No.

In The

Supreme Court of the United States

Marco Vinicio Orrego
(Petitioner)
VS.
United States Court of Appeals
For The Eleventh Circuit
(Respondent)

Motion For Extension of Time To File Petition For Writ of Certiorari

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To The Honorable Justice Thomas:

Comes Now, Marco Vinicio Orrego ("Orrego"), *Pro Se*, respectfully moves this Honorable Court for an extension of time of sixty to ninety (60-90) days to file a Petition For Writ of Certiorari. Orrego presents the following:

1) On December 7, 2021 the United States Court of Appeals For The Eleventh Circuit denied Orrego's Motion For Reconsideration of the Court's order dated November 6, 2020 denying his Motion For a Certificate of Appealability in his appeal from the District Court's denial of his *pro se* 28 U.S.C. §2255 Motion. See: Exh. "A" - (Eleventh Circuit Court's order, December 7, 2021)

2) Orrego resides at Oakdale FCI 1, dormitory Rapides 1. Orrego's dormitory is currently and indefinitely on quarantine due to Covid-19 protocols. Orrego lives in a 2 man cell where he is on lockdown 24 hours a day. Orrego is only allowed out of his cell on Mondays, Wednesdays, and Fridays for a period of one hour to make a phone call and take a shower.

3) At this time Orrego does not have access to a law library or a typewriter to draft out his petitions.

Conclusion

Wherefore, Orrego prays that this Honorable Court will recognize the difficulties he faces as a *Pro Se* inmate and grant this instant request for a sixty to ninety (60-90) day extension of time to file a Petition For Writ of Certiorari. Orrego files this motion in the interest of justice and in good faith.

Certificate of Service

I hereby certify that I have placed the foregoing Motion in the mailbox at Oakdale FCI 1 in appropriate form as *prima facie* Certificate of Service to be mailed to:

Supreme Court of The United States
Washington, D. C. 20543-0001

Respectfully submitted on January 25, 2022.

Marco Orrego

Marco Orrego Reg No 16139-104
Oakdale FCI 1
P.O. Box # 5000
Oakdale, LA 71463

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(Petitioner)

VS.

United States Court of Appeals
For The Eleventh Circuit
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Notice of Filing

Notice is hereby given that Marco Vinicio Orrego ("Orrego") files the foregoing "Motion For Extension of Time To File Petition For Writ of Certiorari". The foregoing Motion is drafted in paper and pen because Orrego is currently on a 24-hour lockdown due to Covid-19 protocol. Orrego does not have access to a law library nor a typewriter to draft out his petitions.

Respectfully submitted,

Marco Orrego

Marco Orrego Reg No 16139-104

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-13037-E

MARCO VINICIO ORREGO,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

ORDER:

Marco Orrego is a federal prisoner serving a 240-month sentence for sex trafficking of a minor (Count 1), 18 U.S.C. § 1591(a)(1), (b)(2), and production of child pornography (Count 2), 18 U.S.C. § 2251(a), (e). In this *pro se* 28 U.S.C. § 2255 motion, he raised the following claims:

> (1) counsel failed to present evidence related to a mistake-of-fact defense regarding the victim's age, and misadvised him about such a defense;
>
> (2) counsel misadvised him that the supervised release and special conditions would only last 20 years;
>
> (3) counsel failed to move to suppress his involuntary confession;
>
> (4) counsel failed to present a pretrial claim of selective prosecution;
>
> (5) counsel failed to move to dismiss the indictment, given that the child pornography offense involved solely intrastate activity;

> (6) counsel failed to discover that the indictment was constructively amended, given that the government and the court referred to language in § 1591(c) during the plea colloquy, but the indictment only referenced § 1591(a)(1),(b)(2); and
>
> (7) counsel did not present any pretrial evidence that Orrego did not use force, fraud, or coercion to induce the victim into human trafficking.

For each claim, he argued that, but for counsel's alleged error, he would not have pled guilty, and therefore, his guilty plea was unknowing and involuntary.

The district court denied Orrego's § 2255 motion and denied him a certificate of appealability ("COA"). Orrego now moves this Court for a COA.

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). The movant satisfies this requirement by demonstrating that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," or that the issues "deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Where the district court denied a motion to vacate on procedural grounds, the movant must show that reasonable jurists would debate (1) whether the motion states a valid claim of the denial of a constitutional right, and (2) whether the district court was correct in its procedural ruling. *Id.* To make a successful claim of ineffective assistance of counsel, a defendant must show both that (1) his counsel's performance was deficient, and (2) the deficient performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

Claim 1:

To the extent that Orrego argued that counsel failed to present any evidence related to a mistake-of-fact defense, reasonable jurists would not debate the district court's finding that this claim was waived by his guilty plea, as he failed to show how such an alleged error affected the voluntary or knowing nature of his guilty plea. *See Wilson v. United States*, 962 F.2d 996, 997 (11th

Cir. 1992). To the extent that he argued that counsel misadvised him about the possibility of such a defense, and he would have proceeded to trial if he was aware of it, reasonable jurists would not debate the district court's finding that his claim was meritless. Mistake of age is not an affirmative defense to a § 2251(a) conviction, and thus, counsel was not deficient for failing to advise Orrego of this nonmeritorious defense. *See United States v. Deverso*, 518 F.3d 1250, 1257-58 (11th Cir. 2008); *Chandler v. Moore*, 240 F.3d 907, 917 (11th Cir. 2001).

Claim 2:

Even if counsel misadvised Orrego about the length of his term of supervised release, Orrego cannot show that he was prejudiced by such an error, given that: (1) he confirmed during the plea colloquy that the possible penalties of his offenses included a supervised release term up to life; and (2) he acknowledged in the plea agreement that he could be subject to a life term of supervised release and that any of his attorney's assurances about his sentence were not binding on the court. *See Strickland*, 466 U.S. at 687 (1984); *United States v. Medlock*, 12 F.3d 185, 187 (11th Cir. 1994).

As to Orrego's argument that he was unaware of the special conditions of his supervised release, counsel's performance is presumed to be reasonable, and Orrego has not shown that no reasonable attorney would have taken such an action, especially given that supervised release, by its nature, comes with conditions. *See Chandler v. United States*, 218 F.3d 1305, 1315 (11th Cir. 2000) (*en banc*); *United States v. Moran*, 573 F.3d 1132, 1138 (11th Cir. 2009). Moreover, besides his conclusory assertions, he offers no evidence that he would have proceeded to trial if he had known about the special conditions, and thus cannot establish prejudice. *See id.*

Claim 3:

Reasonable jurists would not debate the district court's finding that Claim 3 was time-barred. The district court entered judgment on November 2, 2017, and because Orrego did

not directly appeal, the judgment became final 14 days later, on November 16, 2017. *See Murphy v. United States*, 634 F.3d 1303, 1307 (11th Cir. 2011); Fed. R. App. P. 4(b)(1)(A). Thus, Orrego had until November 16, 2018, to raise any claims in a § 2255 motion. 28 U.S.C. § 2255(f)(1). Because he did not assert that his counsel was ineffective for failing to suppress his confession until he filed his second amended motion on February 14, 2019, the district court correctly determined that such a claim was time-barred. *See id.*

Moreover, reasonable jurists would not debate whether the district court abused its discretion in finding that Claim 3 did not relate back to his original motion. His counsel's failure to move to suppress his confession was an entirely new claim that was not tied to a common core of operative facts with the claims presented in his original, timely motion. *See Farris v. United States*, 333 F.3d 1211, 1215 (11th Cir. 2003); *Mayle v. Felix*, 545 U.S. 644, 662-64 (2005).

Claims 4 and 7:

Reasonable jurists would not debate the district court's finding that Claims 4 and 7 were procedurally waived by Orrego's guilty plea. As to Claim 4, although Orrego makes a general assertion that he would not have pled guilty but for counsel's failure to present a pretrial claim of selective prosecution, he does not specify how counsel's failure to do so affected the voluntary and knowing nature of his guilty plea. *See Wilson*, 962 F.2d at 997. Likewise, as to Claim 7, Orrego has failed to show how counsel's failure to present pretrial evidence regarding the use of force affected the knowing and voluntary nature of his guilty plea, especially given that the indictment did not charge any use of force. *See id.*

Claim 5:

We have upheld the constitutionality of § 2251(a) in instances involving solely intrastate activity, finding that Congress is permitted to regulate the wholly intrastate production of child pornography produced with materials shipped in interstate commerce. *See United States v. Smith*, 459

F.3d 1276, 1284-1285 (11th Cir. 2006). Thus, the district court did not lack jurisdiction as to the § 2251(a) charge, and counsel was not ineffective for failing to move to dismiss the indictment based on this nonmeritorious claim. *See Moore*, 240 F.3d at 917.

Claim 6:

Reasonable jurists would not debate the district court's denial of Claim 6, based on its alternative ruling on the merits. Although the indictment included the "reasonable opportunity to observe" language of § 1591(c) without citing to that provision, the government and court set forth, and Orrego pled guilty to, only the "knowing or reckless disregard" element of § 1591(a)(1) contained in the indictment, and he was sentenced pursuant to § 1591(b)(2). Thus, the indictment was not constructively amended, as its essential elements were not altered, and the possible bases for conviction were not broadened. *See United States v. Dortch*, 696 F.3d 1104, 1111 (11th Cir. 2012). Therefore, counsel was not deficient for failing to raise this nonmeritorious claims. *Moore*, 240 F.3d at 917.

Accordingly, Orrego has failed to show that reasonable jurists would debate the denial of any of his claims, and his motion for a COA is DENIED.

/s/ Kevin C. Newsom
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-13037-E

MARCO VINICIO ORREGO,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

Before: NEWSOM and BRANCH, Circuit Judges.

BY THE COURT:

Marco Vinicio Orrego has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's order dated November 6, 2020, denying his motion for a certificate of appealability in his appeal from the district court's denial of his *pro se* 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence. Orrego also has filed two motions to compel, a motion for access to the law library; and a motion to supplement the record. Because Orrego has not alleged any points of law or fact that this Court overlooked or misapprehended in denying his motions, his motion for reconsideration is DENIED. His motions to compel, for access to the law library, and to supplement the record are DENIED AS MOOT.