Appendix A

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-10796-E

JON CHRISTOPHER STOUNE,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

Before: JILL PRYOR and BRASHER, Circuit Judges.

BY THE COURT:

Jon Stoune has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's June 7, 2021, order denying his motions for a certificate of appealability and *in forma pauperis* status on appeal from the denial of his underlying 28 U.S.C. § 2255 motion. Upon review, Stoune's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

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ORDER:

Jon Stoune is a federal prisoner serving a 210-month sentence, which was imposed after he was found guilty at trial of: (1) attempted enticement of a minor to engage in illegal sexual activity, in violation of 18 U.S.C. § 2422(b); (2) advertising the receipt and production of child pornography, in violation of 18 U.S.C. § 2251(d)(1)(A), (d)(2)(B), & (e); and (3) attempted production of child pornography, in violation of § 2251(a) & (e). Mr. Stoune seeks a certificate of appealability ("COA") and leave to proceed *in forma pauperis* ("IFP") to appeal the denial of his 28 U.S.C. § 2255 motion to vacate, in which he made the following claims: (1) trial counsel provided him with ineffective assistance of counsel; (2) the statute § 2422(b) is unconstitutional because it exceeded Congress's Commerce Clause authority and restricted his right to free speech under the First Amendment; and (3) his due process rights in his § 2255 proceedings were violated by the district court's refusal to provide him with free copies of various documents. Notably,

Claim 1 contained approximately 40 different assertions regarding how counsel might have been deficient, but offered no facts or details supporting those assertions.

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). To satisfy that requirement, a movant must demonstrate 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) (quotation marks omitted).

Here, reasonable jurists would not debate the district court's denial of Mr. Stoune's claims. As to Claim 1, a review of Mr. Stoune's § 2255 motion confirms the district court's conclusion that the claim was too conclusory to warrant relief, as his allegations consisted of one-phrase to one-sentence assertions without any supporting law or facts. *See* Rules Governing § 2254 Petitions, Rule 1(b) (noting that district courts may apply the rules to habeas corpus proceedings not brought under § 2254); *Hittson v. GDCP Warden*, 759 F.3d 1210, 1265 & n.62 (11th Cir. 2014) (noting that: (1) "Rule 2(c) of the Rules Governing Section 2254 Cases requires petitioners to 'specify all the grounds for relief available to the petitioner' and 'state the facts supporting each ground'"; and (2) in bringing a § 2254 claim, a petitioner must "plead facts necessary to demonstrate" entitlement to relief under the applicable federal law). Furthermore, although Mr. Stoune argued to this Court in his COA motion that he provided "facts" supporting his allegations, it appears that the "facts" that he contended that he presented were, in actuality, conclusory statements that trial counsel was deficient for various reasons, rather than details providing factual support for his allegations. As to Claim 2, the district court properly concluded that the claim was meritless, as it was foreclosed by this Court's precedent. *See United States v. Hornaday*, 392 F.3d 1306, 1310-11 (11th Cir. 2004) (noting that: (1) "[s]peech attempting to

arrange the sexual abuse of children is no more constitutionally protected than speech attempting to arrange any other type of crime"; and (2) "Hornaday's related contention that if § 2422(b) covers his actions its enactment exceeded Congress' Commerce Power is meritless"); *see also United States v. Farley*, 607 F.3d 1294, 1324 (11th Cir. 2010) ("[C]onvictions for attempted enticement under 18 U.S.C. § 2422(b) . . . do not require the existence of an actual minor victim." (citation omitted)). Finally, the district court properly denied Claim 3, as: (1) the claim did not state a basis for relief under § 2255 because it was not based on the fact that his sentence was imposed in violation of the U.S. Constitution or federal law; and (2) denying Mr. Stoune's document requests did not violate his due process rights. *See* 28 U.S.C. § 2255(a) (noting the remedy for a sentence imposed in violation of the Constitution or federal law is release from prison); *United States v. Herrera*, 474 F.2d 1049 (5th Cir. 1973) ("This Court has consistently held that a federal prisoner is not entitled to obtain copies of court records at the government's expense . . . merely because he is an indigent.").

Accordingly, Mr. Stoune's motion for a COA is DENIED because he has failed to make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2). Mr. Stoune's motion for IFP status is DENIED AS MOOT.

/s/ Jill Pryor
UNITED STATES CIRCUIT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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August 03, 2021

Jon Christopher Stoune
FCI Coleman Medium - Inmate Legal Mail
PO BOX 1032
COLEMAN, FL 33521-1032

Appeal Number: 21-10796-E
Case Style: Jon Stoune v. USA
District Court Docket No: 3:18-cv-00204-MMH-PDB
Secondary Case Number: 3:15-cr-00089-MMH-PDB-1

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing, are available at www.ca11.uscourts.gov.

The enclosed order has been ENTERED. NO FURTHER ACTION WILL BE TAKEN ON THIS APPEAL.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Gloria M. Powell, E
Phone #: (404) 335-6184

MOT-2 Notice of Court Action

Appendix B

08/31/21

To the Hon. Justice C Thomas,

Please find enclosed a copy of my Motion to the Eleventh Circuit. Ultimatly it is a Motion for a COA.

The district court in denying my §2255 also pre-emptivly denied COA as well. On appeal to the Circuit for COA, which I understand is a low bare to begine with, I noted that the district courts decision was contrary to decisions from both the eleventh and the Supreme Court as well.

I filed for "Reconsideration En Banc" after Justice Jill Pryor denied my appeal. She again denied my appeal and closed the process with no further relief available.

Having belived her second denial to be in error, as it was not heard en banc, I sent the appeal for "Reconsider-ation En Banc" directly to the Chief Justice of the cir-cuit. Unfortunantly, at least from my point of view, the Chief Justice in the Eleventh Circuit is Hon. Justice William Pryor, Justice Jill Pryors husband if I've been correctly informed.

Is there relation ship a conflict in this case? I don't know, however I belive my §2255 has merrit on a number of grounds, I simply am both ignorant of the law and of its practice. Therefore, fear that I have not been able to make my self clear.

As part of my Motion for COA there is included my entire §2255. As well as the affidavits I submitted in support of it and my position on the charges against me.

One of those charges the Eleventh Circuit has even conceded could not be a valid conviction based on the record. If thats the case would a jury have found me guilty on the other two charges or could they have even stood as charges? This question is not only pertenant it goes hand in hand with the jurys own question during deliberations.

Even if this only affected the charges on the superceeding indictment it would leave a single ten year minimum mandatory charge, which effectivly would reduce my prison term by five years of a third off the fifteen year minimum mandatory of the two charges on the superceeding indictment. Which it is my contention was illegaly obtained as vindictive when I refused the governments "plea deal." This is also part of my §2255.

I would very much appreciate your guidence in this matter. Do I file a writ for cirtiorary or is there some other legale remedy? Even if I get a COA and its is heard in the Eleventh Circuit will it be fairly heard?

There are a number of reasons for a new trial and even a couple for the case to be dismissed. Though I'd rather the new trial. Having it dismissed for what seems like a technicality (Though having ones

constitutional rights upheld is never a technicality & everyone will think I wigled my way off the proverbial hook rather than never should have been on it in the first place. Which leaves me under a cloud either way but at least being accuited after a trial where there is an acctual deffense would theoreticaly look better.

Though ask any falsly accused "sex offender" and they can tell you you can never get back your reputation.

With all due respect,

Jon C Stone 63042-018
FCI Coleman Medium
Unit B2
POB 1032
Coleman, FL 33521-1032

P.S. I am currently on hold to be transfered to Butner N.C. Low. I don't know when that will change. If it does before I hear from you I will send notice as soon as possible.