APPENDIX A

UNITED STATES OF AMERICA v. CHRISTIAN DIOR WOMACK, a/k/a Gucci Prada Christian Womack, Appellant
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
646 Fed. Appx. 258; 2016 U.S. App. LEXIS 6334
No. 14-4787
March 4, 2016, Submitted Under Third Circuit L.A.R. 34.1(a)
April 7, 2016, Filed

Notice:

NOT PRECEDENTIAL OPINION UNDER THIRD CIRCUIT INTERNAL OPERATING PROCEDURE RULE 5.7. SUCH OPINIONS ARE NOT REGARDED AS PRECEDENTS WHICH BIND THE COURT.PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Editorial Information: Subsequent History

US Supreme Court certiorari denied by Womack v. United States, 137 S. Ct. 530, 196 L. Ed. 2d 430, 2016 U.S. LEXIS 6936, 2016 WL 6269076 (U.S., Nov. 28, 2016)US Supreme Court certiorari denied by Womack v. United States, 137 S. Ct. 521, 196 L. Ed. 2d 424, 2016 U.S. LEXIS 6999, 2016 WL 6037103 (U.S., Nov. 28, 2016)Petition denied by, Without prejudice In re Womack, 791 Fed. Appx. 368, 2020 U.S. App. LEXIS 2798, 2020 WL 429076 (3d Cir. Pa., Jan. 28, 2020)Petition denied by In re Womack, 828 Fed. Appx. 852, 2020 U.S. App. LEXIS 35847, 2020 WL 6708593 (3d Cir. Pa., Nov. 16, 2020)Petition denied by In re Womack, 2021 U.S. App. LEXIS 7543, 2021 WL 979255 (3d Cir. Pa., Mar. 16, 2021)

Editorial Information: Prior History

{2016 U.S. App. LEXIS 1}On Appeal from the United States District Court for the Eastern District of Pennsylvania. (D.C. No. 2-13-cr-00206-001). District Judge: Honorable Mitchell S. Goldberg.In re Womack, 606 Fed. Appx. 638, 2015 U.S. App. LEXIS 9393, 2015 WL 3514707 (3d Cir. Pa., June 5, 2015)

Counsel For UNITED STATES OF AMERICA, Plaintiff - Appellee: Michelle Morgan, Esq., Melanie B. Wilmoth, Esq., Office of United States Attorney, Philadelphia, PA. For CHRISTIAN DIOR WOMACK, a/k/a Gucci Prada (#69121-066), Defendant - Appellant: Matthew Stiegler, Esq., Philadelphia, PA.

Judges: Before: McKEE, Chief Judge, SMITH, and HARDIMAN, Circuit Judges.

CASE SUMMARY District court's statements about its reluctance to impose a life sentence did not establish that the district court lacked an understanding of its authority to vary below the USSG range; the district court knew that the Guidelines were advisory, applied the 18 U.S.C.S. § 3553(a) factors, and imposed a sentence it deemed appropriate.

OVERVIEW: HOLDINGS: [1]-When a district court's statements about its reluctance to impose a life sentence were considered in context, they did not establish that the district court lacked an understanding about its authority to vary below the U.S. Sentencing Guidelines range. The district court knew that the Guidelines were advisory, applied the 18 U.S.C.S. § 3553(a) factors, and imposed a sentence it deemed appropriate under the law of the land; [2]-The life sentence on charges of sex

trafficking by force was not substantively unreasonable. The district court took full cognizance of the mitigating factors defendant proffered, and it was not the court of appeals' place to reweigh those factors.

OUTCOME: Judgment affirmed.

LexisNexis Headnotes

If a defendant neither objected to the district court's calculation of his U.S. Sentencing Guidelines range nor otherwise objected to the process by which the court sentenced him, a court of appeals reviews an argument that the district court committed procedural error at sentencing for plain error. Fed. R. Crim. P. 52(b).

Criminal Law & Procedure > Sentencing > Appeals > Proportionality Review

A sentence is substantively unreasonable only if no reasonable sentencing court would have imposed the same sentence on that particular defendant for the reasons the district court provided.

Opinion

Opinion by: HARDIMAN

Opinion

{646 Fed. Appx. 259} OPINION*

HARDIMAN, *Circuit Judge.*

Christian Dior Womack appeals the District Court's judgment of sentence following his pleas of guilty to three counts of sex trafficking by force in violation of 18 U.S.C. § 1591. We will affirm.

I

Between 2012 and 2013, Womack and his paramour, Rashidah Brice, recruited three women into prostitution, advertised them without their consent on a website known to facilitate prostitution, and transported them against their will across several mid-Atlantic states in furtherance of their illicit scheme. One of the victims was a minor.

A violent and intimidating man,{2016 U.S. App. LEXIS 2} Womack plied his victims with drugs, threatened their lives and the lives of their family members, held a gun to their heads, and beat them into submission. On one occasion, he attempted to rape a victim after she rebuffed his sexual advances. Another time, he and Brice forced their minor victim to have sex with approximately 15 different men in one night.

In addition to the significant physical harm Womack inflicted on the three women, he caused immeasurable emotional harm. His minor victim had to spend a year apart from her family at an inpatient treatment center for teenage victims of sexual abuse. She testified that the experience has "changed [her] life" by limiting her ability to enter into new relationships and that she remains "haunted by the feeling of being 'unclean' and 'impure.'" Presentence Investigation Report (PSR) at

12, ¶ 43. Another victim testified that she has nightmares and that her relationships with family members have been adversely affected.

In April 2013, a grand jury indicted both Womack and Brice with one count of sex trafficking of a minor by force and two counts of sex trafficking of an adult by force. 18 U.S.C. § 1591. Brice pleaded guilty and was sentenced to 185 months'{2016 U.S. App. LEXIS 3} incarceration. Womack filed multiple pro se motions to dismiss the indictment, a motion for a restraining order against the prosecutor, and a motion to address fraud on the court. All were denied. On July 24, 2014-the day his trial was scheduled to begin-Womack pleaded guilty to all counts.

Under the United States Sentencing Guidelines, Womack's total offense level was 45 and his criminal history category was IV, yielding a Guidelines range of life imprisonment, largely because his offense level was "literally and figuratively off the charts." App. 39. Womack did not object to the District Court's calculation of his Guidelines range, but he did request a downward variance.

At the sentencing hearing, the District Court asked the prosecutor why a substantial sentence, such as a 30-year prison term, would not be "sufficient, but not greater than necessary" to punish Womack. 18 U.S.C. § 3553(a). The prosecutor responded that a life sentence was necessary to protect the public given the violent nature of his crimes, the number and age of his victims, and his history of recidivism.

The District Court then recognized that 18 U.S.C. § 3553(b)(2) mandates a Guidelines sentence for those, like Womack, who are convicted of sexual offenses{2016 U.S. App. LEXIS 4} involving {646 Fed. Appx. 260} minors. As the Court rightly noted, however: "despite this language . . . *Booker* trumps . . . [and the Court has] the discretion to go outside of the guidelines." App. 70. The sentencing judge emphasized: "I do retain discretion under *Booker*. So that's how I'm going to look at it." App. 71.

The Court then analyzed Womack's crimes and personal circumstances. It found that "short of homicide [Womack's offenses] couldn't be more serious" and that his record included "12 prior convictions including juveniles," several of which involved violence or threats of violence. App. 72. The Court also noted Womack's mental health, family background, and the 185-month sentence Brice received. After giving these factors and the Guidelines "very, very careful consideration," the Court stated:

> For what it's worth, and it's really not worth much, I personally don't think that a life sentence is appropriate and perhaps that's because I'm from the old school where I equate life sentences where there's a loss of life and there hasn't been a loss of life here. But that is not my job. I took an oath, and my oath was to apply the law. The law tells me that the guideline range here is life. . . . So{2016 U.S. App. LEXIS 5} the only way I'm obligated under the law to give great deference to that recommendation of the sentencing commission and Congress, the only way I can deviate from that is if there are reasonable bases for me to vary.App. 74-75. The Court then considered and rejected Womack's four arguments in support of a downward variance, concluding:
>
> [W]eighing all those factors together, and giving the defendant every single benefit of the doubt, I can't in good conscience conclude that these are appropriate legal bases for a variance. And as much as I do not personally want to do this, the law in my view, requires that I impose a life sentence and that is my sentence.App. 77. Womack filed this timely appeal.1

II

Womack's principal argument on appeal is that the District Court committed procedural error at sentencing. Because Womack neither objected to the District Court's calculation of his Guidelines

range nor otherwise objected to the process by which the Court sentenced him, we review this argument for plain error. *United States v. Flores-Mejia*, 759 F.3d 253, 256 (3d Cir. 2014) (en banc); Fed. R. Crim. P. 52(b). Our review of the record leads us to conclude that the District Court committed neither plain error nor{2016 U.S. App. LEXIS 6} any error at all.

Womack first claims the District Court relegated its own judgment to that of the United States Sentencing Commission and Congress. It did so, he argues, by presuming that a within-Guidelines sentence was reasonable instead of exercising independent judgment as required by clearly established federal law. *See, e.g., Nelson v. United States*, 555 U.S. 350, 129 S. Ct. 890, 172 L. Ed. 2d 719 (2009). He contends further that the Court's failure to explain why a life sentence was "not greater than necessary" as required by § 3553(a) underscores the unreasonableness of its process.

Counsel for Womack does a good job citing discrete statements made by the judge at sentencing that, if taken in isolation, evince a lack of understanding about the Court's power to vary below the {646 Fed. Appx. 261} range established by the Guidelines. For example, the judge said that he "personally [doesn't] believe that a life sentence is appropriate" for Womack because of his "old school" view that life sentences are appropriate only when "there's [been] a loss of life." App. 74. The trial judge also said he was "obligated" to give "great deference" to the Guidelines and that "the only way [he could] deviate" from them was to find a "reasonable bas[i]s" to do so. Womack Br. 12 (quoting App. 75). Womack construes{2016 U.S. App. LEXIS 7} these words as an unlawful presumption in favor of the Guidelines, *Gall v. United States*, 552 U.S. 38, 50, 128 S. Ct. 586, 169 L. Ed. 2d 445 (2007), and blames that presumption for the Court's mistaken belief that it was "require[d] . . . [to] impose a life sentence." App. 77.

As persuasive as Womack's arguments may be when the sentencing judge's Janus‌like statements are considered in isolation, they ultimately fail to persuade. We review the sentencing transcript in its entirety, and when the District Court's statements are considered in context, they demonstrate that the trial judge knew the Guidelines were advisory, applied the relevant factors of 18 U.S.C. § 3553(a), and imposed a sentence he deemed appropriate under the law of the land. The Court's closing remarks are instructive:

> [W]eighing all those factors together, and giving the defendant every single benefit of the doubt, I can't *in good conscience* conclude that these are appropriate legal bases for a variance. And as much as I do not *personally* want to do this, the law in my view, requires that I impose a life sentence and that is my sentence.App. 77 (emphasis added).

In sum, as the Government persuasively argued: "if the sentence were up to [the trial judge] alone, he would not apply a life sentence; but he is a judge who is required to decide{2016 U.S. App. LEXIS 8} the appropriate sentence based on factors decreed by statute, and those factors include the guideline range." Br. at 23. So constrained, the trial judge properly refused to allow personal predilection to trump sober legal judgment. Accordingly, there was no procedural error.

III

Womack next challenges his sentence on substantive grounds. A sentence is substantively unreasonable only if "no reasonable sentencing court would have imposed the same sentence on that particular defendant for the reasons the district court provided." *United States v. Tomko*, 562 F.3d 558, 568 (3d Cir. 2009) (en banc). Womack fails to meet this exacting standard.

In seeking to invalidate his within-Guidelines sentence, Womack offers several mitigating factors: (1) he did not severely hurt or kill any of his victims; (2) two of the victims never actually engaged in prostitution; (3) his "minor" victim was nearly 18 and lived on her own; (4) his life sentence was the result of five upward adjustments under the Guidelines; (5) his criminal record included relatively

minor offenses; (6) he suffered from mental health issues; and (7) the PSR suggested that a sentence of less than life may be appropriate. Womack cites our decision in *United States v. Olhovsky* to argue that{2016 U.S. App. LEXIS 9} no rational judge could conclude that he deserves to spend the rest of his life in prison. 562 F.3d 530, 553 (3d Cir. 2009).

As for Womack's factual arguments, the record reflects that the District Court took full cognizance of all of the mitigating factors he proffered and it is not our place to reweigh them on appeal. Regarding his legal theory, *Olhovsky* doesn't carry the day for Womack because that case involved procedural unreasonableness in addition to substantive unreasonableness. 562 F.3d at 553. Having explained why {646 Fed. Appx. 262} there was no procedural error in this case, we must evaluate the substance of Womack's sentence on its own terms. Under that deferential standard, we conclude that the District Court did not err when it sentenced Womack within the Guidelines range for crimes that the Court aptly found to be of a "heinous horrible horrific nature." App. 71.

IV

For the reasons stated, we will affirm the District Court's judgment of sentence.

Footnotes

*

This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

1

The District Court had jurisdiction under 18 U.S.C. § 3231. We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a).

APPENDIX B

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
v.	:	**CRIMINAL NO. 13-206-01**
CHRISTIAN DIOR WOMACK a/k/a "Gucci Prada"	:	

GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT'S *PRO SE* MOTION TO THE COURT REQUESTING THAT IT SANCTION THE GOVERNMENT'S ATTORNEYS FOR MAKING FALSE STATEMENTS TO THE COURT IN THEIR PLEADINGS [SIC] FACTUAL STATEMENTS

The United States of America, by and through its attorneys, Jennifer Arbittier Williams, United States Attorney for the Eastern District of Pennsylvania, and Michelle L. Morgan, Assistant United States Attorney, hereby responds to the defendant's *pro se* motion to the Court requesting that it sanction the government's attorneys for making false statements to the Court in their pleadings [sic] factual statements (D.E. #358). The defendant alleges that the government's "reply brief" to his Section 2255 petition falsely states that Counts Two and Three of the indictment charged sex trafficking (rather than attempt) and that Persons 2 and 3 engaged in commercial sex, and therefore, the government should be sanctioned. This motion is frivolous. The government has never misrepresented to the Court that Persons 2 or 3 were compelled to engage in commercial sex, the Court has been fully apprised at every step that the defendant engaged in attempted sex trafficking as to Persons 2 and 3, which is what the defendant pled to, and to the extent the government ever referred on the record collectively to the charges in shorthand as "sex trafficking," the defendant can show no prejudice because the penalties for the

completed offense and attempt are the same.

As this Court is aware, the defendant was charged with sex trafficking of Minor 1 (Count One), and attempted sex trafficking of Person 2 and Person 3 (Counts Two and Three), all pursuant to 18 U.S.C. §§ 1591 and 1594(a). The defendant concedes that during his guilty plea colloquy, he plead guilty to sex trafficking as to Count One and attempted sex trafficking as to Counts Two and Three. Tr. 20, 29, 30, 34 (Jul. 23, 2014).

The defendant further concedes that the government's sentencing memorandum made crystal clear that Persons 2 and 3 were not caused to engage in commercial sex acts and those events were charged as attempt. *See* Gov't. Sent. Mem. (D.E. #161) at 1 ("defendants attempted to traffic two females"); 3 ("the defendant and his co-defendant . . . recruited three females, one of whom was a minor . . . and caused the minor to engage in sexual acts"); 4 ("Womack began plying Person 2 with Percocet and suggested to Person 2 that she prostitute, but Person 2 was not interested . . ."); 7 ("the defendants also attempted to traffic two adult women by force, engaging in various threats, use of physical violence, and coercion to attempt to obtain compliance by the victims"); 12 n.3 ("Persons 2 and 3 [] indicated that they did not actually engage in any acts of prostitution while with the defendants. Defendants were convicted of attempt with respect to Persons 2 and 3."). These facts were accurately reflected in the Presentence Report ("PSR"). *See* PSR ¶¶ 18-34. The defendant's attempts to sex traffic Persons 2 and 3 were likewise clear in the government's oral sentencing presentation to the Court. *See* Tr. 35 ("You also heard about the defendant's attempts to traffic two other young ladies"); 36 ("[Person 2] was able to call her father to come and get her out of the situation thankfully before she was actually forced to engage in prostitution;" "by locking herself in a bathroom . . . [Person 3] was able to escape from

CONCLUSION

For the reasons set forth above, the government respectfully requests that the defendant's frivolous motion (D.E. #358) be denied.

Respectfully submitted,

JENNIFER ARBITTIER WILLIAMS
United States Attorney

/s/ Michelle L. Morgan
MICHELLE L. MORGAN
Assistant United States Attorney

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION NO. 13-206-1
v.	:	
CHRISTIAN DIOR WOMACK	:	CIVIL ACTION NO. 17-3192

ORDER

AND NOW, this 6th day of November, 2020, upon consideration of Petitioner Christian Dior Womack's first *pro se* "Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody" (ECF No. 256), Petitioner's Affidavits in Support (ECF Nos. 273, 282), the Government's opposition thereto (ECF No. 275), Petitioner's reply (ECF No. 283), Petitioner's second *pro se* "Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody" (ECF No. 287), Petitioner's *pro se* supplemental brief to his first § 2255 motion (ECF No. 288), and Petitioner's *pro se* "Petition to the Court Requesting Permission to Supplement the Amended Newly Discovered Evidence that was Applied to the Original 2255 Motion" (ECF No. 296), I find as follows:

FACTUAL AND PROCEDURAL BACKGROUND[1]

1. On April 25, 2013, a grand jury returned an indictment charging Petitioner, Christian Dior Womack, and his co-defendant, Rashidah Brice, with three counts of sex trafficking and attempted sex trafficking, in violation of 18 U.S.C. §§ 1591 and 1594(a).

2. At his initial appearance before a magistrate judge on April 29, 2013, Petitioner was appointed counsel under the Criminal Justice Act ("CJA"). However, on May 23, 2013, a

[1] A more detailed recitation of the facts is set out in the opinion of the United States Court of Appeals for the Third Circuit affirming Petitioner's sentence on direct appeal. See United States v. Womack, 646 F. App'x 258, 259 (3d Cir. 2016). Only those facts relevant to the issues presented by Petitioner's § 2255 Motions are discussed in this Order.

privately retained attorney, Lewis Hannah, Esq., entered an appearance on Petitioner's behalf. As a result, the CJA-appointed attorney filed a motion to withdraw as counsel on June 3, 2013, which I granted on June 5, 2013. (ECF Nos. 23, 24, 25.)

3. On March 24, 2014, Petitioner sent a letter to the Court seeking to "relieve" Mr. Hannah from the case. Approximately one month later, on April 22, 2014, Petitioner filed a motion to appear *pro se*, again requesting that I "remove" Mr. Hannah "from this matter completely." Mr. Hannah filed a motion to withdraw on May 20, 2014. (ECF Nos. 59, 67, 79.)

4. During a status hearing on May 29, 2014, I granted Mr. Hannah's motion to withdraw and also conducted a colloquy with Petitioner to determine whether his request to proceed *pro se* was made knowingly, intelligently, and voluntarily. I concluded that it was and granted Petitioner's motion to proceed *pro se*. However, I determined that "back-up" counsel would "nonetheless [be] appropriate," and issued a separate Order (dated June 5, 2014) appointing Kenneth Edelin, Esq. as back-up counsel.[2] (ECF No. 82.)

5. After assuming responsibility for his own defense, Petitioner filed numerous pretrial motions, including multiple motions to dismiss the indictment and motions to suppress evidence. Following a hearing on July 21, 2014, I denied those motions. (ECF Nos. 73, 78, 81, 85, 114, 134.)

6. On July 23, 2014, on the day jury selection was set to begin, Petitioner orally moved to have Mr. Edelin's status converted from back-up counsel to counsel of record and indicated that he wished to plead guilty. I granted Petitioner's motion and appointed Mr. Edelin as counsel of record. Mr. Edelin's appointment was subsequently memorialized in an Order dated July 24, 2014. (See ECF Nos. 136–137; N.T. 7/23/14 at 14:19–25.) After appointing Mr. Edelin and conducting

[2] Mr. Edelin was selected from the approved list of Criminal Justice Act ("CJA") attorneys that is on file with the Clerk of Court.

an extensive colloquy, I accepted Petitioner's plea of guilty to all three counts of the indictment. (N.T. 7/23/14 at 14:23–35:2.)

7. On December 18, 2014, I sentenced Petitioner to life imprisonment. His judgment of sentence was affirmed on appeal. See United States v. Womack, 646 F. App'x 258, 259 (3d Cir. 2016), cert. denied, 137 S. Ct. 521 (2016).

8. On July 17, 2017, Petitioner filed his first *pro se* "Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence." On September 11, 2017, he refiled his motion on the proper form, and, on November 22, 2019, Petitioner filed a supplemental brief to his first § 2255 motion.

9. Petitioner has also requested leave to serve discovery requests on Mr. Edelin and the Assistant United States Attorney who prosecuted the case and requested an evidentiary hearing on his claims. (ECF Nos. 253, 256.)

10. Petitioner's first motion asserts nine grounds for relief. As explained below, the existing record clearly demonstrates that eight of these nine grounds for relief lack merit. Accordingly, I will deny Petitioner's first § 2255 motion without conducting an evidentiary hearing or granting Petitioner leave to conduct discovery on these eight claims. However, as to the remaining claim and for the reasons explained below, I will grant an evidentiary hearing.

11. I also note that, on November 7, 2019, Petitioner filed a second *pro se* "Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence," arguing that as a result of newly discovered evidence regarding the alleged falsity of Backpage.com's advertisements, Petitioner would not have pled guilty and either the indictment would have been dismissed or there would have been a verdict of not guilty. On May 29, 2020, Petitioner filed a *pro se* supplement to his second § 2255 motion. Petitioner's newly discovered evidence claim is also addressed below.

LEGAL STANDARD

12. Section § 2255(a) provides as follows:

> 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.

28 U.S.C. § 2255(a)

13. Eight of Petitioner's nine grounds for challenging his conviction and sentence stem from the Sixth Amendment's right to the effective assistance of counsel. In Strickland v. Washington, 466 U.S. 668 (1984), the United States Supreme Court held that "[a]n accused is entitled to be assisted by an attorney whether retained or appointed, who plays the role necessary to ensure that the trial is fair." Id. at 685. A claim for ineffective assistance of counsel has two requirements: (1) that "trial counsel's representation fell below an objective standard of reasonableness" under prevailing professional norms; and (2) prejudice — that is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Woods v. Diguglielmo, 514 F. App'x 225, 229 (3d Cir. 2013) (quoting Strickland, 466 U.S. at 687–88, 693–94). A reasonable probability is one that is "sufficient to undermine confidence in the outcome." United States v. Day, 969 F.2d 39, 42 (3d Cir. 1992). A district court's scrutiny of trial counsel's performance is highly deferential, and I presume that counsel acted in accordance with the professional standards and pursuant to a sound trial strategy. Strickland, 466 U.S. at 689. And importantly, "[t]here can be no Sixth Amendment deprivation of effective counsel based on an attorney's failure to raise a meritless argument." United States v. Sanders, 165 F.3d 248, 253 (3d Cir. 1999).

14. A petitioner is entitled to an evidentiary hearing on a § 2255 motion unless "the files and records of the case conclusively show that the prisoner is entitled to no relief." 28 U.S.C. § 2255(b). In determining whether a hearing is warranted, the court "must accept the truth of the movant's factual allegations unless they are clearly frivolous on the basis of the existing record." Government of the Virgin Islands v. Forte, 865 F.2d 59, 62 (3d Cir. 1989).

15. Rule 6(a) of the Rules Governing Section 2255 Proceedings provides that "[a] judge may, for good cause, authorize a party to conduct discovery under the Federal Rules of Criminal Procedure or Civil Procedure." To be entitled to conduct discovery under Rule 6(a), a § 2255 petitioner must "set[] forth specific factual allegations which, if fully developed, would entitle him . . . to the writ." Williams v. Beard, 637 F.3d 195, 209 (3d Cir. 2011) (explaining that "[t]he burden rests upon the petitioner to demonstrate that the sought-after information is pertinent and that there is good cause for its production"); see also United States v. Thomas, No. 06-cr-299, 2013 WL 12219606, at *1 (W.D. Pa. Aug. 5, 2013) (noting that the "good cause" standard "limits discovery to those cases where a [petitioner] has made a preliminary showing that requested discovery will tend to support his entitlement to relief").

DISCUSSION

Petitioner's First § 2255 Motion

16. Petitioner's first § 2255 motion sets out nine grounds for relief. In eight of these grounds, Petitioner asserts that his trial counsel's performance was so deficient as to deny him his Sixth Amendment right to the effective assistance of counsel. Regarding the remaining claim for relief, Petitioner contends that I failed to adequately determine whether his decision to proceed *pro se* and waive his right to counsel was made knowingly, intelligently, and voluntarily. These claims are addressed in turn.

Ineffective Assistance of Counsel Claims

17. Petitioner contends that his trial counsel's performance was deficient in eight ways: (1) by failing to move to dismiss the indictment; (2) by neglecting to object to my alleged failure, in accepting Petitioner's guilty plea, to make specific factual findings and inform Petitioner of the mandatory minimum sentences he faced; (3) by failing to demand a hearing on Petitioner's mental competency; (4) by failing to review and discuss the Presentence Investigation Report ("PSR") with Petitioner, and by failing to object to sentencing enhancements that were applied in calculating the sentencing range under the Sentencing Guidelines; (5) by failing to object to my alleged participation in plea negotiations; (6) by failing to communicate to Petitioner a plea offer allegedly made by the Government; (7) by failing to move to dismiss the case on the basis of alleged prosecutorial misconduct and intimidation of Petitioner's witnesses; and (8) by allegedly promising Petitioner a specific sentence in exchange for a payment of $10,000. Each of these eight grounds fails—either because the argument that Petitioner contends his trial counsel should have made is a meritless one; because Petitioner suffered no prejudice from the alleged deficiency; or because Petitioner was proceeding *pro se* at the time of the alleged deficiency.

(1) Ineffectiveness for Failing to Move to Dismiss the Indictment

18. In his first claim of ineffective assistance of counsel, Petitioner argues that the indictment was flawed and that his trial counsel was ineffective by failing to move to dismiss it. Specifically, Petitioner contends that: (1) the indictment "did not contain any of the elements of . . . sex trafficking by force nor the interstate commerce elements;" (2) the indictment was "multiplicitous," and (3) the sex trafficking statute in effect at the time of the indictment and conviction was void for vagueness. Because the indictment was not flawed for any of these three

reasons, Petitioner's trial counsel was not ineffective for not moving to dismiss the indictment at any point.

19. Petitioner's argument that the indictment "did not contain any of the elements of sex trafficking by force nor the interstate commerce elements" is difficult to follow. In his Memorandum in Support, Petitioner explains this argument as follows: "the indictment did not allege each material element of 18 U.S.C. § 1591 (sex trafficking by force) in both counts. Instead, the indictment alleged material elements of 18 U.S.C. § 1594(a) (attempt), in count[s] two and three. This means that the two counts of sex trafficking by force interstate commerce element(s) was not listed [sic] although it must be alleged in the indictment in order to confer federal jurisdiction." (Pet'r's Mem. 22.)

20. To the extent that Petitioner is arguing that any of the three counts failed to include allegations to support the interstate commerce element, he is incorrect. The indictment alleges that Petitioner "created Internet advertisements in which [he and his co-defendant] advertised [the victims] as available for purposes of prostitution." (Indictment Count One ¶ 3; see also Indictment Count Two ¶ 1 (incorporating Count One); Indictment Count Three ¶ 1 (same.)) The creation of Internet advertisements satisfies the interstate commerce elements. See, e.g., United States v. Phea, 755 F.3d 255, 266 (5th Cir. 2014) (affirming conviction for sex trafficking under § 1591, and holding that use of the Internet in the commission of the offense constitutes use of a "means or facilit[y] of interstate commerce sufficient to establish the requisite interstate nexus").[3]

[3] On November 22, 2019, Petitioner filed a supplement to his first § 2255 motion, arguing that the principles of United States v. Davis, 139 S. Ct. 2319 (2019), which applied to 18 U.S.C. § 924(c), should be applied to 18 U.S.C. § 1591. Petitioner explains that the Government used online advertisements to satisfy the interstate commerce nexus under § 1591, "although the statute did not expressly state that advertisements of illegal sex trafficking of a minor or a victim of force, fraud or coercion w[ere] prohibited" until 2015. (Pet'r's Suppl. to Mot. 3.) Petitioner contends that § 1591 was, therefore, unconstitutionally vague until 2015, when Congress enacted The Stop Advertising Victims of Exploitation Act, which

21. To the extent that Petitioner is arguing that any of the three counts failed to include allegations supporting the *other* elements of sex trafficking and attempted sex trafficking, a cursory review of the indictment belies this argument as well. Each count alleges that Petitioner "knowingly recruited, enticed, harbored, transported, provided, and maintained" the victim—or attempted to do so—knowing that "force, threats of force, fraud, and any combination of such means would be used to cause [the victim] to engage in commercial sex acts."[4] (Indictment Count One ¶ 4; Indictment Count Two ¶ 2; Indictment Count Three ¶ 2.)

22. Petitioner also argues that the indictment is multiplicitous because it alleges "sex trafficking by force (attempt) in all three counts of the indictment although [Petitioner] was only

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explicitly prohibited advertisements of illegal sex trafficking of a minor or a victim of force, fraud, or coercion.

For the same reasons discussed above, this argument fails. Before the enactment of The Stop Advertising Victims of Exploitation Act of 2015, courts explicitly held that the creation of internet advertisements satisfied the interstate commerce elements of § 1591. See, e.g., Phea, 755 F.3d at 266 (5th Cir. 2014); United States v. Campbell, 770 F.3d 556, 574–75 (7th Cir. 2014); United States v. Todd, 627 F.3d 329, 334 (9th Cir. 2010). Petitioner ignores these cases and, instead, asks me to apply the principles expressed in Davis, which involved a different statute, to § 1591 and find this provision, pre-2015, unconstitutionally vague. Yet, Petitioner fails to cite to a single case permitting such an application. Thus, I conclude that Petitioner's argument based on Davis lacks merit.

[4] The version of the sex trafficking statute, codified at 18 U.S.C. § 1591, in effect at the time of the offense, read, in relevant part, as follows:

> (a) Whoever knowingly—
>
> (1) in or affecting interstate . . . commerce, . . . recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person; or
>
> (2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1),
>
> knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion . . . , or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

In turn, § 1594 provides that "[w]hoever attempts to violate section . . . 1591 shall be punishable in the same manner as a completed violation of that section."

charged with one event of sex trafficking by force (attempt)." (Pet'r's Mem. 23.) Again, Petitioner's argument is belied by a cursory review of the Indictment, which alleges three counts of sex trafficking involving offenses against three different victims at three different time periods: Count One alleges an offense involving "Minor 1" occurring "[b]etween on or about May 25, 2012, through on or about June 11, 2012;" Count Two alleges an offense involving "Person 2" occurring "[b]etween on or about June 26, 2012, through on or about July 2, 2012;" and Count Three alleges an offense involving "Person 3" occurring "[b]etween on or about February 1, 2013, through on or about February 3, 2013." Accordingly, the Indictment is not multiplicitious as it does not "charg[e] . . . a single offense in separate counts of an indictment." United States v. Kennedy, 682 F.3d 244, 254 (3d Cir. 2012). Rather, it charges three separate offenses in three separate counts.

23. Finally, Petitioner's argument that the sex trafficking statute in effect at the time of the offense was void for vagueness is meritless. (Pet'r's Mem. 14.) "A statute is unconstitutionally vague under the Due Process Clause if it (1) fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits; or (2) authorizes or even encourages arbitrary and discriminatory enforcement." United States v. Fontaine, 697 F.3d 221, 226 (3d Cir. 2012) (internal quotation marks omitted). Here, the sex trafficking statute in effect at the time of Petitioner's conduct made it an offense to "recruit[]. . . a person" knowing that force will be used to cause that person to engage in a commercial sex act. See 18 U.S.C. § 1591(a). That is precisely what the Indictment alleges that Petitioner did, and what Petitioner pled guilty to doing: "recruit[ing] young females to work as prostitutes" and "engag[ing] in acts of physical violence and threats of physical harm to maintain the participation of [these] females in [a] prostitution business." (Indictment, Count One ¶ 2.) It is beyond serious dispute that a person of ordinary

intelligence would know that such conduct violates the statute, and that such a statute does not encourage arbitrary enforcement. Accordingly, the statute is not void for vagueness and, therefore, counsel was not ineffective for failing to move to dismiss the indictment on this ground.

(2) Ineffectiveness for Failing to Object to the Court's Purported Failure to Make Factual Findings in Accepting Petitioner's Guilty Plea and to Apprise Petitioner of the Possible Sentences He Faced

24. Regarding his next asserted ground of ineffectiveness, Petitioner argues that, in accepting Petitioner's guilty plea, I failed to make findings of fact supporting his guilt, and failed to apprise him of the possible sentences that he faced in pleading guilty—and that his trial counsel was ineffective for neglecting to object to these alleged failures.

25. Specifically, Petitioner argues that I failed to: (1) specify whether he was guilty of "sex trafficking of a minor" or "sex trafficking by force" (Pet'r's Mem. 21); and (2) inform him of the sentence he faced by pleading guilty.

26. Again, the record belies Petitioner's arguments. After Petitioner indicated that he wished to plead guilty, I colloquied Petitioner to ensure that he was aware of, among other things, the mandatory minimum sentence and maximum sentence that he faced:

> THE COURT: We've been through the possible penalties and mandatory minimums, but in an abundance of caution, I'm going to ask one of the Assistant U.S. Attorneys to review those with you now, please.
>
> [ASSISTANT U.S. ATTORNEY]: Your Honor, on Count 1, the Defendant is pleading guilty and is charged with both sex trafficking of a minor and sex trafficking by force. Sex trafficking of a minor of the age of this minor carries a mandatory minimum penalty of 10 years. Sex trafficking by force carries a mandatory minimum penalty of 15 years. *So the mandatory minimum on Count 1 is 15 years.* Count 2 and Count 3 charge attempted sex trafficking by force. *They each carry a 15-year mandatory minimum. Each count carries a maximum term of life. So the total possible sentence is a mandatory minimum of 15 years.* If those are ordered consecutive, it would be 45 years, *a maximum term of life* . . . .
>
> THE COURT: Do you understand all of that, sir?

[PETITIONER]: Yes.

(N.T. 7/23/2014 at 19:21–20:16 (emphasis added.))

27. Later in the plea hearing, I requested that the Government "summarize the evidence that [it] would present . . . to meet the elements necessary for me to accept the plea." (N.T. 7/23/2014 at 27:6–10.) The Government did so, specifying the evidence that it considered support for the convictions on all three counts of the Indictment. (See id. at 27:25–32:21.) Petitioner then confirmed that the recounted facts were substantially accurate and that he was, in fact, guilty of the charged offenses. (Id. at 32:22–33:2.) Following this recitation of evidence, the Court's Deputy Clerk asked Petitioner to enter his plea:

> THE CLERK: [Petitioner], you have heretofore plead not guilty to Bill of Indictment Number 13-206-1 charging you with, Count 1, sex trafficking of a minor or by force and attempt, in violation of Title 18, Section 1591 and Title 18, Section 1594. Counts 2 and 3, sex trafficking by force and attempt, in violation of Title 18, Section 1591 and Title 18, Section 1594(a). As to Counts 1, 2 and 3 of the Indictment, how do you plead now, guilty or not guilty?
>
> [PETITIONER]: Guilty.

28. Thereafter, I placed my factual findings on the record:

> THE COURT: All right. I make the following findings: I find that there is a factual basis to make out the elements of Counts 1 through 3. I find the Defendant's plea is knowing, voluntary and intelligent. He's doing so of his own free will. He understands the nature of the charges, maximum possible penalties, including the mandatory minimums. He understands all the rights he is giving up. The Defendant is found guilty of Counts 1 through 3.

29. Because I informed Petitioner of the possible sentences that he faced and made factual findings sufficient to establish Petitioner's guilt as to each count, and because his plea was made knowingly, intelligently, and voluntarily, Petitioner's trial counsel was not ineffective for failing to object.

(3) Ineffectiveness for Failing to Disclose Petitioner's Mental Health or Move for a Competency Hearing

30. In his next ineffectiveness claim, Petitioner contends that his trial counsel "fail[ed] to disclose [his] mental health history and . . . move or otherwise request a competency hearing pursuant to 18 U.S.C. § 4241." (Pet'r's Mot. 9.)

31. Section 4241(a) requires a trial court to hold a hearing to determine the mental competency of a criminal defendant "if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense." 18 U.S.C. § 4241(a).

32. As the Third Circuit has explained, in order to be considered mentally incompetent for purposes of § 4241, the "defendant must not only suffer from a mental impairment but must also be 'presently' unable to understand the nature and consequences of the proceeding." United States v. Leggett, 162 F.3d 237, 244 (3d. Cir. 1998) (concluding that defendant's statements that he had been "diagnosed in the past as having psychiatric problems, . . . standing alone, did not give the district court reason to believe that [the defendant] did not grasp the nature and consequences of the proceedings against him").

33. Petitioner's claim fails because he identifies no "reasonable cause" to believe that, at any point in the proceedings against him, he was unable to understand the nature and consequences of the proceedings or assist properly in his defense. Petitioner points only to the following facts: (1) that, according to the pre-sentence investigation report prepared by the Probation Office (hereinafter the "PSR"), he has been treated for post-traumatic stress disorder, depression, and adjustment disorder; (2) that he has a history of alcohol and drug addiction; and (3) that I ordered mental health treatment as a part of his sentence.

34. None of these facts give rise to "reasonable cause" to believe that Petitioner was, at any stage of the proceedings, unable to understand the nature and consequences of the proceedings or assist properly in his defense.

35. As an initial matter, I note that during the July 23, 2014, plea colloquy, Petitioner denied, under oath, that he had "ever been treated for any type of mental illness," nor "treated for drug or alcohol addiction." (N.T. 7/23/2014 at 16:1–7.) However, Petitioner now admits that these answers—given under oath—were "wrong." (Pet'r's Mem. 10.)

36. While preparing the PSR, the Probation Officer discovered that—in 2002—Petitioner received a court-ordered psychiatric evaluation that resulted in a diagnosis of "Adjustment Disorder With Depressive Symptoms R/O [i.e., ruling out] Major Depressive Disorder and Cannabis Dependence." (PSR ¶ 121.)

37. In October 2014, while Petitioner was awaiting sentencing, the psychology department at the Federal Detention Center diagnosed him with post-traumatic stress disorder, based on Petitioner's claims of having nightmares since being shot in 2003. (PSR ¶ 121.)

38. Accordingly, during the December 18, 2014, sentencing hearing, I "strongly recommend[ed] [that] [Petitioner] receive mental health evaluation and treatment . . . while incarcerated." (N.T. 12/18/2014 at 25:12–17.)

39. As to alcohol and substance abuse, the Probation Officer found that, in 2002, Petitioner received a court-ordered assessment for substance abuse, which assessment concluded with a finding that Petitioner "has a serious substance abuse disorder." (PSR ¶ 122.)

40. The Probation Officer further reported that Defendant claimed to be addicted to oxycodone. (PSR ¶ 124.)

41. The above facts regarding Petitioner's mental health and substance abuse—while certainly indicative of a need for treatment—do not give rise to a reasonable cause to believe that Petitioner could not assist in his own defense. These diagnoses were made more than a decade before this criminal matter commenced, and do not show that Petitioner could not communicate with his counsel and the Court.

42. Moreover, a cursory review of the record in this case demonstrates that Petitioner was more than capable of understanding and participating in the proceedings, by asking and answering questions at multiple hearings—including the hearing on his motion to proceed *pro se*, a hearing on his various pre-trial motions, and his plea hearing. See Leggett, 162 F.3d at 242 (affirming district court's conclusion that defendant was not incompetent where he cross-examined witnesses on his own behalf and made objections, noting that "defendant's ability to participate in court proceedings [was] a sign of competency").

43. Because Petitioner has not identified facts that give rise to a reasonable cause to believe that Petitioner could not assist in his own defense—and because the record clearly refutes his uncorroborated allegations that he was mentally incompetent—his claim for ineffective assistance of counsel for failing to disclose his mental health and substance abuse history, or request a competency hearing, fails.

(4) Ineffectiveness for Failing to Review and Discuss the Presentence Investigation Report with Petitioner, and Failing to Object to Sentencing Enhancements that Were Applied in Calculating his Sentencing Range Under the Sentencing Guidelines

44. Petitioner next contends that his trial counsel was ineffective for failing to review and discuss the PSR with him and for failing to object to the application of certain sentencing enhancements. This claim too is without merit.

45. Petitioner acknowledges that during allocution, when Petitioner brought it to my attention that he had not reviewed the PSR or its addendum, I allowed him an opportunity to review those documents. Petitioner's complaint is therefore not that he never saw the PSR, but rather that because his counsel had not previously reviewed the PSR with him, Petitioner did not have the chance to discuss with his attorney the sentencing enhancements to which he wanted to object. I note first that Petitioner fails to identify any evidence in the record corroborating his claim that Mr. Edelin failed to discuss the complained-of sentencing enhancements with him. And Petitioner does not otherwise explain how this alleged failure by counsel amounts to ineffective assistance under Strickland.

46. Nevertheless, even if Petitioner's counsel failed to discuss the PSR with him before the sentencing hearing, Petitioner has identified no prejudice caused by that failure, and I can discern none.

47. As possible prejudice, Petitioner points only to two enhancements under the Sentencing Guidelines that were recommended by the Probation Officer, and that I applied in calculating Petitioner's sentencing range under the Guidelines, but to which Mr. Edelin did not object: (1) a two-level enhancement for use of a computer under USSG § 2G1.3(b)(3); and (2) a two-level enhancement for obstruction of justice under USSG § 3C1.1. As discussed below, both of these enhancements were properly applied. Accordingly, Petitioner suffered no prejudice from any failure on the part of Mr. Edelin to discuss the PSR with him, or to object to these enhancements.

48. USSG § 2G1.3(b)(3) provides a two-level enhancement for sex trafficking of a minor, when that offense "involved the use of a computer or an interactive computer service to (A) persuade, induce, entice, coerce, or facilitate the travel of, the minor to engage in prohibited sexual

conduct; or (B) entice, encourage, offer, or solicit a person to engage in prohibited sexual conduct with the minor."

49. Petitioner's conduct clearly implicates USSG § 2G1.3(b)(3)(B), because it involved the use of a compute to "entice, encourage, offer, or a solicit a person to engage in prohibited sexual conduct with [a] minor"—specifically, because it involved posting advertisements on an Internet website enticing others to contact Petitioner to seek sex with Minor 1.

50. Nevertheless, Petitioner contends that the enhancement does not apply because, while he used a computer to advertise Minor 1 to *third parties*, he did not use a computer to directly contact *Minor 1*. In support of his argument, Petitioner cites Application Note 4 to USSG § 2G1.3, which provides that the enhancement "is intended to apply only to the use of a computer or an interactive computer service to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor."

51. However, the Third Circuit has held that this Application Note is satisfied, where—like here—a defendant posts Internet advertisements enticing third parties to use their computers to seek out sex with a minor, and where the defendant exercises "supervisory control" over the minor that is advertised. United States v. Burnett, 377 F. App'x 248, 252 (3d Cir. 2010).[5]

[5] I note that the United States Court of Appeals for Fifth Circuit has criticized, in a published opinion, the reasoning of Burnett, concluding that it "would make the relevant 'use of the computer' the *third party's* use," rather than the *defendant's* use, which is inconsistent with the plain language of the enhancement. United States v. Pringler, 765 F.3d 445, 452 (5th Cir. 2014). Instead, the Fifth Circuit concluded that Application Note 4's limitation of the enhancement to use of a computer for direct communication with the minor is inconsistent with the text of the enhancement—and appears to be a "mere drafting error" that accounts only for § 2G1.3(b)(3)*(A)*, failing to account for *(B)*. Id. at 454-456; but see United States v. Patterson, 576 F.3d 431, 443 (7th Cir. 2009) (applying Application Note 4 to limit the enhancement to use of a computer to communicate directly with a minor, but not addressing whether the Note is consistent with the text of the enhancement). Whether under the theory of the Third Circuit in Burnett or the Fifth Circuit in Pringler, it is beyond reasonable dispute that the enhancement is applicable to Petitioner.

52. Here, as in Burnett, Petitioner exercised supervisory control over Minor 1 during the time of the offense, and placed advertisements on the Internet soliciting others to respond to seek sex with her. Accordingly, the enhancement was appropriately applied.

53. Petitioner also contends that the two-level enhancement for obstruction of justice under USSG § 3C1.1 should not have been applied. Again, Petitioner's argument is belied by the clear record.

54. Section 3C1.1 provides for a two-level enhancement where "(1) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and (2) the obstructive conduct related to (A) the defendant's offense of conviction and any relevant conduct; or (B) a closely related offense." USSG § 3C1.1.

55. The commentary to the enhancement explains that "[o]bstructive conduct can vary widely in nature," but includes, among other things: (1) "unlawfully influencing a co-defendant . . . or attempting to do so," (2) "committing . . . perjury," (3) "providing a materially false statement to a law enforcement officer that significantly obstructed or impeded the official investigation or prosecution," and (4) "threatening the victim of the offense in an attempt to prevent the victim from reporting the conduct constituting the offense of conviction." USSG § 3C1.1 cmt. 3; id. cmt. 4(A), (B), (G), (K).

56. Here, as detailed in PSR, Petitioner engaged in each of these four types of obstructive conduct. First, Petitioner attempted to influence the testimony of his co-defendant, Rashida Brice, while the two were incarcerated, by sending her letters "encourage[ing] her to recant her statements against him and to testify on his behalf." (See PSR ¶ 46.)[6]

[6] While Petitioner's letters did not threaten harm to Brice or her family, it is clear that they were thinly veiled attempts at manipulation, as the letters included repeated appeals to Brice about how much

57. Second, following Petitioner's arrest he was interviewed by FBI agents. Throughout this interview, he lied to the agents by denying that he profited from the prostitution of the victims, as well as by lying about how one of the victims escaped. (See PSR ¶ 45.)

58. Third, during a hearing on his motion to suppress evidence obtained during a search of his cell phone, Petitioner testified under oath that he did not give law enforcement officers consent to search his cell phone. I found Petitioner's testimony during this hearing to be incredible—constituting perjury meriting the obstruction of justice enhancement.

59. And finally, after one of his victims escaped, Petitioner called the victim's friend and "threatened that if [the victim] report[ed] anything to the police, he would kill her, her dog, and her mom." (PSR ¶ 34.)

60. The combination of these four activities more than adequately supports the application of the enhancement for obstruction of justice.

61. Because the two enhancements Petitioner identifies—the use of computer enhancement and the obstruction of justice enhancement—were properly applied, and because Petitioner identifies no other errors in the PSR, Petitioner cannot demonstrate any prejudice resulted from any alleged failure on the part of his counsel to review the report with him, or any failure to object to any sentencing enhancements. Accordingly, this claim for ineffective assistance of counsel fails.

(5) Ineffectiveness for Failing to Object to the Court's Alleged Involvement in Plea Negotiations

62. Petitioner next contends that I impermissibly participated in plea negotiations, in violation of Federal Rule of Criminal Procedure 11, and that his trial counsel was ineffective for

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Petitioner loved her; that she should "tell the truth;" that her attorneys and the Government forced her to tell lies about him; and that, if she "followe[ed] [his] lead," he would get the two of them out of jail. (See PSR ¶ 46.)

> THE COURT: Okay. So if it's a guilty on 2 or 3, no matter what, it's 15. It has to be 15, okay. All right. So what we're going to do is I'm going to give you . . .
>
> THE COURT: You talk to [Petitioner] and I'll be back at 9:30, okay?
>
> [ASSISTANT U.S. ATTORNEY]: Thank you, Judge.
>
> MR. EDELIN: Yes. . . .

(N.T. 7/23/14 at 4:17–13:1.)

64. As the above exchange makes clear, I did not comment on the appropriateness of any plea offers, but, rather, sought information about the status of plea negotiations in order to determine whether delaying the proceedings at such a late hour was likely to be fruitful, and thus warranted. Such inquiries do not run afoul of Rule 11. See United States v. Frank, 36 F.3d 898, 902–903 (9th Cir. 1994) (rejecting defendant's claim that the trial judge violated Rule 11 by engaging in plea negotiations, where the trial judge discussed with counsel the terms of a plea agreement that was offered in the middle of trial, and explaining that the purpose of the discussion was merely to determine whether the plea negotiations would be a waste of time).

65. Petitioner focuses on a single comment in the course of this exchange, in which I noted that "twenty years . . . is substantial." (N.T. 7/23/14 at 7:24–8:1.) But even if that single comment—divorced from the context in which it occurred—is sufficient to implicate the prohibition on participating in plea negotiations, Petitioner can identify no prejudice resulting from his counsel's failure to object to such participation. Indeed, as the above exchange makes clear, the Government was unwilling to even consider the 20-year offer that was being discussed at that point in the exchange, and Petitioner ultimately decided to plead guilty without any agreement with the Government at all.

66. Moreover, during my colloquy with Petitioner in accepting that guilty plea, Petitioner affirmed that he had not been coerced into, nor promised anything in exchange for, pleading guilty. (N.T. 7/23/14 at 33:20–23.) See United States v. Weinstein, 658 F. App'x 57, 60–61 (3d Cir. 2016) (rejecting defendant's claim that district court impermissibly participated in plea negotiations where, among other things, the defendant "stated under oath at his plea hearing that he was not induced to plead guilty and that no one had made any promises to him other than what appeared in the plea agreement").

67. Accordingly, Petitioner's ineffective assistance of counsel claim based on my alleged participation in plea negotiations fails.

(6) Ineffectiveness for Failing to Communicate to Petitioner a Plea Offer Allegedly Made by the Government

68. Petitioner next contends that Mr. Edelin was ineffective for failing to communicate a plea offer, and that he suffered prejudice from the failure as he ultimately pled guilty without the benefit of a plea agreement.

69. As recounted above, Petitioner was represented by counsel from the outset of the case until May 29, 2014, when I permitted Petitioner's retained counsel, Mr. Hannah, to withdraw and allowed Petitioner to proceed *pro se*. At that time, I appointed Mr. Edelin as back-up counsel.

70. Petitioner remained *pro se* until immediately before he pled guilty on July 23, 2014—when I granted his request to convert Mr. Edelin from back-up counsel to counsel of record.

71. However, Petitioner contends that on July 24, 2014—one day after he pled guilty without an agreement—Mr. Edelin "advised [him] and his family that the Government had offered a twenty-five year plea offer." (Pet'r's Mot. 12.) Petitioner does not allege precisely when Mr.

Edelin received this offer from the Government, but, alleges that Mr. Edelin received it at some point before Petitioner pled guilty, and did not disclose it until after Mr. Edelin pled guilty.[7]

72. Petitioner's allegation is thus that the Government communicated a plea offer to Mr. Edelin—but not Petitioner—*before* he pled guilty without a plea agreement, and thus while Petitioner was proceeding *pro se*. Accordingly, Mr. Edelin was merely back-up counsel at the time of the alleged offer and Petitioner remained in complete control of his own defense, including the making and accepting of plea offers.

73. Several courts, including the Third Circuit (albeit in an unpublished opinion), have held that a criminal defendant proceeding *pro se* has no constitutional right to back-up counsel, and thus cannot claim that any deficiencies on the part of his back-up counsel deprived him of his Sixth Amendment right to the effective assistance of counsel. See United States v. Tilley, 326 F. App'x 96, 96–97 (3d Cir. 2009) (rejecting ineffective assistance claim against back-up counsel, and noting that defendant "had no constitutional right to standby counsel"); see also Lee v. Hines, 125 F. App'x 215, 217 (10th Cir. 2004) ("A defendant who chooses to represent himself and has the assistance of court appointed standby counsel cannot succeed in establishing ineffective assistance against such counsel when it is clear that the defendant maintained control of his defense.").

74. However, I note that these cases do not address the precise conduct on the part of stand-by counsel alleged by Petitioner here: that the Government made a plea offer to stand-by

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[7] Petitioner maintains that his allegation is corroborated by a "July 28, 2014, letter to the district court," which he asserts "disclosed that [Mr.] Edelin did not inform [him] of the [G]overnment's twenty-five (25) year plea offer until after [he] entered a[n] open plea." (Pet'r's Reply 19.) However, Petitioner did not attach this letter to his § 2255 motion, nor cite to any place in the record where it may be found. As discussed below, the letter is immaterial, as Petitioner's allegation, even if true, does not make out a claim for ineffective assistance of counsel—because Mr. Edelin was merely his back-up counsel at the time of the alleged plea offer.

counsel, which stand-by counsel then failed to convey to the defendant. I recognize that, at a minimum, reasonable jurists could conclude that such conduct can amount to ineffective assistance of counsel, because a defendant in such a situation was not effectively "in control of his [own] defense." Lee, 125 F. App'x at 217; see also United States v. Morrison, 153 F.3d 34, 55 (2d Cir. 1998) (noting that a court "might entertain a claim for ineffective assistance of standby counsel if standby counsel held that title in name only and, in fact, acted as the defendant's lawyer throughout the proceedings").

75. Because an evidentiary hearing regarding the veracity of Petitioner's allegations may obviate the need to resolve the undecided issue of when, if ever, an ineffective-assistance claim may be brought against stand-by counsel and what, if anything, was conveyed to Mr. Edelin, I will grant Petitioner an evidentiary hearing on this claim.

(7) Ineffectiveness for Failing to Move to Dismiss the Case on the Basis of Alleged Prosecutorial Misconduct and Intimidation of Petitioner's Witnesses.

76. Petitioner next contends that trial counsel was "constitutionally ineffective for failing to submit an application to the . . . court requesting it to dismiss the case due to . . . judicial and government misconduct, which drove [his] defense witnesses from the stand." (Pet'r's Mot. 14). Petitioner alleges that the Government "allowed or otherwise authorized its witness and the witness['] family members to engage in threatening and intimidating [his] defense witnesses." (Id. at 13.)

77. As with Petitioner's claim alleging a failure by Mr. Edelin to communicate a plea offer—the events alleged by Petitioner occurred while he was proceeding *pro se* and while Mr. Edelin was merely serving as his stand-by counsel.

78. Petitioner brought his allegations of witness intimidation to my attention in a "Motion for a Restraining Order" filed on June 18, 2014, and reiterated them orally during a status

hearing on July 1, 2014—shortly after I granted his motion to proceed *pro se*. (See Mot. for Restraining Or., ECF No. 92; N.T. 7/1/14 at 12:24–21:6.) At that hearing, I tasked Thomas Perricone—a supervisor at the Department of Justice, independent of the prosecution team—with investigating the allegations. (N.T. 7/1/14 at 19:4–21:6, 23:21–29:3.)

79. Petitioner, who was then proceeding *pro se*, did not at that time—nor at any time thereafter—move to dismiss the case based on his allegations of witness intimidation.

80. Instead, on July 23, 2014, Petitioner expressed his desire to plead guilty, and to have Mr. Edelin converted from back-up counsel to counsel of record, in order to assist him in entering a guilty plea.

81. As with Petitioner's claim for failure to communicate a plea offer, I will assume that Petitioner could, in certain circumstances suggesting that he did not remain in complete control of his defense, maintain an ineffective-assistance claim against his standby-counsel. However, the current record demonstrates beyond dispute that, at least insofar as Petitioner's allegations of witness intimidation, Petitioner remained in complete control of his defense. He raised the issue in a pro se motion, raised this issue orally *pro se*, and indicated while he was proceeding pro se that he wished to plead guilty.

82. Accordingly, Petitioner cannot succeed on a claim that he was deprived of the effective assistance of counsel based on the alleged witness intimidation.

(8) Ineffectiveness for Allegedly Promising Petitioner a Specific Sentence in Exchange for a Legal Fee Payment of $10,000.

83. Finally, Petitioner contends that Mr. Edelin provided ineffective assistance because he promised him and his family that he could obtain the mandatory minimum sentence of 15 years if they paid Mr. Edelin $10,000.

84. Even if this allegation is true, Petitioner cannot demonstrate prejudice because he was informed during the guilty plea colloquy (and acknowledged understanding) that no one could promise him what sentence he would receive. The relevant portion of the colloquy was as follows:

> THE COURT: [Petitioner, you're] just going to plead guilty and leave . . . the sentencing issue in my hands; is that correct, sir?
>
> [PETITIONER]: Yes.
>
> THE COURT: [A]re you pleading guilty of your own free will?
>
> [PETITIONER]: Yes.
>
> THE COURT: Did anyone force you or threaten you to plead guilty?
>
> [PETITIONER]: No.
>
> THE COURT: We've been through the possible penalties and mandatory minimums, but in an abundance of caution, I'm going to ask [the Government] to review those with you [Petitioner] now, please.
>
> ASSISTANT U.S. ATTORNEY: . . . [T]he total possible sentence is a mandatory minimum of 15 years. If [Counts one, two, and three] are ordered consecutive, it would be 45 years, a maximum term of life, a mandatory term of supervised release of 5 years up to life, a fine of $250,000 per count for a total of $750,000 and a special assessment of $100 per count for a total of $300.
>
> THE COURT: Do you understand all of that, sir?
>
> PETITIONER: Yes.
>
> THE COURT: Sir, do you understand that *no one can guarantee you what sentence you will receive* from me?
>
> PETITIONER: Yes.
>
> THE COURT: *Do you understand if I impose a more severe sentence than you expect, you will not be allowed to withdraw your plea?* Do you understand that?
>
> PETITIONER: Yes.

(N.T. 7/23/14 at 18:18–21; 19:15–24; 20:5–23) (emphasis added).

85. Federal courts—including the Third Circuit—have rejected ineffective assistance of counsel claims based on alleged promises by counsel of a specific sentence, where the petitioner was informed during the guilty plea colloquy that no one could guarantee a specific sentence. See United States v. Jones, 336 F.3d 245, 254 (rejecting claim that counsel was ineffective for promising a specific sentence where, during the guilty plea colloquy, the petitioner denied that anyone had promised him a specific sentence, notwithstanding his later allegation that his counsel "had told him 'don't worry about' what the judge actually says in the courtroom" during the colloquy); see also Garnica v. United States, 361 F. Supp. 2d 724, 737 (E.D. Tenn. 2005) (rejecting habeas petitioner's ineffective assistance claim alleging that counsel promised the petitioner a specific sentence, and noting that "even if [the] [p]etitioner had alleged sufficient specific and corroborated facts for the [c]ourt to believe that [counsel] promised him a sentence of less than six years if he pleaded guilty, the [c]ourt cured any prejudice that might have resulted from such a promise during the plea colloquy by making it clear [that] the [c]ourt, not the parties, would determine his sentence and [that the] [p]etitioner would be bound to his plea even if his sentence were more severe than he expected").

86. Accordingly, Petitioner's ineffectiveness claim based on his counsel's alleged promise of a specific sentence fails.

Violation of Sixth Amendment Right to Counsel Based on Inadequate Colloquy Before Granting Petitioner's Motion to Proceed *Pro Se*

87. In addition to the foregoing eight claims alleging that his trial counsel was ineffective, Petitioner raises a habeas claim alleging that he was denied his Sixth Amendment right to the assistance of counsel because I granted his motion to proceed *pro se* without conducting an adequate colloquy to determine whether his waiver of the right was knowing, intelligent, and voluntary. Again, the record belies Petitioner's argument.

88. "The right to counsel embodied within the Sixth Amendment carries as its corollary the right to proceed *pro se*." United States v. Peppers, 302 F.3d 120, 129 (3d Cir. 2002). However, because these two rights are in "tension"—that is, one cannot exercise the right to proceed *pro se* without waiving the right to counsel—a trial court faced with a motion to proceed *pro se* has "the weighty responsibility of conducting a sufficiently penetrating inquiry to satisfy itself that [a] defendant's waiver of counsel is knowing and understanding, as well as voluntary." Id. at 130-131.

89. The inquiry must allow the trial court to "satisfy itself that the defendant understands the nature of the charges, possible punishments, potential defenses, technical problems that the defendant may encounter, and any other facts important to a general understanding of the risks involved" in self-representation." Peppers, 302 F.3d at 132 (internal quotation marks omitted). And while the Third Circuit in Peppers set out 14 questions with sub-questions, as "a useful framework" for conducting the inquiry, the court also affirmed that "there is no talismanic formula" that must be followed in conducting the colloquy. Id. at 135–137.

90. In contending that the colloquy was inadequate—and that his decision to proceed *pro se* was thus not knowing, intelligent, and voluntary—Petitioner focuses on a single sub-question within a single question of the 14 questions recommended in Peppers by the Third Circuit, sub-question 7a, which Petitioner contends was not asked during the colloquy. Question 7 and sub-question 7(a) read as follows:

> 7. Do you understand that if you represent yourself, you are on your own? I cannot tell you—or even advise you—as to how you should try your case.
>
> 7a. Do you know what defenses there might be to the offenses with which you are charged? Do you understand that an attorney may be aware of ways of defending against these charges that may not occur

> to you since you are not a lawyer? Do you understand that I cannot give you any advice about these matters?

Peppers, 302 F.3d at 136.

91. The purpose of Question 7 and Sub-question 7(a) is not to provide a criminal defendant legal advice about possible defenses that he can raise. Rather, the purpose is "guaranteeing that the defendant understands what he is giving up"—an understanding of possible defenses that effective counsel would know about—and "that he is made aware of the dangers and disadvantages of self-representation." United States v. Welty, 674 F.2d 185, 190 (3d Cir. 1982).

92. The colloquy that occurred on May 29, 2014, sufficiently demonstrated that Petitioner understood what he was giving up by proceeding *pro se*, and the dangers and disadvantages of doing so. The colloquy included the following exchange, which is substantially similar to Question 7 from Peppers, as set out above:

> THE COURT: Okay. Do you understand that if I allow your attorney to withdraw, you are going to represent yourself in the realest of terms? So in other words, I cannot tell you or advise you how to try your case. You will be without legal representation. Do you understand that?
>
> [PETITIONER]: I understand.

(N.T. 5/29/14 at 32:2–7.)

93. Moreover, Petitioner's responses to several other questions asked during the colloquy make clear that Petitioner was aware of the disadvantages that he would suffer by waiving his right to counsel and electing to proceed *pro se*. The colloquy included the following questions and responses:

> THE COURT: Do you understand that you will be bound, whether you have a lawyer or not, to the rules of evidence? So if a document or testimony is not admissible, it's not admissible whether you're represented or not. So to put it in plain language, I'm going to follow the rules of evidence and you're not going to be cut any breaks under the rules of evidence because you don't

have a lawyer. You're going to be bound by the rules of evidence. Do you understand that?

[PETITIONER]: I understand.

THE COURT: Do you know what the rules of evidence are?

[PETITIONER]: Somewhat, yes.

THE COURT: Somewhat?

[PETITIONER]: Yes.

THE COURT: Tell me about them.

[PETITIONER]: Well, the rules of evidence, if it don't apply to the case, then it can't be admitted in court.

THE COURT: Okay. That's about as bare bones as an understanding -- and I'm not demeaning you, sir.

[PETITIONER]: Right.

THE COURT: You're not a lawyer, so –

[PETITIONER]: No, I'm not.

THE COURT: -- I just want to make sure you understand that you're going to be at a significant disadvantage because I can assure you [the Assistant U.S. Attorney] understands the rules of evidence.

[PETITIONER]: I'm already at one with all this nonsense.

THE COURT: You're going to give yourself a greater disadvantage because you're not going to have anyone to explain to you the rules of evidence and she knows them. Do you understand that, sir?

[PETITIONER]: I understand.

[PETITIONER]: Okay. Are you familiar at all with the Federal Rules of Criminal Procedure?

[PETITIONER]: Yes.

THE COURT: Do you understand that if I allow you to represent yourself, you're going to be bound by those and I'm not going to cut you any slack on those?

[PETITIONER]: Yes.

THE COURT: And of course, it goes without saying, [the Assistant U.S. Attorney] specializes in criminal law. She knows the rules of criminal procedure. Do you understand that?

[PETITIONER]: I understand.

THE COURT: So you say you're already at a disadvantage, do you understand that by not having a lawyer to explain this to you, you're going to be at an even greater disadvantage? Do you understand that?

[PETITIONER]: I understand.

(N.T. 5/29/14 at 32:8–34:7.)

94. Despite all of these warnings, Petitioner unequivocally affirmed that he wished to waive his right to counsel and proceed *pro se:*

THE COURT: . . . In light of everything that we've just talked about is it still your view that you want to represent yourself and I'll give you a couple of choices here. You can say nothing is going to change my mind; I want to represent myself no matter what. Or you could say, choice B, I want to think about it and sleep on it, maybe think about it over the weekend. Or choice C is Judge, I'm going to take your advice, I'm going to continue with my counsel. What's your choice, A, B or C?

[PETITIONER]: A.

THE COURT: Nothing is going to change your mind; you want to represent yourself?

[PETITIONER]: That's correct.

THE COURT: No matter how many times we go through this?

[PETITIONER]: That's correct.

THE COURT: Okay. Is this decision entirely voluntary?

[PETITIONER]: Yes, it is.

(N.T. 5/29/14 at 35:7–36:1.)

95. Because this colloquy was "sufficiently penetrating . . . to satisfy [me] that [Petitioner's] waiver of counsel [was] knowing and understanding as well as voluntary," Petitioner's claim that he was denied his Sixth Amendment right to counsel when he was permitted to proceed *pro se* fails. Peppers, 302 F.3d at 130–131.

Petitioner's Second § 2255 Motion Based on Newly Discovered Evidence

96. In Petitioner's second § 2255 motion and its supplement, he argues that, in 2018, Backpage.com executives, "in a federal cooperation plea agreement, admitted under oath that [Backpage.com's] purpose was to knowingly facilitate human trafficking on its website, and that it revised advertisements to conceal its criminal liability." (Pet'r's Suppl. to Second Mot. 12.) Because Backpage.com allegedly altered its advertisements to conceal the true nature of the prostitution services being offered, Petitioner contends that the Backpage.com advertisements, which the Government said were created by Petitioner and Rashidah Brice, constituted false evidence: "False in one respect, false in all." (Id.)

97. Petitioner argues that if he had known this information at the time of his trial, then he would not have pled guilty. He also contends that this information, which proves that the Backpage.com advertisements attributed to Petitioner and Brice were false, would have resulted in dismissal of the indictment or a not guilty verdict.

98. Although Petitioner offers no factual basis for this allegation of falsity, asking me instead to infer the falsity of advertisements attributed to Petitioner from Backpage.com's general admission that it altered some of its advertisements to avoid criminal liability, I remain cognizant that Petitioner is proceeding *pro se* and that there may be questions regarding the timeliness of

Petitioner's second § 2255 motion[8] and the significance of this evidence to Petitioner's conviction and sentence. Because I have already determined that an evidentiary hearing is necessary on one of Petitioner's ineffective assistance of counsel claims, I will also allow Petitioner an opportunity to pursue this issue at such a hearing.

99. Petitioner is advised however that the following five requirements regarding newly discovered evidence must be met: (1) the evidence must be in fact, newly discovered, i.e. discovered since the trial; (2) facts must be alleged from which the court may infer diligence on the part of Petitioner; (3) the evidence relied on must not be merely cumulative or impeaching; (4) it must be material to the issues involved; and (5) it must be such, and of such a nature, as that, on a new trial, the newly discovered evidence would probably produce an acquittal. See United States v. Rodriguez, No. 07-709, 2015 WL 1279472, at *4 (E.D. Pa. Mar. 19, 2015) (citing United States v. Kelly, 539 F.3d 172, 181–82 (3d Cir. 2008)). Petitioner must show that the newly discovered evidence, "if proven and viewed in the light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found [Petitioner] guilty of the offense." 28 U.S.C § 2255(h)(1).

WHEREFORE, it is hereby **ORDERED** that:

- Petitioner Christian Dior Womack's first "Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody" (ECF No. 256) is **DENIED IN PART**. Specifically, Petitioner's first Motion (ECF No. 256) is **DENIED** as to Grounds One through Six, Eight, and Nine.

[8] A one-year period of limitation applies to motions filed pursuant to § 2255. 28 U.S.C. § 2255(f). "The limitation period shall run from the latest of . . . the date on which the judgment of conviction becomes final . . . [or] the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence." 28 U.S.C. § 2255(f)(1), (4).

- The Court declines to issue a certificate of appealability as to Grounds One through Six, Eight, and Nine, as Petitioner has not demonstrated that "reasonable jurists" would find my conclusions as to these claims to be debatable or wrong. See Slack v. McDaniel, 529 U.S. 473, 484 (2000); 28 U.S.C. § 2253(c)(2) (providing that a certificate of appealability shall issue "only if the applicant has made a substantial showing of the denial of a constitutional right").
- An evidentiary hearing is **GRANTED** as to (1) Ground Seven in Petitioner's first § 2255 Motion and (2) Petitioner's newly discovered evidence claim in his second § 2255 Motion. The Government shall file a short response to Petitioner's newly discovered evidence claim **within 30 days of the date of this Order**. Thereafter, I will issue an order scheduling the evidentiary hearing.[9]

BY THE COURT:

/s/ Mitchell S. Goldberg

MITCHELL S. GOLDBERG, J.

[9] The Court's ability to promptly schedule an evidentiary hearing in this matter is dependent upon the ongoing COVID-19 pandemic and whether the United States District Court for the Eastern District of Pennsylvania has resumed its regular operation regarding evidentiary hearings.

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 14-4787

UNITED STATES OF AMERICA

v.

CHRISTIAN DIOR WOMACK, a/k/a Gucci Prada

Christian Womack,
Appellant

(E.D. Pa. No. 2-13-cr-00206-001)

Present: McKEE, HARDIMAN, and SMITH Circuit Judges

1. Motion by Appellant to Recall the Mandate.

Respectfully,
Clerk/slc

ORDER

The foregoing Motion is DENIED.

By the Court,

s/ Thomas M. Hardiman
Circuit Judge

Dated: October 7, 2022
SLC/cc: Christian Dior Womack
Michelle Morgan, Esq.

APPENDIX E

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL NO.
v.	:	DATE FILED: April 25, 2013
CHRISTIAN DIOR WOMACK, a/k/a "Gucci Prada," RASHIDAH BRICE, a/k/a "Camille," a/k/a "Milly"	: : :	VIOLATIONS: 18 U.S.C. § 1591 (sex trafficking of a minor or by force - 1 count); 18 U.S.C. § 1591 (sex trafficking by force - 2 counts); 18 U.S.C. § 1594(a) (attempt) 18 U.S.C. § 2 (aiding and abetting) Notice of Forfeiture

INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES THAT:

1. At all times material to this indictment, defendants CHRISTIAN DIOR WOMACK, a/k/a "Gucci Prada," and RASHIDAH BRICE, a/k/a "Camille," a/k/a "Milly," were the operators of a prostitution venture in Philadelphia, Pennsylvania, and elsewhere.

2. As part of this venture, defendants CHRISTIAN DIOR WOMACK, a/k/a "Gucci Prada," and RASHIDAH BRICE, a/k/a "Camille," a/k/a "Milly," recruited young females to work as prostitutes for them. Defendants CHRISTIAN DIOR WOMACK, a/k/a "Gucci Prada," and RASHIDAH BRICE, a/k/a "Camille," a/k/a "Milly," engaged in acts of physical violence and threats of physical harm to maintain the participation of females in their prostitution business.

3. As part of this venture, defendants CHRISTIAN DIOR WOMACK, a/k/a "Gucci Prada," and RASHIDAH BRICE, a/k/a "Camille," a/k/a "Milly," created Internet

COUNT TWO

THE GRAND JURY FURTHER CHARGES THAT:

1. The allegations of Paragraphs 1 through 3 of Count One are incorporated by reference.

2. Between on or about June 26, 2012, through on or about July 2, 2012, in the Eastern District of Pennsylvania and elsewhere, defendant

CHRISTIAN DIOR WOMACK,
a/k/a "Gucci Prada," and
RASHIDAH BRICE,
a/k/a "Camille,"
a/k/a "Milly,"

in and affecting interstate commerce, knowingly attempted to recruit, entice, harbor, transport, provide, obtain, and maintain Person 2, whose identity is known to the Grand Jury, and attempted to benefit financially from participation in a venture which engaged in the knowing recruitment, enticement, harboring, transporting, providing, obtaining, and maintaining of Person 2. At the time that defendants CHRISTIAN DIOR WOMACK and RASHIDAH BRICE did this, they knew and acted in reckless disregard of the fact that force, threats of force, fraud, coercion, and any combination of such means would be used to attempt to cause Person 2 to engage in commercial sex acts.

In violation of Title 18, United States Code, Sections 1591 and 1594(a).

COUNT THREE

THE GRAND JURY FURTHER CHARGES THAT:

1. The allegations of Paragraphs 1 through 3 of Count One are incorporated by reference.

2. Between on or about February 1, 2013, through on or about February 3, 2013, in the Eastern District of Pennsylvania and elsewhere, defendant

CHRISTIAN DIOR WOMACK,
a/k/a "Gucci Prada," and
RASHIDAH BRICE,
a/k/a "Camille,"
a/k/a "Milly,"

in and affecting interstate commerce, knowingly attempted to recruit, entice, harbor, transport, provide, obtain, and maintain Person 3, whose identity is known to the Grand Jury, and attempted to benefit financially from participation in a venture which engaged in the knowing recruitment, enticement, harboring, transporting, providing, obtaining, and maintaining of Person 3. At the time that defendants CHRISTIAN DIOR WOMACK and RASHIDAH BRICE did this, they knew and acted in reckless disregard of the fact that force, threats of force, fraud, coercion, and any combination of such means would be used to attempt to cause Person 3 to engage in commercial sex acts.

In violation of Title 18, United States Code, Sections 1591 and 1594(a).

NOTICE OF FORFEITURE

THE GRAND JURY FURTHER CHARGES THAT:

1. As a result of the violations of Title 18, United States Code, Section 1591, set forth in this Indictment, defendants

CHRISTIAN DIOR WOMACK,
a/k/a "Gucci Prada," and
RASHIDAH BRICE,
a/k/a "Camille,"
a/k/a "Milly,"

shall forfeit to the United States of America:

(a) any property, real or personal, used or intended to be used to commit, or to facilitate the commission of such violations; and

(b) any property, real or personal, constituting or derived from, any proceeds obtained directly or indirectly as a result of such violations.

2. If any of the property subject to forfeiture, as a result of any act or omission of the defendant:

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the Court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;

APPENDIX F

VOIR DIRE

The charges that have been brought by way of Indictment against Mr. Womack are as follows: Count 1 charges him with sex trafficking of a minor or by force, that is, sex trafficking by force or of a minor. Count 2 charges sex trafficking by force as does Count 3. And I believe in Count 2 and 3, it's charged that there was also an attempt.

Or is that all three counts, Ms. Morgan, the attempt?

MS. MORGAN: Counts 2 and 3 are charged as attempt, Your Honor.

THE COURT: Okay. Two and three are attempted sex trafficking and Count 1 is actual sex trafficking of a minor or by force. Again, these are just charges.

I have not heard in great detail the evidence that the Government intends to present, but generally, generally -- and again, this has to be proven -- it's alleged that Mr. Womack in Counts 2 and 3, by force or coercion enlisted, what the Government says are victims, -- and, again, that has to be proven -- to engage in acts of prostitution. And in Count 1, it is alleged that Mr. Womack enlisted a minor to engage in the acts and/or did so through threats, coercion or force.

I am told that the facts will cover areas in Chester, Pennsylvania, Atlantic City, New Jersey, Virginia Beach, Marcus Hook, Pennsylvania and Claymont, Delaware. The time period in Count 1 is between May 25th, 2012, and June 11,

APPENDIX G

[PETITIONER]: Yes.

(N.T. 7/23/2014 at 19:21–20:16 (emphasis added.))

27. Later in the plea hearing, I requested that the Government "summarize the evidence that [it] would present . . . to meet the elements necessary for me to accept the plea." (N.T. 7/23/2014 at 27:6–10.) The Government did so, specifying the evidence that it considered support for the convictions on all three counts of the Indictment. (See id. at 27:25–32:21.) Petitioner then confirmed that the recounted facts were substantially accurate and that he was, in fact, guilty of the charged offenses. (Id. at 32:22–33:2.) Following this recitation of evidence, the Court's Deputy Clerk asked Petitioner to enter his plea:

> THE CLERK: [Petitioner], you have heretofore plead not guilty to Bill of Indictment Number 13-206-1 charging you with, Count 1, sex trafficking of a minor or by force and attempt, in violation of Title 18, Section 1591 and Title 18, Section 1594. Counts 2 and 3, sex trafficking by force and attempt, in violation of Title 18, Section 1591 and Title 18, Section 1594(a). As to Counts 1, 2 and 3 of the Indictment, how do you plead now, guilty or not guilty?
>
> [PETITIONER]: Guilty.

28. Thereafter, I placed my factual findings on the record:

> THE COURT: All right. I make the following findings: I find that there is a factual basis to make out the elements of Counts 1 through 3. I find the Defendant's plea is knowing, voluntary and intelligent. He's doing so of his own free will. He understands the nature of the charges, maximum possible penalties, including the mandatory minimums. He understands all the rights he is giving up. The Defendant is found guilty of Counts 1 through 3.

29. Because I informed Petitioner of the possible sentences that he faced and made factual findings sufficient to establish Petitioner's guilt as to each count, and because his plea was made knowingly, intelligently, and voluntarily, Petitioner's trial counsel was not ineffective for failing to object.

APPENDIX H

include psychological care of the victims. Given the average estimated current cost of psychotherapy in the Philadelphia area of $100 per hour,[1] and contemplating weekly psychotherapy for two years for each victim, this would result in an award of $10,400 each for Minor 1, Person 2, and Person 3, for a total of $31,200.

In addition, as previously stated, Section 1593 requires the restitution award to account for the value of the victims' services to the defendant. Minor 1 estimated that she engaged in 25-30 prostitution "dates" during her several weeks with the defendants and gave 100% of her earnings to the defendants.[2] While Minor 1 does not know exactly how much customers were charged because she never received any of the money, other testimony and statements in this case indicate that the average charge per date was $150. This leads to an additional award of $4500 for Minor 1, which the Court is required by statute to award.[3]

The government further submits that the restitution should be owed jointly and severally by both defendants, who were equally culpable in these offenses and charged identically.

Incorporating this amount for Minor 1 and adding the cost of psychological counseling for all three victims, the totals are as follows:

Minor 1 $14,900

1 This figure is based on an informal survey of local psychological providers and on anecdotal experience in seeking counseling for various victims in sex crimes cases in this District.

2 Minor 1 stated under oath that the defendants sent her on "dates" to engage in sexual activity with 1 man in Atlantic City, a 2nd man in Virginia, approximately 15 men in one house in Virginia, and that she went on approximately 10 "dates" at the Red Roof Inn at the Philadelphia Airport, several of which included more than one man.

3 There is no similar award applicable for Persons 2 and 3, who indicated that they did not actually engage in any acts of prostitution while with the defendants. Defendants were convicted of attempt with respect to Persons 2 and 3.

APPENDIX I

(indiscernible).

THE COURT: I'm sorry, you did what?

THE DEFENDANT: Ain't nobody tell me about no force, I didn't force nobody do nothing.

THE COURT: Stop, stop for a second. I'm not -- slow down a little bit. When you pled to sex trafficking, you did not what, I can't hear you.

THE DEFENDANT: (indiscernible) force, I --

THE COURT: Oh, by force?

THE DEFENDANT: Right.

THE COURT: Okay. Well, I'm pretty sure that this transcript is going to not support that, but let me just check.

(Pause)

THE COURT: The transcript reflects, and I'm reading verbatim, this is me speaking to you,

"We've been through the indictment numerous times, the indictment charges you with sex trafficking of a minor, or by force and two counts of sex trafficking by force."

THE DEFENDANT: Well, from my understanding, I was supposed to plea out just the sex trafficking, that's the only thing I knew, just the sex trafficking, I was not (indiscernible) of force.

APPENDIX J

considerations ." *Withrow v. Williams*, 507 U.S. 680, 720-721 (1993) (Scalia, J., concurring) (citing *Frady*). Defendant has demonstrated neither cause nor actual prejudice.

To the extent that the defendant asserts that his appellate counsel was ineffective for failing to raise competency on appeal, a criminal defendant's attorney has the obligation and discretion to select particular grounds for appeal in order to "maximize the likelihood of success." *Smith v. Robbins*, 528 U.S. 259, 288 (2000). Thus, counsel need not raise every issue requested by the client. *Jones v. Barnes*, 463 U.S. 745, 750 (1983). Where defense counsel's decision not to raise an issue on appeal is concerned, "[t]he test for prejudice under *Strickland* is . . . whether [the appellate court] would have likely reversed and ordered a remand had the issue been raised on direct appeal." *United States v. Mannino*, 212 F.3d 835, 844 (3d Cir. 2000). There is no likelihood that petitioner could have achieved a reversal and remand based on this frivolous argument, as explained above. Accordingly, his claim must fail.

B. There Was No Basis for Defense Counsel to Object to the Court's Proper Descriptions of the Charges and the Mandatory Minimums.

Next, the petitioner claims that in accepting his plea, the Court failed to indicate whether the plea was to sex trafficking of a minor or sex trafficking by force, and failed to "properly evaluate the mandatory minimums," and that counsel was ineffective for not objecting. The petitioner is wrong.

During the plea colloquy, the government stated that the petitioner was pleading guilty on Count 1 to both sex trafficking of a minor and by force, resulting in a mandatory minimum term of 15 years (rather than 10 if no force had been used). Tr. 20 (July 23, 2014). The government also stated that Counts 2 and 3 charged sex trafficking by force and similarly each carried a mandatory minimum of 15 years. *Id.* Thus, government counsel explained, the total possible sentence was a mandatory minimum of 15 years per count, 45 years if ordered to run

consecutive, and a maximum term of life. *Id.* All of this information was legally correct. *See* 18 U.S.C. §1591(b)(1). The Court then asked the petitioner, "Do you understand all of that sir?," and the petitioner replied, "Yes." *Id.* at 21. The Court also confirmed that the petitioner understood that no one could guarantee his sentence, and he could not withdraw his plea if the Court imposed a more severe sentence than he expected. *Id.* at 22. In addition, the Court went over the elements of the offenses with the petitioner, including the requirement that the government prove either that the victim was under 18 or that force, threats, fraud or coercion was used, and the petitioner said he understood. *Id.* at 24. The government then explained in detail the factual basis for the plea, including that the victim in count 1 was under 18, and that all three victims in the three respective counts were subjected to force, threats of force, fraud or coercion to engage in a commercial sex act, and the petitioner said the facts were accurate. *Id.* at 28-32. Thus, the petitioner was fully advised of the nature of the charges and the possible penalties.[3]

C. The Court Conducted an Adequate *Peppers* Colloquy.

The petitioner next argues that he was prejudiced because the *Peppers* colloquy conducted by the Court did not include a discussion of the possible defenses. *See United States v. Peppers*, 302 F.3d 120, 129 (2002). What *Peppers* requires is for the Court to ensure that a criminal defendant understands that a trained attorney would be in a better position to identify

[3] Moreover, this was not the first time the mandatory minimums and statutory maximum were explained to the petitioner. During a status hearing on May 29, 2014, the petitioner asked to represent himself. Tr. 27 (May 29, 2014). The Court advised the petitioner that he was charged with one count of sex trafficking of a minor by force and two counts of sex trafficking by force, which carried a maximum penalty of life and a fifteen-year mandatory minimum per count. *Id.* at 30-31.

APPENDIX K

AO 245B (Rev. 06/05) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

Eastern District of Pennsylvania

UNITED STATES OF AMERICA
V.
CHRISTIAN DIOR WOMACK

JUDGMENT IN A CRIMINAL CASE

Case Number: DPAE2:13CR000206-001

USM Number: 69121-066

Kenneth C. Edelin, Jr., Esq.
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) 1 through 3 of the Indictment.

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

FILED
DEC 18 2014
MICHAEL E. KUNZ, Clerk
By_____ Dep. Clerk

Title & Section	Nature of Offense	Offense Ended	Count
18:1591	Sex trafficking of a minor or by force.	2/2013	1
18:1591	Sex trafficking by force.	2/2013	2,3

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

December 18, 2014
Date of Imposition of Judgment

Signature of Judge

MITCHELL S. GOLDBERG, U.S.D.J.
Name and Title of Judge

12.18.14
Date

ECF DOCUMENT

I hereby attest and certify that this is a printed copy of a document which was electronically filed with the United States District Court for the Eastern District of Pennsylvania.

Date Filed: 8/31/2015
Michael E. Kunz, Clerk

By: _____, Deputy Clerk.