FILED: December 15, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7387
(1:15-cr-00301-AJT-7)
(1:20-cv-01169-AJT)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

SAMMY REDI ARAYA, a/k/a Samaraii, a/k/a Samaraii Rainmaker

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA,	)	
	)	
v.	)	Civil Action No. 1:20-cv-01169-AJT
	)	Crim. Case No. 1:15-cr-00301-AJT-7
SAMMY REDI ARAYA,	)	
	)	
Defendant.	)	
	)	

ORDER

Pending before the Court is Petitioner Sammy Araya's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 (the "Motion") filed on October 5, 2020. [Doc. No. 828]. On July 19, 2017, a jury convicted Araya of one count of Conspiracy to Commit Mail and Wire Fraud, five counts of Wire Fraud, and five counts of Mail Fraud. Jury Verdict 3–4 [Doc. No. 559]. Araya was sentenced to 240 months in prison based on a loss amount in excess of $9.5 million. *See* U.S.S.G. § 2B1.1(b)(1)(K). Araya challenges the validity of this sentence on the following grounds: (1) ineffective assistance of counsel, (2) errors in the application of sentencing enhancements, and (3) a violation of the Sixth Amendment compulsory process clause. Upon consideration of the Motion, the materials submitted in support thereof and in opposition thereto, and for the reasons that follow, the Motion is DENIED.

I. BACKGROUND AND PROCEDURAL HISTORY

From at least in or about July 2011 through at least in or about September 2014, Araya along with several co-conspirators engaged in a mortgage modification scheme. [Doc. No. 254] (Superseding Indictment) (hereinafter "S.I.") ¶ 10. The scheme operated through various fictitious entities through which Araya and co-conspirators misled homeowners into making payments to the scheme for the expected modification of the homeowners' mortgages. S.I. ¶ 11.

Araya was the mastermind of the scheme, carrying on many responsibilities critical to the scam's operations and receiving a large share of its profits. *See* [Doc. No. 92] (Joint Appendix) (hereinafter "J.A.") at 774. Araya recruited and trained several of his co-conspirators, often writing scripts that other co-conspirators would prepare to trick homeowners into the scheme. S.I. ¶¶ 1, 14. The scheme was set up into several teams of co-conspirators—many of which Araya directly oversaw—working as fictitious customer service representatives who spoke with the homeowner victims to draw them into the scam. S.I. ¶ 3. Co-conspirator Roscoe Umali was the leader of one such team that reported back to Araya, the leader of the larger scheme. *See* J.A. at 774. Araya often pitted the teams against each other to compete to generate the most money from the scheme. *Id.* Araya retained a significant portion of the scam's profits for his own benefit. J.A. at 818.

On July 7, 2017, Araya was named in an eleven-count Superseding Indictment. Araya was charged with one count of Conspiracy to Commit Mail and Wire Fraud in violation of 18 U.S.C. § 1349, five counts of wire fraud in violation of 18 U.S.C. §§ 1343 and 2, and five counts of mail fraud in violation of 18 U.S.C. 1341 and 2. Trial began on April 10, 2017, and the jury returned a guilty verdict on April 21, 2017. [Doc. No. 559] (Jury Verdict) at 3–4. Araya timely moved for judgment of acquittal and for a new trial on April 28, 2017 [Doc. No. 567] which were both denied on May 30, 2017 [Doc. No. 601]. On July 19, 2017, Araya was sentenced to 240 months on each of the eleven counts to run concurrently. [Doc. No. 664] (Judgment). Araya appealed his conviction on July 29, 2017. [Doc. No. 674]. On appeal, Araya raised several issues, including a hearsay argument pertaining to hard copies of electronic voicemail records, a general insufficiency of evidence argument, and a contention that the District Court erred by declining his request to open an investigation into a government witness who he

believes perjured herself at trial. *United States v. Seko, et al.*, No. 17-4495, 771 F. App'x 199, 200–01 (4th Cir. 2019). Araya made no arguments pertaining to the Sentencing Guidelines calculation or his Sixth Amendment right to compulsory process. *See id.* The Fourth Circuit rejected all of Araya's arguments and affirmed the District Court on all charges. *Id.* at 201. After the denial of Araya's appeal, he petitioned for certiorari from the United States Supreme Court, which was denied on October 7, 2019. Mot. at 2.

Most recently, on October 5, 2020, Araya filed a § 2255 Motion to Vacate, Set Aside, or Correct Sentence [Doc. No. 828] ("Mot.") and submitted a memorandum in support of the motion without the assistance of counsel [Doc. No. 832] ("Mem."). In the Motion, Araya asks the Court to vacate his conviction and grant a new trial on the following grounds: (1) ineffective assistance of counsel, (2) errors in the application of sentencing enhancements, and (3) a violation of the Sixth Amendment compulsory process clause. Mem. at 18, 40. In addition, Araya requests an evidentiary hearing to investigate the facts behind his claims; however, conclusory allegations do not entitle a petitioner to an evidentiary hearing. *See United States v. Roane*, 378 F.3d 381, 401 (4th Cir. 2004).

II. LEGAL STANDARD

Under 28 U.S.C. § 2255, a prisoner in federal custody may challenge his sentence on the grounds that: (1) the sentence was imposed in violation of the Constitution or the laws of the United States; (2) the court was without jurisdiction to impose the sentence; (3) the sentence was in excess of the maximum authorized by law; or (4) the sentence is otherwise subject to a collateral attack. 28 U.S.C. § 2255(a); *Hill v. United States*, 368 U.S. 424, 426-427 (1962). The petitioner has the burden to prove all his claims by a preponderance of the evidence. *Miller v. United States*, 261 F.2d 546, 547 (4th Cir. 1958).

Errors of law and fact, aside from lack of jurisdiction or constitutional error, do not provide a basis for collateral attack unless the claimed error constituted "a fundamental defect which inherently results in a complete miscarriage of justice." *Hill*, 368 U.S. at 428. It is well-settled that "habeas review is an extraordinary remedy and will not be allowed to do service for an appeal." *See United States v. Sanders*, 247 F.3d 139,144 (4th Cir. 2001) (quoting *Bousley v. United States*, 523 U.S. 614, 621 (1998)). For this reason, where a petitioner has failed to raise issues on direct appeal, he has procedurally defaulted on those issues and his claims based on those issues may be challenged collaterally on habeas review only if the petitioner can demonstrate both cause excusing his procedural default and actual prejudice. *See United States v. Landrum*, 93 F.3d 122, 124-25 (4th Cir. 1996) (citing *United States v. Frady*, 456 U.S. 152, 167-68 (1982)).

The petitioner must file a § 2255 motion within one year of either (1) the date on which the judgment of conviction becomes final; (2) the date on which the impediment to making a motion is removed, if the movant was prevented from making a motion by governmental action; (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court; or (4) the date on which the facts supporting the claim(s) presented could have been discovered through due diligence. 28 U.S.C. § 2255(f)(1)-(4). Under the first prong, "finality attaches when . . . [the United States Supreme Court] denies a petition for a writ of certiorari." *Clay v. United States*, 537 U.S. 522, 527 (2003). Additionally, when a petitioner files a § 2255 motion, the respondent is not required to answer unless a judge so orders 28 U.S.C. § 2255 Proc. R. 5(a).

Ineffective assistance of counsel claims are assessed under the standard set out in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Under that

standard, a petitioner alleging ineffective assistance must show that (1) counsel's performance was deficient, and (2) the deficiency prejudiced the defense. *Jackson v. Kelly*, 650 F.3d 477, 493 (4th Cir. 2011) (citing *Strickland*, 466 U.S. at 687). To satisfy the first prong of the *Strickland* test, the petitioner must overcome the "strong presumption" that counsel's strategy and tactics fall "within the wide range of reasonable professional assistance." *Burch v. Corcoran*, 273 F.3d 577, 588 (4th Cir. 2001) (quoting *Strickland*, 466 U.S. at 689). The second prong requires the petitioner to "show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* A failure to make the required showing under either prong defeats any claim for ineffective assistance of counsel, and the court may consider the two prongs in either order. *Id.* at 697.

A *pro se* complainant is held "to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976)). However, while *pro se* complainants are not "expected to frame legal issues with the clarity and precision ideally evident in the work of those trained in law, neither can district courts be required to conjure up and decide issues never fairly presented to them." *Richardson v. Hancq*, 2018 WL 10667258 (quoting *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985)).

III. ANALYSIS

A. Ineffective Assistance of Counsel

As a threshold matter, the Court will consider the timeliness of the Petition. In the statute of limitations provision for § 2255 motions outlined above, there are four possible methods of determining the filing deadline: (1) the date on which the judgment of conviction becomes final;

(2) the date on which the impediment to making a motion is removed, if the movant was prevented from making a motion by governmental action; (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court; or (4) the date on which the facts supporting the claim(s) presented could have been discovered through due diligence. 28 U.S.C. § 2255(f)(1)-(4). Under subsection (1), if an individual files a petition for certiorari from the United States Supreme Court, the judgement becomes final on the date that the petition is denied. *Clay*, 537 U.S. at 527. In this case, the Supreme Court denied Araya's petition for certiorari on October 7, 2019. Araya filed the Motion on October 5, 2020—two days prior to the end of the one-year statute of limitations. Therefore, the Motion is timely.

B. Ineffective Assistance of Counsel

Petitioner's ineffective assistance of counsel claim fails to sufficiently plead facts supporting the rule set forth in *Strickland*. Under the two-pronged *Strickland* test, a petitioner must show that (1) counsel's performance was deficient, and (2) the deficiency prejudiced the defense. *Jackson v. Kelly*, 650 F.3d 477, 493 (4th Cir. 2011) (citing *Strickland*, 466 U.S. at 687). There is a strong presumption that counsel's strategy and tactics fall "within the wide range of reasonable professional assistance." *Burch v. Corcoran*, 273 F.3d 577, 588 (4th Cir. 2001) (quoting *Strickland*, 466 U.S. at 689). Because Araya cannot demonstrate with reasonable probability that but for counsel's behavior, the trial's results would have been different, his ineffective assistance of counsel claim is without merit. *Strickland*, 466 U.S. at 694.

1. Counsel's Pretrial Performance

Araya alleges ineffective assistance at all phases of litigation. Beginning pretrial, Araya argues that counsel's choice to adopt all discovery motions made by counsel for co-defendant

Seko constituted a failure to reasonably investigate. Mem. at 18–19. In conducting discovery, "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary," and counsel is afforded significant deference. *Strickland*, 466 U.S. at 691. Absent a showing of the favorable evidence that would have been produced, an allegation of inadequate investigation does not warrant relief. *Holmes v. United States*, 2015 U.S. Dist. LEXIS 10113 (E.D. Va. 2015) (citing *Beaver v. Thompson*, 93 F.3d 1186, 1195 (4th Cir. 1996)).

Araya alleges that additional discovery would have proven a victim's perjury in court stating she had never received a refund from Araya. Mem. at 23. Araya states that he issued this witness a refund of money she paid into the fraud scheme, while the witness testified at trial that she had received no such refund. *Id.* The Fourth Circuit, however, has already rejected Araya's claim as baseless, stating that the record—which includes this witness's bank statements—shows no evidence of a refund or that the witness perjured herself. *United States v. Seko, et al.*, No. 17-4495, 771 Fed. Appx. 199, 201 (4th Cir. 2019). Because Araya points to no additional exculpatory evidence that he believes existed which trial counsel failed to review, his allegations of counsel's pretrial deficiency fail.

2. Counsel's Trial Performance

Furthermore, Araya describes three instances of counsel's conduct during trial which Araya contends amounted to a denial of effective assistance of counsel. Mem. at 23. First, Araya states that counsel's questioning of the aforementioned witness at trial was improper because counsel failed to impeach the witness after her alleged perjury. Mem. at 8–9. Basic trial strategy such as witness examination is "a tactical matter and not subject to deeper analysis on review." *Thomas v. Clarke*, No. 2:19cv479, 2020 U.S. Dist. LEXIS 146423, at *54 (E.D. Va.

2020) (citing *Sallie v. North Carolina*, 587 F.2d 636, 640 (4th Cir. 1974)). Moreover, as explained above, the Fourth Circuit rejected Araya's allegation of perjury as baseless after a full examination of the record. *Seko*, 771 F. App'x at 201. Even if there had been evidence that this single victim had received a refund and perjured herself, due to the thousands of victims in the case and the preponderance of evidence against Araya, there is no evidence that counsel's questioning of this witness materially prejudiced Araya, thus failing the second prong of the *Strickland* test. 466 U.S. at 689.

Araya's second allegation of deficient trial performance relates to counsel's decision not to challenge evidence regarding American Certified Processing, a shell company found to be connected with Araya's fraud scheme. Araya argues that because a singular codefendant, Michael Henderson, stated that American Certified Processing was unaffiliated with the larger fraud scheme, counsel's failure to make a relevance objection constituted deficient performance. Mem. at 26. Araya maintains that this failure unfairly prejudiced the trial's results. Failure to make a relevance objection does not constitute deficient performance unless the failure was prejudicial to the defendant. *See Strickland*, 466 U.S. at 689; *Sparks v. Clarke*, No. 2:14cv440, 2014 U.S. Dist. LEXIS 180887, at *25–*26 (E.D. Va. 2014) (holding that failure to make relevance objection to expert witness testimony was deficient performance when the trial court did not base its findings on the testimony). In this case, Araya's conviction was based on extensive evidence, thousands of victims, and multiple sham entities aside from American Certified Processing. Because of this extensive evidence, counsel's failure to make a relevance objection to one of many sham entities used by Araya and his codefendants did not prejudice the defendants in any way.

Lastly, Araya claims counsel was ineffective because he failed to call Umali to testify at trial, whom Araya claims would have exculpated him. Like Araya's other claims of counsel's deficiency during trial, this allegation fails the *Strickland* test. Counsel's decision to not call a witness does not constitute ineffective assistance when the witness's testimony would not have helped the defense. *See Strickland*, 466 U.S. at 689; *Jones v. Taylor*, 547 F.2d 808, 811 (4th Cir. 1977). Umali was a government cooperating witness; therefore, counsel's belief that Umali's testimony would have harmed, rather than helped, Araya's case was within the wide range of reasonability afforded to counsel in ineffective assistance analyses.

3. Counsel's Post-Trial Performance

Araya's last claim of ineffective assistance relates to his attorney's failure to adequately object to the sentencing enhancement for total losses between $9.5 million and $25 million. *See* Mem. at 21; U.S.S.G. § 2B1.1(b)(1)(K). The record reflects that Araya's attorney did, in fact, object to the calculation in conjunction with counsel for Araya's codefendants, for many of the same reasons that Araya listed in his memorandum. Because counsel made this objection—which the District Court rejected as meritless—Araya's claim fails the first *Strickland* prong requiring that counsel's performance was deficient. 466 U.S. at 687.

Moreover, even if the first prong was satisfied, Araya cannot prove his sentence was unfair or prejudicial as is required by the second prong. *Id.* The Sentencing Guidelines range included a maximum of twenty years on each of Araya's eleven counts to run consecutively, for a total of 2,640 months. The Court instead ordered that the sentences run concurrently, amounting to 240 months. The sentence Araya received was far below what the Court was within its power to impose. Therefore, even if counsel's performance regarding Araya's

sentencing had been deficient, the performance did not prejudice Araya as he received a much lighter sentence than what he could have, under the guidelines.

C. Sentencing Enhancement Calculation

Araya's second claim for relief is an independent challenge to the sentencing enhancement as violative of the Fifth Amendment due process clause. Mem. at 40. Araya did not raise the issue on appeal, his excuse being ineffective assistance of appellate counsel. Mot. at 7. As a result, the government contends that this claim is procedurally barred. [Doc. No. 835] at 8. Claims not raised on appeal are prohibited from adjudication in later proceedings unless the petitioner demonstrates both cause for the default and actual prejudice as a result. *United States v. Maybeck*, 23 F.3d 888, 891 (4th Cir. 1994). Effectiveness of appellate counsel is evaluated under the two-pronged *Strickland* standard, and appellate counsel need not raise every nonfrivolous issue on appeal. *See Smith v. Robbins*, 528 U.S. 259, 285 (2000); *Beyle v. United States*, 269 F. Supp. 3d 716, 727 (E.D. Va. 2017). When a petitioner raises ineffective assistance of counsel as a cause excusing procedural default, the claim must meet the *Strickland* standard. *See Beyle*, 269 F. Supp. 3d at 735. Therefore, the petitioner must demonstrate that, but for appellate counsel's failure to raise the sentencing enhancement calculation error, the petitioner would have won the appeal. *Id.* at 736.

Araya fails to meet this heavy burden. Araya challenges the application of the sentencing enhancement due to errors with the calculation of victim's losses that the government presented at trial, stating that some of the losses may have been counted twice. Mem. at 38. Prior to sentencing, the government submitted a declaration from financial analyst Rebecca Lee outlining the methods of calculation used to remove any possibility of double counting. [Doc. No. 644-7] at 4–8. This analysis was used in the Pre-Sentence Investigation Report and resulted in the

removal of over $1.2 million from the calculation by its criteria. *Id.* at 7. Total losses under this metric amounted to $11,086,771.30, and losses under an alternative metric amounted to $10,196,713.21 attributable to specific victims by name. *See id.*; [Doc. No. 685-1]. Because both reasonable calculations totaled above $9.5 million, the sentencing enhancement was appropriate.

Moreover, Araya's claim that he and his co-conspirators made payments—unaccounted for in the government's loss calculation—to lenders via cash and cashier's checks is contradicted by the trial record. Several lenders testified that they had never received such payments, and other additional evidence showed that the money was distributed among all conspirators, with a large share taken by Araya. *See, e.g.*, J.A. at 963, 1316, 2054-62.

Both the sentencing proceedings and trial record overwhelmingly support the addition of the sentencing enhancement. Though Araya contests the facts, the trial record fails to support his contentions. For these reasons, Araya cannot prove that but for his appellate counsel's failure to raise the sentencing enhancement, he would have succeeded on appeal. Accordingly, Araya cannot assert ineffective assistance of appellate counsel as cause for his procedural default. The claim both fails on the merits and is procedurally barred.

D. Sixth Amendment Compulsory Process Clause

Finally, Araya contends that because his attorney did not call Umali, a government cooperating witness, Araya was denied his Sixth Amendment right to compulsory process. Mem. at 40. Araya failed to raise this claim on appeal, which he attributes to ineffective assistance of appellate counsel. [Doc. No. 828-1] at 2. Here, too, Araya's claim is barred and fails the *Strickland* test. Araya asserts that the Court denied him compulsory process by preventing Umali from testifying; however, Umali was a government witness, and the Court limited the total number of government witnesses due to the lengthy proceedings and

overwhelming evidence already introduced. *See* J.A. 1253-55, 2925. The Court did not bar Araya and his counsel from calling Umali to testify during the defense's case in chief. Therefore, Araya's Sixth Amendment right to compulsory process was not violated.

IV. CONCLUSION

For the foregoing reasons, it is hereby

ORDERED that Petitioner Sammy Araya's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 be, and the same hereby is, DENIED.

An appeal may not be taken from the final order in a § 2255 proceeding unless a circuit justice or judge issues a certificate of appealability, which will not issue unless the petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This requirement is satisfied only when reasonable jurists could debate whether "the petition should have been resolved in a different manner of that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)). The Court finds that Petitioner has failed to satisfy this standard and therefore expressly declines to issue a certificate of appealability. Although Petitioner may not appeal the denial of his § 2255 proceeding without a certificate of appealability, he may seek one from the Fourth Circuit. To appeal, Petitioner must file a written notice of appeal with the Clerk's Office within thirty (30) days of the date of this Order.

The Clerk is directed to forward copies of this Order to all counsel of record, and to Petitioner at the address listed in the record.

Anthony J. Trenga
United States District Judge

Alexandria, Virginia
July 30, 2021

FILED: February 13, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7387
(1:15-cr-00301-AJT-7)
(1:20-cv-01169-AJT)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

SAMMY REDI ARAYA, a/k/a Samaraii, a/k/a Samaraii Rainmaker

Defendant - Appellant

ORDER

The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Wilkinson, Judge Richardson, and Judge Quattlebaum.

For the Court

/s/ Patricia S. Connor, Clerk