

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 21-3458

Charles E. Williams

Movant - Appellant

v.

United States of America

Respondent - Appellee

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:20-cv-00998-RK)

JUDGMENT

Before GRUENDER, SHEPHERD, and STRAS, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

January 03, 2022

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

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ORDER

The petition for rehearing by the panel is denied.

April 11, 2022

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

**ORDER DENYING MOVANT'S MOTION TO VACATE SENTENCE (28 U.S.C. § 2255)
AND DECLINING TO ISSUE A CERTIFICATE OF APPEALABILITY**

Movant is incarcerated at the Federal Correctional Institution (Gilmer) in Glenville, West Virginia, where he is serving a 180-month sentence for being a felon in possession of a firearm. (Crim. Doc. 100.) Movant pled guilty to his crime (*see id.*), and he unsuccessfully appealed this Court's judgment. (See Crim. Doc. 106-1.)

Movant filed this case pro se, seeking relief from his sentence pursuant to 28 U.S.C. § 2255, and claiming four grounds for relief, all of which relate to the performance of counsel. (Doc. 1 at 4-13.) To prevail on these claims, Movant must show that his attorney's performance was both constitutionally deficient and prejudicial. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Hill v. Lockhart*, 474 U.S. 52, 58 (1985) (*Strickland* standard applies to the performance of plea counsel). Movant has the burden of proving his claims. *Kress v. United States*, 411 F.2d 16, 20 (8th Cir. 1969).

As his first ground for relief, primarily, Movant claims he was denied effective assistance of counsel because his attorney failed to prepare adequately for the suppression hearing. (Doc. 1 at 4-7.) Respondent makes the following argument as to this claim:

Williams . . . fails to identify any witnesses other than himself, and failed to provide sworn statements of [proposed] witness testimony. Williams does not identify any reports, video recordings, or records that counsel failed to review. Williams also has not conducted any prejudice analysis demonstrating a reasonable probability that the motion to suppress would have been successful but for counsel's alleged failures. Williams does not provide any evidence demonstrating this Court's factual findings were erroneous or any case law demonstrating that this Court's legal rulings were erroneous.

(Doc. 21 at 9-10) (footnote omitted). Having rereviewed Movant's reply (Doc. 23 at 3-7), the Court agrees with Respondent that Movant cannot establish prejudice under the *Strickland* standard. Therefore, relief is denied on Movant's first ground.

As his second ground for relief, Movant claims he was denied effective assistance of counsel because his attorney failed to raise the suppression issue on appeal. (Doc. 1 at 8.) However, there can be no constitutional violation when counsel declines to assert a meritless claim, *United States v. Johnson*, 707 F.2d 317, 320-21 (8th Cir. 1983), which is the case here. Therefore, relief is denied on Movant's second ground.

As his third ground for relief, Movant claims he was denied effective assistance of counsel at sentencing because his attorney failed to challenge his designation and treatment as an armed career criminal. (Doc. 1 at 10-12.) As to this claim, Respondent argues:

First, Williams asserts that defense counsel should have argued that his three drug convictions under Mo. Rev. Stat. § 195.211 only counted as one predicate offense. That argument is legally erroneous. The Eighth Circuit has repeatedly held that convictions for separate drug transactions on separate days are multiple ACCA predicate offenses, even if the transactions were sales to the same victim or informant. Williams also argues that the Missouri statute criminalizes acts which are not serious drug offenses. That claim was raised on appeal and cannot be relitigated in this motion.

Williams also contends that his second-degree murder conviction is not a violent felony because it can be committed without instilling a fear of injury in the victim. But fear of injury is not a requirement under the statute.

(Doc. 21 at 10-11) (citations and quotation marks omitted). Having reviewed Movant's reply (Doc. 23 at 8-13), the Court agrees with Respondent that Movant's criticisms of counsel regarding the ACCA sentence are legally frivolous. (See Crim. Doc. 106-1 at 3.) Therefore, relief is denied on Movant's third ground.

As his fourth ground for relief, Movant claims he was denied effective assistance of counsel because his attorney failed to argue "Rehaif error" on appeal. (Doc. 1 at 13.) However, the Court of Appeals determined that Movant was not entitled to relief under *Rehaif v. United States*, 139 S. Ct. 2191 (2019). (Crim. Doc. 106-1.) Therefore, relief is denied on Movant's fourth ground.

The Court has considered all subclaims not addressed specifically herein and finds that none has merit. The Court also finds that an evidentiary hearing is not required to resolve the

issues presented in this case. For the reasons explained above, Movant's motion to vacate sentence pursuant to 28 U.S.C. § 2255 is **DENIED**. The Court also declines to issue a certificate of appealability. *See* 28 U.S.C. § 2253(c)(2) (certificate of appealability may be issued "only if [Movant] has made a substantial showing of the denial of a constitutional right"). The Clerk of the Court shall enter judgment accordingly and dismiss this case.

IT IS SO ORDERED.

s/ Roseann A. Ketchmark
ROSEANN A. KETCHMARK, JUDGE
UNITED STATES DISTRICT COURT

DATED: October 13, 2021