming that trial counsel performed deficiently here, the district court concluded that Stinson did not demonstrate prejudice because Stinson received two-third of the fraudulent refund and admitted that he was aware that Scales fraudulently claimed a dependent. Moreover, Young does not claim that he was privy to any conversations between Stinson and Scales concerning fraudulently claiming a dependent. In these circumstances, reasonable jurists could not debate the district court's conclusion.

(b) Failure to Object to Jury Instructions. Stinson next claimed that trial counsel performed ineffectively by failing to object to jury instructions that did not properly define the terms "responsible person" and "willfully." The district court noted that the jury was instructed that "the defendant must have been a person required to collect, truthfully account for, or pay over withheld federal income and Social Security (FICA) taxes." The district court concluded that, contrary to Stinson's apparent argument, this instruction did not allow the jury to convict Stinson if he was merely an employee performing ministerial acts without exercising independent judgment. The district court further noted that Stinson failed to adequately develop this claim by identifying any legal error in the jury instructions or any alternative instruction that would have been approved. Because Stinson did not show either that counsel's performance was deficient in this regard or any resulting prejudice, reasonable jurists would not disagree with the district court's rejection of this claim.

(c) Characterization of Staffing Company as Co-Owned. Stinson also argued that trial counsel performed ineffectively by referring to the staffing company as a "co-ownership" rather than as a sole proprietorship owned by Jayton. Reasonable jurists would not debate the district court's conclusion that Stinson did not show prejudice because the ownership structure of the business was not determinative of whether Stinson was legally responsible for remitting payroll taxes.

Accordingly, the application for a COA is **DENIED**. Stinson's other motions are **DENIED** as moot.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

MARK STINSON, Movant, v. UNITED STATES OF AMERICA, Respondent.	Cv. No. 2:18-cv-02807-JTF-atc Cr. No. 2:16-cr-20247-01-JTF

ORDER TO MODIFY THE DOCKET, DENYING MOTION PURSUANT TO 28 U.S.C. § 2255, DENYING A CERTIFICATE OF APPEALABILITY, CERTIFYING THAT AN APPEAL WOULD NOT BE TAKEN IN GOOD FAITH, AND DENYING LEAVE TO PROCEED *IN FORMA PAUPERIS* ON APPEAL

Before the Court are the Petition for a Writ of Habeas Corpus Pursuant to 28, USC., § 2255 ("§ 2255 Motion") filed on behalf of Movant, Mark Stinson, Bureau of Prisons register number 29908-076, an inmate at the Federal Correctional Institution Low in Forrest City, Arkansas (ECF No. 1); the Response of the United States to Petitioner's § 2255 Petition for a Writ of Habeas Corpus ("Answer") (ECF No. 10); and Mark Stinson's Reply to the United States of America's Response to the Petition filed by Petitioner Pursuant to § 2255 ("Reply") (ECF No. 17).[1] For the reasons stated below, the Court **DENIES** the § 2255 Motion.

[1] This filing was incorrectly docketed as a response in support of Stinson's second motion for an extension of time to reply. The Clerk is directed to modify the docket to reflect that this filing is a reply to the Answer.

Appendix 13

I. BACKGROUND AND PROCEDURAL HISTORY

A. Criminal Case No. 2:16-cr-20247-01

On November 10, 2016, a federal grand jury in the Western District of Tennessee returned a thirteen-count indictment against Mark Stinson and Jayton Stinson, who were, at the time, husband and wife. (Criminal ("Cr.") ECF No. 3 (sealed).) On September 1, 2017, after Jayton Stinson had entered a guilty plea to Count 1, the grand jury returned a superseding indictment against Mark Stinson. (Cr. ECF No. 54 (sealed).) The superseding indictment charged Mark Stinson with two types of tax offenses, the first (Counts 1 through 11) arising from his operation of a temporary staffing company with Jayton Stinson, and the second (Counts 12 and 13) arising from an individual income return filed by Mark Stinson's son, Abdaul Scales. As for the staffing company counts, the superseding indictment alleged that, during all relevant times, the Stinsons operated a staffing company that provided temporary staffing services to businesses in Shelby County, Tennessee and elsewhere. From in or around January 2006 through in or around July 2009, the staffing company, then known as Jayton Stinson Connexx Staffing & Janitorial Service, operated as a sole proprietorship under the direction and control of Mark Stinson and Jayton Stinson. From in and around July 2009 through in or around December 2011, the staffing company operated under the name Connexx Staffing Services, LLC, a limited liability company, under the direction and control of Mark Stinson and Jayton Stinson. From in or around January 2012 through in or around March 2012, the staffing company operated under the name Complete Employment Agency, Inc. under the direction and control of Mark Stinson and Jayton Stinson. From in or around June 2013 through in or around September 2015, Conexx Staffing Services, Inc. operated as a corporation under the direction and control of Mark Stinson and Jayton Stinson. Each of these entities were in essence the same company, with the same line of business, substantially the same

customers, and the same individuals in control. Mark Stinson and Jayton Stinson each had a duty to collect, account for, and pay over to the Internal Revenue Service ("IRS") the withheld payroll taxes, including Federal Insurance Contribution Act ("FICA") taxes (Social Security and Medicare), and federal income taxes. The Internal Revenue Code requires employers to report the total amount of payroll taxes on an Employer's Quarterly Federal Tax Return, IRS Form 941. The IRS Form 941 is required to be filed quarterly, one month after the end of each calendar quarter. Employers are also required to report the total payments to all employees in a calendar year on an Employer's Annual Federal Unemployment ("FUTA") Tax Return, IRS Form 940. The IRS Form 940 is required to be filed annually, one month after the conclusion of the calendar year.

Count 1 charged that, between in or around January 2005 and in or around January 2015, Mark Stinson and Jayton Stinson conspired to defraud the United States by, *inter alia*, (i) failing to timely file IRS Forms 941 and filing false IRS Forms 941; (ii) failing to pay over $2.8 million in payroll taxes due from the staffing company to the IRS despite withholding said taxes from the wages of the employees of the staffing company; (iii) using the funds that could have been used for payroll taxes to continue operating the staffing company and to fund expenditures for the benefit of Mark Stinson and Jayton Stinson; and (iv) in order to impede IRS collections efforts, Mark Stinson and Jayton Stinson (a) made false statements to the IRS about Mark Stinson's and Jayton Stinson's control of the staffing company and their knowledge of their responsibility to truthfully account for and pay over payroll taxes; (b) transferred operations to a new business entity after accumulating payroll tax liabilities; (c) placed the staffing company's business operations in the hands of nominees who in reality had no control over such operations; (d) entered into a factoring agreement after the IRS placed a levy on customer payments to the staffing company; and (e) performed acts and made statements to hide and conceal, and cause to be hidden and

concealed, the purpose of the conspiracy and the acts committed in furtherance thereof, all in violation of 18 U.S.C. § 371. Counts 2 through 6 charged Mark Stinson with failing to account for and pay over payroll taxes on July 31, 2011 (Count 2), October 31, 2011 (Count 3), January 31, 2012 (Count 4), April 30, 2012 (Count 5), and July 31, 2015 (Count 6), in violation of 26 U.S.C. § 7202. Counts 7 through 11 charged Mark Stinson with making false statements on various tax documents on November 17, 2010, in violation of 26 U.S.C. § 7206(1). Count 12 charged that, on or about February 21, 2013, Mark Stinson stole government funds, specifically, an income tax refund in the amount of $1000 for A.S., in violation of 18 U.S.C. § 641. Count 13 charged Mark Stinson with aggravated identity theft in connection with the offense charged in Count 12, in violation of 18 U.S.C. §§ 1028A(a)(1) and 2. Counts 12 and 13 involved an individual income tax return filed by Mark Stinson's son, Abdual Scales, in which Scales improperly claimed his half-brother, J.S., another of Mark Stinson's sons, as a dependent.

A jury trial on the charges against Mark Stinson commenced on December 4, 2017. (Cr. ECF No. 73.) On December 8, 2017, the jury returned guilty verdicts on every count of the superseding indictment. (Cr. ECF Nos. 83, 85.) At a hearing on March 1, 2018, the Court sentenced Mark Stinson to a term of imprisonment of seventy-five (75) months, or six years, four months, to be followed by a two-year period of supervised release. (Cr. ECF No. 108.)[2] Stinson was also ordered to pay restitution in the amount of $2,834,000.73 jointly and severally with Jayton Stinson. (*Id.*) Judgment was entered on March 1, 2018. (Cr. ECF No. 109 (sealed).) An amended judgment was entered on March 8, 2018. (Cr. ECF No. 113 (sealed).) The United States Court of

[2] Stinson was sentenced to concurrent terms of 51 months on Counts 1 through 12 and a consecutive term of 24 months on Count 13.

Appeals for the Sixth Circuit affirmed. *United States v. Stinson*, 761 F. App'x 527 (6th Cir. 2019) (per curiam).

B. Stinson's § 2255 Motion

On November 20, 2018, Stinson, through counsel, filed his § 2255 Motion and incorporated legal memorandum. (ECF No. 1.) Although the issues presented are not clearly enumerated, Stinson appears to argue that is trial counsel, Arthur E. Quinn, rendered ineffective assistance by (i) failing to speak to "any of the former employees who worked for Jayton's sole proprietorship who knew Jayton was in total control of the company and Petitioner was only an employee" (*id.* at PageID 3); (ii) "fail[ing] to retain an expert witness to testify regarding the documents Petitioner said he did not sign but had his signature on the copies" (*id.*); (iii) failing to object to the jury instructions although the terms "responsible person" and "willingly" "were not stated in accordance with court decisions" (*id.*); (iv) failing to call Melvin Travis as a witness (*id.*); (v) referring "to the business as a co-ownership" (*id.* at PageID 4); and (vi) failing to call Corey Young as a witness (*id.* at PageID 6-7).

The Court issued an order on February 14, 2019 directing the Government to respond to the § 2255 Motion. (ECF No. 5.) On April 5, 20189 the Government filed its Answer, accompanied by the affidavit of Quinn. (ECF Nos. 10, 10-1.) Stinson filed his Reply on June 24, 2019. (ECF No. 17.)[3]

On March 12, 2021, Stinson filed a *pro se* motion, titled "Motion, Due to Extraordinary Circumstances, Under Error of Constitutional Magnitude, the Petitioner Request that the Present

[3] On September 13, 2019, Stinson filed a *pro se* Reply to the United States of America's Response to the Petition filed by Petitioner Pursuant to § 2255. (ECF No. 18.) On November 23, 2020, Stinson filed a *pro se* Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. (ECF No. 19.) However, because Stinson is represented by counsel, he is not entitled to make *pro se* filings. Therefore, these filings will be disregarded.

Counsel be Replaced, a Copy of Everything Filed on this Case be Mailed to the Petitioner and the Court Recuses Himself" ("Motion to Replace Counsel of Record, to Appoint Counsel, and for Recusal"). (ECF No. 21.) The filing sought the removal of the attorney who represented Stinson on direct appeal, not the attorney who has appeared in this matter. The Court denied the motion on April 29, 2021. (ECF No. 22.)

II. THE LEGAL STANDARD

Pursuant to 28 U.S.C. § 2255(a),

> [a] prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that 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, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

"A prisoner seeking relief under 28 U.S.C. § 2255 must allege either (1) an error of constitutional magnitude; (2) a sentence imposed outside the statutory limits; or (3) an error of fact or law that was so fundamental as to render the entire proceeding invalid." *Short v. United States*, 471 F.3d 686, 691 (6th Cir. 2006) (internal quotation marks omitted).

"In reviewing a § 2255 motion in which a factual dispute arises, the habeas court must hold an evidentiary hearing to determine the truth of the petitioner's claims." *Valentine v. United States*, 488 F.3d 325, 333 (6th Cir. 2007) (internal quotation marks omitted). "[N]o hearing is required if the petitioner's allegations cannot be accepted as true because they are contradicted by the record, inherently incredible, or conclusions rather than statements of fact." *Id.* (internal quotation marks omitted). Where the judge considering the § 2255 motion also presided over the criminal case, the judge may rely on his recollections of the prior case. *Blanton v. United States*, 94 F.3d 227, 235 (6th Cir. 1996); *see also Blackledge v. Allison*, 431 U.S. 63, 74 n.4 (1977) ("[A] motion under §

2255 is ordinarily presented to the judge who presided at the original conviction and sentencing of the prisoner. In some cases, the judge's recollection of the events at issue may enable him summarily to dismiss a § 2255 motion . . . ."). Movant has the burden of proving that he is entitled to relief by a preponderance of the evidence. *Pough v. United States*, 442 F.3d 959, 964 (6th Cir. 2006).

III. ANALYSIS

In each of his claims, Stinson argues that Quinn rendered ineffective assistance, in violation of the Sixth Amendment. A claim that ineffective assistance of counsel has deprived a movant of his Sixth Amendment right to counsel is controlled by the standards stated in *Strickland v. Washington*, 466 U.S. 668, 687 (1984), which require a showing that "counsel's performance was deficient" and that "the deficient performance prejudiced the defense." To demonstrate deficient performance by counsel, a movant must demonstrate that "counsel's representation fell below an objective standard of reasonableness." *Id.* at 688.

> A court considering a claim of ineffective assistance must apply a strong presumption that counsel's representation was within the wide range of reasonable professional assistance. The challenger's burden is to show that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment.

Harrington v. Richter, 562 U.S. 86, 104 (2011) (internal quotation marks and citations omitted).

To demonstrate prejudice, a prisoner must establish "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* "It is not enough to show that the errors had some conceivable effect on the outcome of the proceeding. Counsel's errors must be so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Richter*, 562 U.S. at 104 (internal quotation

marks and citations omitted); *see also id.* at 112 ("In assessing prejudice under *Strickland*, the question is not whether a court can be certain counsel's performance had no effect on the outcome . . . . The likelihood of a different result must be substantial, not just conceivable.") (citations omitted); *Wong v. Belmontes*, 558 U.S. 15, 27 (2009) (per curiam) ("But *Strickland* does not require the State to rule out [a more favorable outcome] to prevail. Rather, *Strickland* places the burden on the defendant, not the State, to show a 'reasonable probability' that the result would have been different.").

A. Counsel's Failure to Investigate and Call Witnesses

Stinson first complains that Quinn failed to conduct an adequate investigation and failed to call witnesses, including employees who could testify to his limited role in the staffing company; Melvin Travis, a former accountant; Corey Young, the individual who was listed as the preparer of Abdaul Scales's income tax return; and a handwriting expert.

Most of this claim is based on the premise that Mark Stinson's role in the staffing company was extremely limited and that any crimes were committed solely by Jayton Stinson. However, although the defense relied on that theory to some extent, it is both legally and factually erroneous. Count 1 charged Mark Stinson with conspiring with Jayton Stinson to defraud the United States. As for Counts 2 through 13, the Court gave an aiding and abetting instruction. (Cr. ECF No. 84 at 23-24.) By convicting Mark Stinson on all counts, the jury necessarily concluded that he conspired with Jayton Stinson to defraud the United States and that he either personally committed the remaining criminal acts or helped one or more other persons to do so.

The factual premise of this claim is also inaccurate. As the superseding indictment makes clear, the staffing company was only a sole proprietorship until in and around July 2009 and, even then, the jury necessarily concluded that Mark Stinson had a duty during that time period to file

the required forms and remit the amounts withheld to the IRS. Moreover, Quinn, Stinson's trial counsel, has addressed Stinson's contention that the defense should have emphasized his limited role in the company:

> Based on my recollection, whenever possible if not already pointed out by the Government and/or its witnesses, I attempted to point out in what capacity Ms. Stinson would have represented herself to be acting in with regard to the various documents. However, a trial defense based solely on laying it off on Ms. Stinson would have been rather tenuous because of the way Mr. Stinson took the blame for the mistakes early on in saying that he thought the payroll taxes were included on Schedule C on the joint income tax returns he prepared, the characterization by Whitsy and Travis of his involvement and the characterization by other witnesses of his involvement; [t]he testimony by Ms. Travis when the Travises informed the Stinsons (who were together) that Mr. Stinson's reaction was you are talking all of "our profits;" the common style of living they had relative to their vehicles, spending habits, and even charitable givings; and the fact that the first count was a conspiracy count, and the trial [j]udge ended up giving a not unexpected aiding and abetting charge.

(ECF No. 10-1 at PageID 71.)

Although Stinson, through his trial testimony, attempted to minimize his role at the staffing company, his testimony was not persuasive and, in some instances, bordered on perjury. Stinson testified that he had no background in finance or payroll. (Cr. ECF No. 133 at PageID 1458, 1459.) When the Stinsons started their business, Mark Stinson had never heard of Form 941. (*Id.* at PageID 1461.) He testified that he assumed that the funds withheld from employees' paychecks were remitted to the IRS when he and his wife filed their joint income tax return, which included a Schedule C. (*Id.* at PageID 1461, 1467.) According to Mark Stinson, his initial role in the staffing company was to "assist on contracts, help check the temps in," supply them with bottled water and uniforms, and "basically running a lot of errands, just taking care of all of the whatever needed, that the company needed." (*Id.* at PageID 1462.) However, Mark Stinson admitted that he set up the system Jayton Stinson used to prepare the payroll. (*Id.* at PageID 1460.) Mark

Stinson's description of his role in the company was contradicted by the testimony of the various accountants employed by the Stinsons and the IRS representatives with whom they dealt.

As for his role in preparing the individual income tax return for Abdaul Scales that was charged in Counts 12 and 13, Mark Stinson testified that he was a recruiter for a tax preparation firm owned by Corey Young and, in addition to referring family and acquaintances to the business, he stood "outside passing out cards, holding up signs, passing out flyers." (*Id.* at PageID 1521.) According to Mark Stinson, Young and Scales asked to use J.S.'s social security number and he agreed in exchange for $4000 of the $6000 refund received by Scales. (*Id.* at PageID 1522-23.) Mark Stinson admitted that Young received nothing from the scheme other than his customary fee for preparing the return. (*Id.* at PageID 1523-24.) By convicting Mark Stinson on every count, the jury necessarily rejected his characterization of his role in the staffing company and in the preparation of Abdaul Scales's individual income tax return.

The presentence report ("PSR") recommended an enhancement for obstruction of justice based on Mark Stinson's perjury at trial. (PSR ¶ 41.) At the sentencing hearing, the Government supported that recommendation. (Cr. ECF No. 126 at PageID 592-93.) Although the Court declined to apply the enhancement (*id.* at PageID 593), it emphasized that Stinson's "credibility was . . . weak; it was not good. The way he handled the questions, and some of the things that he said, bordered on being incredible." (*Id.* at PageID 573.) The Court cited, in particular, Mark Stinson's testimony that "he just 'ran errands,'" which "just flies in the face of the proof that was presented, in some of his proof of the contacts that he had with other individuals later in the case." (*Id.*; *see also id.* at PageID 593 ("That one thing, that I was 'running errands,' that's outrageous, but whether it amounts to perjury, well, it's borderline on that. But the way he testified, he was not believable, but I just am not ready to say that it amounted to obstruction to the point of

perjury.").) In addition, in affirming Stinson's convictions, the Court of Appeals noted that "there was overwhelming evidence of Stinson's guilt on all of the counts." *Stinson*, 761 F. App'x at 529. With that background in mind, the Court will address the specific acts and omissions about which Stinson complains.

1. The Failure to Call Staffing Company Employees

Stinson first complains that Quinn "failed to contact any of the former employees who worked for Jayton's sole proprietorship who knew Jayton was in total control of the company and [Mark Stinson] was only an employee." (ECF No. 1 at PageID 3.) However, Stinson's presentation of this claim does not comply with Rule 2(b)(2) of the Rules Governing Section 2255 Proceedings for the United States District Courts ("§ 2255 Rules"), which requires that a movant "state the facts supporting each ground" for relief. Notice pleading is not permitted in habeas litigation. *Mayle v. Felix*, 545 U.S. 644, 655-56 (2005); *Allison*, 431 U.S. at 75-76; *Short v. United States*, 504 F.2d 63, 65 (6th Cir. 1974); *Robertson v. Turner*, Case No. 15-cv-296, 2017 WL 4296187, at *2 (N.D. Ohio Sept. 28, 2017). Stinson has not identified the company employees he contends the defense should have called and has not summarized the testimony they were prepared to offer. He also makes no showing that, if only Quinn had undertaken the investigation he suggests, there is a reasonable probability the outcome of the trial would have been different.

In his affidavit, Quinn states that he was fully familiar with what the testimony of the witnesses was likely to be through the voluminous discovery provided by the Government, through the extensive communication between the Stinsons and the IRS prior to the indictment, and through the Government's trial brief and witness list. (ECF No. 9-1 at 2, 3-4.) Quinn states that, in preparing the case, he "asked Mr. Stinson to provide me with the names of any witnesses that he would like me to call at trial. . . . Based on my recollection, I cannot recall Mr. Stinson asking

me to contact any former employees of the business." (*Id.* at 4.) Quinn swore that, with certain limited exceptions, "I do not know of any witnesses that Mr. Stinson asked me to procure for the trial that I did not procure, or discuss with him to say why they were not necessary, or, in a number of cases, the Government was going to call them." (*Id.* at 8.) Stinson has not responded to Quinn's affidavit, has not identified any witnesses he contends should have been called, and has not even identified the witnesses he claims that Quinn failed or refused to call.[4]

Stinson claims in his Reply that Quinn failed properly to cross-examine Tamika Martin, a former employee of the staffing company. (ECF No. 17 at PageID 107-08.) Martin, who had worked as a staffing specialist during 2011 and 2012, testified that Jayton Stinson "did more of a sales type role [at the staffing company] trying to get clients" and that she "turned in [her] timecard information to [Jayton Stinson] so that she could process the pay through our software system." (Cr. ECF No. 131 at PageID 1249.) Mark Stinson "just dealt more like the systems, if we had technical problems, like things like the bills, invoices, the W-2's I remember, things like that." (*Id.* at PageID 1250.) Mark Stinson also assisted with payroll. (*Id.*) Martin also testified that she had refused permission for her name to be used on corporate documents but she learned at some point that her name had been used. (*Id.* at PageID 1251, 1255.)

Stinson contends that Quinn "should have crossed [sic] examined Martin to get a complete understanding that Jayton Stinson processed the payroll exclusively. However, he never asked her

[4] In his Reply, Stinson argues, for the first time, that "Quinn never retained a CPA, an accountant, a tax preparer or a tax attorney to testify regarding the responsibility of Stinson in the sole proprietorship owned by his wife or the corporations that were later incorporated." (ECF No. 17 at PageID 101-02.) This proposed amendment is improper because it is presented in a reply to which the Government has no opportunity to respond. It is also entirely conclusory. Stinson has not identified any such witnesses that he contends that Quinn should have called, has not stated what each such witness could have testified to, and has made no argument that, if only Quinn had done so, there is a reasonable probability that the outcome of the trial would have been different.

about the processing of payroll which is totally unreasonable." (ECF No. 17 at PageID 108.) However, Stinson has not presented an affidavit from Martin establishing that she had personal knowledge and would have been able to testify to that fact. Moreover, the proposed line of questioning was irrelevant. It does not matter which of the Stinsons was responsible for processing the payroll and calculating deductions from gross wages. The Stinsons were not charged with improperly calculating deductions but, rather, with failing to transmit the money withheld to the IRS. No showing has been made that Martin had any relevant information on that subject. Finally, the proposed questions to Martin are at odds with Stinson's own testimony at trial that, when he and his wife started their company, he set up the system that Jayton Stinson used to process the payroll. (Cr. ECF No. 133 at PageID 1460-61.)

2. The Failure to Call Melvin Travis

Stinson complains that

> [t]he accountant Melvin Travis who worked with Petitioner was never called to testify. He could have told the court that Petitioner did not know what he was doing and that Jayton completely made all decisions for her company. The accountant's testimony would have convinced the jury that Petitioner was not a responsible person [within the meaning of 26 U.S.C. § 7202] nor did he willfully not pay the 941 tax that had been withheld by Jayton Stinson who controlled payroll and all other aspects of her company.

(ECF No. 1 at PageID 3.) Once again, Stinson has not provided an affidavit from Melvin Travis setting forth the testimony he was prepared to offer had he been called as a witness at trial.

Barbara Travis was the Government's first witness at trial. The firm she ran with her husband, Melvin Travis, was retained by the Stinsons in 2008 to prepare the Form 941's and negotiate a settlement with the IRS. (Cr. ECF No. 129 at PageID 1007-08.) Barbara Travis calculated that the Stinsons owed $1,578,429.32 at that time and, in response, Mark Stinson said, "[M]an, you trying to take all my profits." (*Id.* at PageID 1011.) In fact, said Barbara Travis,

"[t]he amount they were showing as net income was close to the amount that they owed in payroll taxes." (*Id.* at PageID 1012.) Barbara Travis prepared 941's for the Stinsons to file for the 2001 through 2008 timeframe. (*Id.*) The Travises developed a plan for the Stinsons going forward "for them to start paying their taxes." (*Id.* at PageID 1016.) That plan was presented "to both Mr. and Mrs. Stinson because, when they saw us, they were together." (*Id.* at PageID 1017.) Barbara Travis also accompanied Jayton Stinson to the bank in early 2009 to make a payroll tax deposit. (*Id.* at PageID 1017-18.) Melvin Travis worked with Mark Stinson to install the QuickBooks business accounting software. (*Id.* at PageID 1018.) The Travises continued to work with the Stinsons "[f]or a short amount of time" (*id.*), but they ended the relationship "[b]ecause we found out they were not paying their payroll taxes" (*id.* at PageID 1021). Nothing in Barbara Travis's testimony supports Stinson's claim that he was not involved in making decisions for the staffing company.

In his affidavit, Quinn responds that

> [i]t is true that Mr. Travis did not testify at the trial, however, I did attempt to talk to Mr. Travis prior to the trial. When I called, I was informed that he was sick and most ofmy [sic] interview occurred with Ms. Travis who did have extensive knowledge about the dealings with the Stinsons. She was, in fact the witness who was called by the Government to testify concerning the Travis' accounting practice dealings with the Stinsons. As a result of my conversation with Ms. Travis, I thought we were able to make some valid points in cross examination. However, I was not able to make a point which Mr. Stinson wanted me to make concerning Mr. Travis recommending to the Stinsons to change the nature of the business entity. When Ms. Travis could not testify to that on cross-examination, I immediately issued a subpoena for Mr. Travis and informed the Government that I was going to call him as a witness. The Government and defense eventually entered into a stipulation that was read to the jury on the point that I wanted to establish through Mr. Travis as a witness. In terms of actually calling Mr. Travis as a witness, I would have been reluctant because of some of the things he had said when he gave a statement to the Government agents, including the fact that he quit doing work for the Stinsons because he did not think they were going to follow through with the recommendations he was making.

(ECF No. 9-1 at 5-6.) The stipulation Quinn referred to was that "the certified public accountant, Melvin Travis, did tell special agents . . . of the Internal Revenue Service on July 29th, 2014 in and [sic] interview, that because the records were in disarray or obsolete, he did advise the Stinsons in late 2008 or 2009 to close the sole proprietorship and start a new business." (Cr. ECF No. 133 at PageID 1454.)

In his Reply, Stinson did not address Quinn's contentions that, due to an illness, he was unable to interview Melvin Travis and that he was reluctant to call him as a witness. Melvin Travis could have corroborated Barbara Travis's damaging testimony about why they dropped the Stinsons as clients. Finally, even if Melvin Travis were to testify as Stinson suggests, he ceased working with the Stinsons in early 2009, six years before the conclusion of the time charged in the superseding indictment. Subsequent witnesses testified to Mark Stinson's knowledge of his tax obligations and his knowing failure to comply in later years.

3. The Failure to Call a Handwriting Expert

In response to Claims 2 through 6, which charged Mark Stinson with false statements on tax documents, Stinson testified that his signatures on the documents were forged and that he had filed the records electronically. (Cr. ECF No. 133 at PageID 1488-93.) Stinson complains that Quinn failed to call a handwriting expert to establish that the signatures were not his. (ECF No. 1 at PageID 3.)

In response, Quinn states that

> the allegation that I failed to retain an expert witness to testify regarding documents that he did not sign that had a signature on the copy is simply not true. I located and retained, Thomas Vastrick; a well-known expert in the document examination field in this area. I applied for and received funding from the Court to hire him. This occurred in August 2017. I reached out to the Government to obtain either the originals or best possible copies of the documents that were in question. On October 2, 2017 I received an email from Nathan Brooks, Assistant U.S. Attorney, who informed me that because the documents were faxed they did not have the

> originals and he was providing me with the best copies they had. He had one other suggestion about attempting to obtain the originals. I attempted to follow up on that suggestion but was unsuccessful in obtaining originals or better copies. Accordingly, on October 25, 2017, I forwarded the documents to Mr. Vastrick for his review. He called me later that day and had concluded that his opinion would not support his contention. I immediately relayed that information, on October 25, 2017[,] to Mr. Stinson. I did this via email. He responded the same day, October 25, 2017, indicating that we should try to call him as a witness anyway. Based on my recollection, I later told him that that would not be a good idea.

(ECF No. 9-1 at 8-9.)

In his Reply, Stinson, through counsel, states that, "[a]lthough Arthur Quinn obtained funds to retain an expert handwriting expert[, t]he expert was not paid nor did he rinder [sic] and [sic] opinion." (ECF No. 17 at PageID 101.) As support, Stinson refers to an email from Quinn to Vastrick asking him to "look at the 2008 employment returns and first quarter 209 [sic] return and tell me whether Mr. Stinson's signature was cut and pasted on the returns" (*id.* at PageID 111) and an email to Stinson's 2255 counsel from Vastrick stating that "I found no record of any report or of any case record or documentation" (*id.* at PageID 110). On that basis of Vastrick's 2019 email, Stinson argues that Quinn lied about contacting Vastrick to render an opinion. (ECF Nos. 17 at PageID 102, 21 at PageID 158-59.)

This sub-claim is meritless for two reasons. First, Vastrick's email is not inconsistent with Quinn's affidavit. If Vastrick told Quinn that he could not render a favorable conclusion, Quinn would not have retained him to prepare a report that would not have aided the defense. Counsel's decision not to formally retain Vastrick and call him as a witness at trial was a reasonable strategic decision that is "virtually unchallengeable." *Strickland*, 466 U.S. at 668.

Second, even if it were assumed that Quinn did not, in fact, consult with or follow up with Vastrick, Stinson has not come forward with any evidence that there exists a qualified handwriting

expert who could have testified in his favor at trial. Therefore, even if Quinn was ineffective, Stinson suffered no prejudice.

4. The Failure to Call Corey Young

Stinson also objects to the fact that Quinn did not call Corey Young to testify. (ECF No. 1 at PageID 6.) Young's testimony would have been relevant to Counts 12 and 13, which involved the return filed by Stinson's son, Scales, in which Scales improperly claimed his half-brother, J.S., another of Mark Stinson's sons, as a dependent. Scales, who testified for the Government under a grant of immunity (Cr. ECF No. 132 at PageID 1379-81), testified that, in the spring of 2013, he asked his father, who was preparing tax returns for a business called Icy Taxes, to prepare his 2012 income tax return (*id.* at PageID 1384-85). Scales told Stinson that he needed to increase the amount of his refund because he hoped to take a trip during spring break. (*Id.* at PageID 1385.) Stinson advised Scales that he could increase his refund if he "carried [his] little brother as a dependent." (*Id.* at PageID 1386.) J.S. never lived with Scales, and Scales did not pay any part of his support. (*Id.* at PageID 1396.) Stinson provided J.S.'s social security number, which Scales did not have access to. (*Id.* at PageID 1389.) Scales received a refund of $6020. (*Id.* at PageID 1389-91.) Pursuant to the parties' agreement, when the funds were deposited to Scales's account, he kept $1800 and wired the remainder to Stinson's account. (*Id.* at PageID 1391-92.) Scales knew at the time that what he was doing was wrong. (*Id.* at PageID 1392.) When the IRS contacted him, Scales filed an amended return and repaid the money. (*Id.* at PageID 1402.) Stinson repaid Scales the share of the refund he had received. (*Id.*)

Scales admitted that Corey Young was listed on his return as the preparer, but he insisted that his father prepared the return. (*Id.* at PageID 1404-05.) Scales testified that "I sat and prepared with my father and he went to consult Corey." (*Id.* at PageID 1405.) After Quinn announced his

intention to call Young, the Government advised that he needed to be advised of his Fifth Amendment rights. (*Id.* at PageID 1425.) The defense ultimately decided not to call Young. (Cr. ECF No. 133 at PageID 1433.)

Attached to the Reply is a copy of what purports to be the affidavit of Corey Young, in which he states that "I was willing to testify on behalf of Mark Stinson that he did not help me prepare Abdul Scales, his son's income tax return" and that, "[i]n his opinion Stinson's son nor Stinson were not trying to do anything illegal." (ECF No. 17 at PageID 112.) Young provides no explanation as to why he believed that Scales was entitled to list his younger brother, who he did not live with or support, as a dependent. Young also provides no facts supporting his conclusion—which would not have been admissible—that Stinson and Scales did not think they were doing anything wrong. If this was, in fact, what Young was prepared to testify to at trial, it is not surprising that the Government found it necessary to state that Young needed to be advised of his rights since he was either prepared to admit to a federal crime or to commit perjury.[5]

Although Quinn did not have the benefit of Young's affidavit when he responded to the § 2255 Motion, he explains that he interviewed Scales prior to trial and also interviewed and subpoenaed Young. (ECF No. 10-1 at PageID 67.) After the Government

> indicated to the Court the issue of Miranda warning before [Young] testified, [Quinn] discussed all of this with Mr. Stinson and Mr. Young. In consultation with Mr. Stinson we agreed that we would not [call] Mr. Young as a witness. I did excuse Mr. Young, and he left the court room. I do have some recollection that one of the reasons that Mr. Stinson agreed not to call Mr. Young was that he did not want to be in a position to make his son look like a liar.

[5] In his Reply, Stinson argues, for the first time, that Quinn failed to object to the Government's witness tampering, namely, the statement that Young needed to be advised of his rights. (ECF No. 17 at PageID 104-07.) However, Stinson failed to seek leave to amend to raise that new claim. Quinn did, in fact, complain that Scales was given immunity but Young was not. (Cr. ECF No. 132 at PageID 1425-26.)

(*Id.* at PageID 68.) Stinson does not address this aspect of Quinn's affidavit in his Reply.

Stinson has not demonstrated that he was prejudiced by Quinn's failure to call Young. Although Young has submitted a bare-bones affidavit, he does not state that he was aware of his Fifth Amendment rights and would have been willing to testify despite the legal risk. Moreover, Stinson has not shown that, if only Young had testified, there is a reasonable likelihood that he would have been acquitted on Counts 12 and 13. By Stinson's own admission, he was aware that Scales claimed J.S. as a dependent, and he provided Scales with J.S.'s social security number. Stinson also did not claim J.S. as a dependent on his own 2012 income tax return. (Cr. ECF No. 133 at PageID 1495-96.) The jury could infer that Stinson, rather than Young, was the instigator of the scheme can be inferred from the fact that he received two-thirds of Scales's tax refund, while Young received only the ordinary fee for preparing a return.

For all the foregoing reasons, Stinson's claim that Quinn failed to investigate and call witnesses is without merit and is **DISMISSED**.

B. The Failure to Object to Jury Instructions

Stinson also complains that Quinn "did not object to the instructions to the jury which were incorrect, responsible person and willingly [sic] definition were not stated in accordance with court decisions." (ECF No. 1 at PageID 3.)[6] Later, Stinson agrees that "[t]he courts and the Internal Revenue Service have broadly defined a responsible person." (*Id.* at PageID 9.) He cites a provision of the IRS Internal Manual to the effect that "individuals who are non owner employees performing ministerial acts without exercising independent judgment will not be deemed responsible." (*Id.* at PageID 10.)

[6] Stinson presumably means "willfully," not willingly.

This claim is not presented with the specificity required by Rule 2(b)(2) of the § 2255 Rules. The jury was instructed that, "[i]n order to be found guilty of the offenses charged in counts two through six of the indictment, the defendant must have been a person required to collect, truthfully account for, or pay over withheld federal income and Social Security (FICA) taxes." (Cr. ECF No. 84 at PageID 300.) Nothing in the jury instructions permitted the jury to convict Stinson on Counts 2 through 6 if it believed that he was, in fact, a "non owner employee[] performing ministerial acts without exercising independent judgment." Stinson also has not raised any specific objection to the instruction on "willfulness." (*See id.* at PageID 301.) Stinson has cited no judicial decisions disapproving of any of the jury instructions. He has not offered alternative instructions that have been approved by any court. The evidence introduced at trial would not have supported an instruction that Stinson was a "non owner employee[] performing ministerial acts without exercising independent judgment," and the jury's verdict made clear that they rejected Stinson's characterization of his role in the staffing company.

This claim is without merit and is **DISMISSED**.

C. The Characterization of the Staffing Company as a "Co-Ownership"

Finally, Stinson complains that Quinn "referred to the business as a co-ownership" although even the Government "admitted that the business was a sole proprietorship and it was never a co-ownership." (ECF No. 1 at PageID 4.) Although no record citation is provided, Stinson may be referring to Quinn's opening statement, in which he states that, in 2008 and 2009, "it was a proprietorship at that point, the Stinsons owned the business. His wife, Jayton Stinson, she was actually the—the owner, and he owned an interest in it, too, they were co-owners in effect." (Cr. ECF No. 129 at PageID 996.) Although that statement may have been imprecise, Stinson makes no showing that he suffered any prejudice from that brief reference in a multi-day trial. The fact

that the staffing company may have been a sole proprietorship at one point does not mean that Stinson was responsible for collecting and paying over taxes. As the jury instructions made clear, the ownership structure of the company is not determinative of whether Stinson was a responsible person. (*See* Cr. ECF No. 84 at PageID 300.)

Moreover, as Quinn has noted, "one of [Stinson's] theory of this offense was that he prepared the parties' tax return and that he thought the payroll tax was included in the Schedule C on the tax returns. In reviewing the transcript of Mr. Stinson's testimony, even Mr. Stinson, for the most part, testified using the word 'we.' Most of his testimony was in the first person plural." (ECF No. 9-1 at PageID 51.) Although Stinson minimized his role in the staffing company, he never took the position at trial that the venture was solely owned and managed by Jayton Stinson.

This claim is without merit and is **DISMISSED**.

* * * *

Because every claim asserted is without merit, the Court **DENIES** the § 2255 Motion. The § 2255 Motion is **DISMISSED WITH PREJUDICE**. Judgment shall be entered for the United States.

IV. APPEAL ISSUES

Twenty-eight U.S.C. § 2253(a) requires the district court to evaluate the appealability of its decision denying a § 2255 motion and to issue a certificate of appealability ("COA") "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see also* Fed. R. App. P. 22(b). The COA must indicate the specific issue or issues that satisfy the required showing. 28 U.S.C. §§ 2253(c)(2) & (3). No § 2255 movant may appeal without this certificate.

A "substantial showing" is made when the movant demonstrates that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner 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).

> Where a district court has rejected a constitutional claim on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. . . . When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. . . .

Slack v. McDaniel, 529 U.S. 473, 484 (2000). "In short, a court should not grant a certificate without some substantial reason to think that the denial of relief might be incorrect." *Moody v. United States*, 958 F.3d 485, 488 (6th Cir. 2020). "To put it simply, a claim does not merit a certificate unless *every independent reason to deny the claim is reasonably debatable.*" *Id.*; *see also id.* ("Again, a certificate is improper if *any* outcome-determinative issue is not reasonably debatable.").

There can be no question that the issues raised in Movant's § 2255 Motion are meritless for the reasons previously stated. Because any appeal by Movant on the issues raised does not deserve attention, the Court **DENIES** a certificate of appealability.

The Sixth Circuit has held that the Prison Litigation Reform Act of 1995, 28 U.S.C. §§ 1915(a)-(b), does not apply to appeals of orders denying § 2255 motions. *Kincade v. Sparkman*, 117 F.3d 949, 951 (6th Cir. 1997). Rather, to appeal *in forma pauperis* in a § 2255 case, and thereby avoid the appellate filing fee required by 28 U.S.C. §§ 1913 and 1917, the prisoner must obtain pauper status pursuant to Federal Rule of Appellate Procedure 24(a). *Kincade*, 117 F.3d at

952. Rule 24(a) provides that a party seeking pauper status on appeal must first file a motion in the district court, along with a supporting affidavit. Fed. R. App. P. 24(a)(1). However, Rule 24(a) also provides that if the district court certifies that an appeal would not be taken in good faith, or otherwise denies leave to appeal *in forma pauperis*, the prisoner must file his motion to proceed *in forma pauperis* in the appellate court. *See* Fed. R. App. P. 24(a) (4)-(5).

In this case, for the same reasons the Court denies a certificate of appealability, the Court determines that any appeal would not be taken in good faith. It is therefore **CERTIFIED**, pursuant to Federal Rule of Appellate Procedure 24(a), that any appeal in this matter would not be taken in good faith. Leave to appeal *in forma pauperis* is **DENIED**.[7]

IT IS SO ORDERED, this 3rd day of May, 2021.

s/John T. Fowlkes, Jr.
JOHN T. FOWLKES, JR.
United States District Judge

[7] If Movant files a notice of appeal, he must also pay the full $505 appellate filing fee or file a motion to proceed *in forma pauperis* and supporting affidavit in the Sixth Circuit Court of Appeals within 30 days.

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