APPENDIX A

United States Court of Appeals
for the Sixth Circuit

Order Denying Application
for a
Certificate of Appealability (COA)

Judgment

Nos. 22-1882/1883

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BELKIS SOCA-FERNANDEZ,
(No. 22-1882)

DAVID SOSA-BALADRON,
(No. 22-1883)

Petitioners-Appellants,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

ORDER

Before: SUTTON, Chief Judge.

Belkis Soca-Fernandez and David Sosa-Baladron (collectively, "the couple"), pro se federal prisoners, appeal a district-court judgment denying their motions under 28 U.S.C. § 2255 to vacate, set aside, or correct their sentences. They seek a certificate of appealability ("COA"). *See* 28 U.S.C. § 2253(c)(1)(B); Fed. R. App. P. 22(b)(1)-(2).

The couple had a scheme and carried it out. It "involved opening massage therapy clinics, staging car accidents, and submitting false claims for services to insurance companies." *United States v. Sosa-Baladron*, 800 F. App'x 313, 315 (6th Cir.), *cert. denied*, 141 S. Ct. 315 (2020). The two were convicted of health care fraud (11 counts), mail fraud (six counts), and conspiracy to commit mail fraud (one count). The district court sentenced both to prison, Soca-Fernandez for 135 months, Sosa-Baladron for 120. They appealed, the appeals were consolidated, and this court affirmed. *Id.* at 315, 317, 332.

Each defendant filed a § 2255 motion—both one day late, according to the district court. The motions, which were identical, raised six claims: (1) the Government presented evidence of multiple conspiracies in the guise of one, thus unconstitutionally amending the indictment; (2) the couple's convictions for health-care fraud and mail fraud were multiplicitous, in violation of the

Double Jeopardy Clause; (3) the trial court erred in admitting text messages between Soca-Fernandez and co-conspirator Gustavo Acuna-Rosa; (4) the trial court erred in admitting photographs of the couple's home in Florida; (5) the sentence enhancements were inappropriate; and (6) trial counsel provided ineffective assistance in the guilt and sentencing phases. The Government responded; the couple replied. The district court held that the § 2255 motions were untimely and that the couple's claims lack merit. Accordingly, the district court denied both the motions and a COA. The couple timely appealed and seek a COA in this court.

A COA shall issue "if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). If the district court denied the § 2255 motion on the merits, the applicant must show that "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). If the district court denied the § 2255 motion on procedural grounds without reaching the petitioner's underlying constitutional claim, a COA should issue when the applicant shows that jurists of reason would find debatable (a) whether the motion states a valid claim of the denial of a constitutional right and (b) whether the district court was correct in its procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). A COA is improper "if *any* outcome-determinative issue is not reasonably debatable." *Moody v. United States*, 958 F.3d 485, 488 (6th Cir. 2020).

Even assuming the § 2255 motions were timely, Soca-Fernandez and Sosa-Baladron fail to meet the COA standard.

Section 2255 motions "may not be employed to relitigate an issue that was raised and considered on direct appeal absent highly exceptional circumstances, such as an intervening change in the law." *Jones v. United States*, 178 F.3d 790, 796 (6th Cir. 1999). And except for claims of ineffective assistance of counsel, "claims *not* raised on direct appeal may not be raised on collateral review unless the petitioner shows cause and prejudice," *Massaro v. United States*, 538 U.S. 500, 504 (2003) (emphasis added), or actual innocence, *Bousley v. United States*, 523 U.S. 614, 622 (1998). Only one of the six claims raised in the § 2255 motions alleges counsel's ineffectiveness. And none alleges actual innocence.

The couple attempted to add claims in the district court in reply to the government's response; these included ineffectiveness claims to establish cause and prejudice to lift the procedural bars blocking some of the § 2255 claims. Adding claims then was forbidden. *Tyler v. Mitchell*, 416 F.3d 500, 504 (6th Cir. 2005). They were "not properly before the district court," which "did not err in declining to address" them. *Id.* And to the extent that the couple now seek a COA on those same claims, the claims are not "properly before this court," either. *Id.*

The couple contend otherwise for two reasons. *One*, the Government's response was not really a responsive pleading. It was a motion to dismiss. Therefore (goes their argument), under Federal Rule of Civil Procedure 15(a)(1), they were allowed to amend their § 2255 motions once as a matter of course and without seeking the district court's permission, since the Government had not yet served the couple with a responsive pleading. In short, as the Government's response was really a motion to dismiss, the couple's reply was really an amendment—or a combination reply/amendment. *Two*, under the relation-back doctrine, their amendment was timely since the newly asserted claims arose out of the same set of facts the original claims did. These arguments are creative but unpersuasive. To hold otherwise would be to eviscerate the prohibition on adding claims in a reply.

In Claim 1, the couple argue that the Government provided the jury with evidence of multiple conspiracies in the guise of one, thus unconstitutionally amending the indictment. The district court held that this claim had been raised on direct appeal, *see Sosa-Baladron*, 800 F. App'x at 319-21, and so was procedurally barred. The couple deny that this is the same claim presented on direct appeal. Even if that is true, the claim is barred, for it could have been presented on direct appeal and they do not show cause and prejudice. Jurists of reason would not debate the district court's resolution of this claim.

In Claim 2, the couple argue that their convictions for health-care fraud and mail fraud were multiplicitous, in violation of the Double Jeopardy Clause. The district court held that this claim was not raised on direct appeal but was meritless even so, because health-care fraud and mail fraud are separate and distinct offenses for double-jeopardy purposes. The couple think the district court wrong. But the merits need not be reached because the claim could have been raised

on direct appeal and the § 2255 motions did not argue cause and prejudice. That leaves the claim barred. Jurists of reason would not debate that fact.

Claims 3-4 will be considered together. Claim 3 is that the trial court erred in admitting text messages between Soca-Fernandez and co-conspirator Acuna-Rosa; Claim 4 is that the trial court erred in admitting photographs of the couple's home in Florida. The district court held both claims barred. Soca-Fernandez had raised them on direct appeal. *See id.* at 324-27. Sosa-Baladron could have raised them on direct appeal and provided no justification for failing to do so. Also, the claims had not been raised as constitutional error, so they were not cognizable on collateral review. Jurists of reason would not debate that the claims are barred.

In Claim 5, the couple argue that their sentence enhancements were inappropriate. The district court held the claim barred because it was raised on direct appeal. The couple admit the claim was raised on direct appeal. *See id.* at 327-32. The claim is barred. Jurists of reason would not debate it.

In Claim 6, the couple argue that counsel was ineffective in the guilt and sentencing phases. Specifically, co-conspirator Antonio Martinez-Lopez "had told Soca-Fernandez's attorney that he had made prior fraud claims," yet counsel never used this evidence "to demonstrate that neither Soca-Fernandez or Sosa-Baladron could have been the masterminds behind these incidents." The district court held the claim meritless.

To establish ineffective assistance, the couple must show that (1) counsel's performance was deficient—objectively unreasonable under prevailing professional norms—and (2) it prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). Prejudice exists if "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. The district court held that the couple had shown neither deficient performance nor prejudice, because they "do not argue how this information could have been beneficial to them."

Jurists of reason would not disagree. Even if Martinez-Lopez had committed this sort of fraud before, that did not make him the mastermind this time, nor did it prove that Soca-Fernandez and Sosa-Baladron were not the masterminds behind the crimes charged. The couple fail on both *Strickland* prongs. They do not show it objectively unreasonable not to have used this evidence.

Nor do they show a reasonable probability that, had the evidence been used, the outcome of either the trial or sentencing would have been different.

Jurists of reason could not debate that Soca-Fernandez and Sosa-Baladron have failed to make a substantial showing of the denial of a constitutional right. Accordingly, their application for a certificate of appealability is **DENIED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

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Filed: April 27, 2023

Belkis Soca-Fernandez
6825 Armand Drive
Tampa, FL 33634

Mr. David Sosa-Baladron
6825 Armand Drive
Tampa, FL 33634

Re: Case No. 22-1882/22-1883, *Belkis Soca-Fernandez v. USA*
Originating Case No. : 1:21-cv-00863 : 1:16-cr-00062-5

Dear Parties,

The Court issued the enclosed Order today in this case. Judgment to follow.

Sincerely yours,

s/Roy G. Ford
Case Manager
Direct Dial No. 513-564-7016

cc: Ms. Ann E. Filkins
Mr. Ronald Matthew Stella

Enclosure

No mandate to issue

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Nos. 22-1882/1883

BELKIS SOCA-FERNANDEZ,
(No. 22-1882)

DAVID SOSA-BALADRON,
(No. 22-1883)

Petitioners-Appellants,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

Before: SUTTON, Chief Judge.

JUDGMENT

THESE MATTERS came before the court upon the application by Belkis Soca-Fernandez and David Sosa-Baladron for a certificate of appealability.

UPON FULL REVIEW of the record and any submissions by the parties,

IT IS ORDERED that the application for a certificate of appealability is DENIED.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

APPENDIX B

United States District Court
for the
Western District of Michigan

Order Denying § 2255 Motions

Order Denying Application
for a
Certificate of Appealability (COA)

Judgment

Order Transferring COA Application
to the
United States Court of Appeals
for the Sixth Circuit

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff,	)	
	)	No. 1:16-cr-62
V.	)	
	)	Honorable Paul L. Maloney
BELKIS SOCA-FERNANDEZ and DAVID SOSA-BALADRON, Defendants.	)	

OPINION AND ORDER

Co-Defendants Belkis Soca-Fernandez ("Belkis") and David Sosa-Baladron ("David") (collectively, "Petitioners") have filed identical motions to vacate, set aside, or correct their sentences under 28 U.S.C. § 2255 (ECF Nos. 487, 489). This opinion and order addresses both of their motions. For the reasons to be explained, Petitioners' motions will be denied.

I. Facts

From about April 2012 to May 2015, Petitioners and their co-conspirators were involved in a fraud scheme where they would stage fake automobile accidents and bill insurance companies for medical treatments and services that were never provided to the "victims." For their part in the conspiracy, Petitioners were indicted for conspiracy to commit mail fraud, health care fraud, and mail fraud (*see Fourth Superseding Indictment*, ECF No. 229). Following a jury trial in March 2017, Petitioners were found guilty of these offenses (*see Verdict Form*, ECF No. 274). This Court sentenced Belkis to 135 months in prison and sentenced David to 120 months in prison (ECF Nos. 352, 350).

Petitioners appealed their convictions and sentences to the Sixth Circuit, which consolidated their appeals, rejected their claims, and affirmed their judgments of conviction. *See United States v. Sosa-Baladron*, 800 F. App'x 313 (6th Cir. 2020). On appeal, Belkis raised the following issues: (1) whether there was a constructive amendment of the indictment based on multiple conspiracies; (2) whether there was a constructive amendment of the indictment where Belkis was charged in substantive counts as a principal but convicted as an aider and abettor; (3) whether her convictions for multiple counts of health care fraud were multiplicitous; (4) the admissibility of photos of her home; (5) the admissibility of text messages; (6) whether the obstruction of justice sentence enhancement was proper; and (7) whether the risk of serious bodily harm sentence enhancement was proper. *See id.* Further, David raised the following issues on appeal: (1) whether the denial of his Rule 29 motion at trial was proper; (2) whether the Court's failure to instruct the jury on multiple conspiracies was proper; (3) whether the two-level risk of serious bodily harm sentence enhancement was proper; (4) whether the two-level obstruction of justice sentence enhancement was proper; and (5) whether the four-level leader or organizer sentence enhancement was proper. *See id.* Petitioners filed a petition for a writ of certiorari with the Supreme Court, which was denied on October 5, 2020. *See Sosa-Baladron v. United States*, 141 S. Ct. 315 (2020) (mem.).

On October 5, 2021, the day the one-year statute of limitations under § 2255(f) expired, someone located in Coral Gables, Florida mailed Petitioners' identical § 2255 motions. Petitioners raise multiple grounds for relief: the existence of multiple conspiracies (some of which they argue they were not involved in), rather than one (Exhibit A); that being convicted of health care fraud and mail fraud violates the Fifth Amendment's Double

Jeopardy Clause (Exhibit A); whether certain text messages were properly admitted at trial (Exhibit B); whether certain photos were properly admitted at trial (Exhibit C); whether their sentence enhancements were proper (Exhibit D); and ineffective assistance of counsel for failing to use certain statements allegedly made by another co-defendant at trial (Exhibit D) (*see* ECF Nos. 487, 489).

II. Legal Standard

A. Merits

A prisoner who moves to vacate his sentence under § 2255 must show that the sentence was imposed in violation of the Constitution or laws of the United States, that the court was without jurisdiction to impose such a sentence, that the sentence was in excess of the maximum authorized by law, or that it is otherwise subject to collateral attack. 28 U.S.C. § 2255. To prevail on a § 2255 motion "a petitioner must demonstrate the existence of an error of constitutional magnitude which had a substantial and injurious effect or influence on the guilty plea or the jury's verdict." *Humphress v. United States*, 398 F.3d 855, 858 (6th Cir. 2005) (quoting *Griffin v. United States*, 330 F.3d 733, 736 (6th Cir. 2003) (internal quotation marks omitted)). Non-constitutional errors are generally outside the scope of § 2255 relief. *United States v. Cofield*, 233 F.3d 405, 407 (6th Cir. 2000). A petitioner can prevail on a § 2255 motion alleging a non-constitutional error only by establishing a "fundamental defect which inherently results in a complete miscarriage of justice, or, an error so egregious that it amounts to a violation of due process." *Watson v. United States*, 165 F.3d 486, 488 (6th Cir. 1999) (quoting *United States v. Ferguson*, 918 F.2d 627, 630 (6th Cir. 1990) (internal quotation marks omitted)).

B. Evidentiary Hearing

The Court must hold an evidentiary hearing to determine the issues and make findings of fact and conclusions of law "[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief[.]" 28 U.S.C. § 2255(b). No hearing is required if a petitioner's allegations "cannot be accepted as true because they are contradicted by the record, inherently incredible, or [are] conclusions rather than statements of fact." *Arredondo v. United States*, 178 F.3d 778, 782 (6th Cir. 1999) (quotation omitted).

C. Procedural Default

Generally, claims not raised on direct appeal are procedurally defaulted and may not be raised on collateral review unless the petitioner shows either (1) "cause" and "actual prejudice" or (2) "actual innocence." *Massaro v. United States*, 538 U.S. 500, 504 (2003). An ineffective assistance of counsel claim, however, is not subject to the procedural default rule. *Id.* An ineffective assistance of counsel claim may be raised in a collateral proceeding under § 2255, whether or not the petitioner could have raised the claim on direct appeal. *Id.*

D. Ineffective Assistance of Counsel

The right to counsel at a criminal trial, enshrined in the Sixth Amendment, assures the fairness and legitimacy of the trial process. *See Kimmelman v. Morrison*, 477 U.S. 365, 374 (1986). Establishing ineffective assistance of counsel can therefore excuse the failure to raise a particular claim at trial or on direct appeal. *Id.* at 383; *Ratliff v. United States*, 999 F.2d 1023, 1026 (6th Cir. 1993). The two-part test for ineffective assistance of counsel was outlined in *Strickland v. Washington*, 466 U.S. 668 (1984). The defendant must first show that counsel's representation fell below an objective standard of reasonableness. *Id.* at 688.

When reviewing allegations of ineffective assistance, this Court must "strongly presume[]" that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment[.]" *Burt v. Titlow*, 571 U.S. 12, 22 (2013) (quoting *Strickland*, 466 U.S. at 690 (internal quotation marks omitted)). The defendant must also show that, but for counsel's errors and omissions, a reasonable probability exists that the result of the proceedings would have been different. *Strickland*, 466 U.S. at 694. Explained another way, the defendant must show that the alleged errors in counsel's performance created actual prejudice and worked to the defendant's "substantial disadvantage." *United States v. Frady*, 456 U.S. 152, 170 (1982). For this second factor, the defendant must show actual prejudice, not the mere possibility of prejudice. *Maupin v. Smith*, 785 F.2d 135, 139 (6th Cir. 1986).

Ultimately, the question is not merely whether defense counsel was simply inadequate, but it is instead whether defense counsel was so thoroughly ineffective that the errors caused defeat that was "snatched from the hands of probable victory." *United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992) (en banc). Necessarily then, when the alleged underlying error by counsel lacks merit, counsel cannot be deemed constitutionally ineffective for failing to raise the issue. *See Mapes v. Coyle*, 171 F.3d 408, 427 (6th Cir. 1999); *Ludwig v. United States*, 162 F.3d 456, 459 (6th Cir. 1998) ("Counsel was not required to raise meritless arguments in order to avoid a charge of ineffective assistance of counsel.").

III. Analysis

A. Timeliness

The Antiterrorism and Effective Death Penalty Act contains a one-year statute of limitations for federal habeas petitions. Under § 2255(f)(1), a petitioner must file a § 2255 petition within one year of the date on which the judgment of conviction became final. A judgment of conviction becomes final when direct review concludes, or when the Supreme Court "affirms a conviction on the merits on direct review or denies a petition for certiorari, or when the time for filing a certiorari petition expires." *Clay v. United States*, 537 U.S. 522, 527 (2003). In other words, a petitioner has until the "anniversary date" of the day that his conviction became final to timely file a § 2255 motion. *See United States v. Marcello*, 212 F.3d 1005, 1009 (7th Cir. 2000) ("The clock begins ticking on the day after the Supreme Court announces the denial of certiorari, which means the last day the § 2255 motion may be filed is the anniversary date of the certiorari denial.").

The Government argues that Petitioners' § 2255 motions are untimely because they were filed on October 6, 2021, while their judgments of conviction became final on October 5, 2020, the day the Supreme Court denied Petitioners' certiorari petition (*see* ECF No. 497 at PageID.5180). True, Petitioners had until October 5, 2021—the "anniversary date" of the denial of their certiorari petition—to file their § 2255 motions. But although the motions were electronically filed on October 6, both motions are postmarked October 5, 2021 (*see* ECF No. 487 at PageID.5109; No. 489 at PageID.5142).

Given the liberal prison mailbox rule, it would appear that Petitioners' motions were therefore timely filed because they were mailed on October 5, 2021. *See Brand v. Motley*,

526 F.3d 921, 925 (6th Cir. 2008) ("Under this relaxed filing standard, a pro se prisoner's complaint is deemed filed when it is handed over to prison officials for mailing to the court."). However, the Government asserts that the prison mailbox rule does not apply to Petitioners' motions because they were not mailed from prison. Rather, it appears that someone at an address in Coral Gables, Florida mailed both motions via FedEx overnight mail (*see* ECF No. 487 at PageID.5109; No. 489 at PageID.5142). The Court agrees with the Government: Given that Petitioners did not mail their § 2255 petitions from prison, the "prison mailbox rule" does not apply. *See Robinson v. Jones*, No. 3:15cv496/MCR/EMT, 2016 WL 8470183, at *2 n.2 (N.D. Fla. Dec. 16, 2016) (citing *Houston v. Lack*, 487 U.S. 266, 270 (1988)). Therefore, Petitioners' motions are deemed filed when they were received by the clerk of court, which was October 6, 2021. *See id.* Accordingly, Petitioners' § 2255 motions are untimely because they were filed one day after the one-year statute of limitations expired. The Court must therefore dismiss Petitioners' untimely § 2255 motions. *See Marcello*, 212 F.3d at 1010 (affirming the dismissal of the petitioners' untimely § 2255 motion, which was filed one day late).

B. Merits

But in an abundance of caution, the Court will briefly consider the merits of Petitioners' § 2255 motions. Even if Petitioners' motions were timely, their arguments are without merit, and they are not entitled to relief under § 2255.

Ground One of Petitioners' motions (*see Exhibit A*, ECF Nos. 487-1, 489-1) argues that "there were actually multiple conspiracies that were provided to the Jury under the guise of one," which led to an "unconstitutionally" amended indictment and a failure to instruct

the jury on multiple conspiracies. However, the Sixth Circuit already heard these arguments on direct appeal and rejected them:

> The government's proof of the fraudulent scheme and false mailings from Revive, Renue, and H & H did not so alter the terms of the indictment as to create a substantial likelihood that Soca-Fernandez and Sosa-Baladron may have been convicted of an uncharged offense. Therefore, the district court did not err in refusing to give a mitigating jury instruction, and no constructive amendment to Count 1 of the indictment occurred . . . The evidence presented at trial proved one, overarching conspiracy with a common goal to defraud insurance companies.

Sosa-Baladron, 800 F. App'x at 320-21. Because Petitioners' arguments regarding the multiple-conspiracy issue have already been fully litigated on direct appeal, they may not be relitigated via a § 2255 motion. *See DuPont v. United States*, 76 F.3d 108, 110 (6th Cir. 1996) ("A § 2255 motion may not be used to relitigate an issue that was raised on appeal absent highly exceptional circumstances."); *Giraldo v. United States*, 54 F.3d 776, 776 (6th Cir. 1995) (table) ("It is well settled that a § 2255 motion may not be employed to relitigate an issue that was raised and considered on appeal absent highly exceptional circumstances."). Petitioners are not entitled to relief on their multiple-conspiracy challenges.[1]

Also under Ground One, Petitioners claim that their convictions for health care fraud and mail fraud were multiplicitous in violation of the Double Jeopardy Clause. The Government argues that Belkis already raised this argument on direct appeal, and thus, it is

[1] In their reply to the Government's response, Petitioners concede that many of their arguments are procedurally barred because they were raised on direct appeal. Yet, they argue that these issues should "be revisited because the prior decision was clearly wrong" (ECF No. 503 at PageID.5206). But this is not the standard. Rather, Petitioners must show that "highly exceptional circumstances" are present, which would allow them to relitigate issues on collateral appeal that they already raised on direct appeal. Petitioners have not met this burden, let alone even asserted that highly exceptional circumstances exist. Merely disagreeing with the appeals court does not constitute highly exceptional circumstances, and the Court finds that all arguments that Petitioners seek to raise in their § 2255 petition that they have already raised on direct appeal are procedurally barred.

procedurally barred (*see* ECF No. 497 at PageID.5185). However, while Belkis raised a similar argument on direct appeal, she did not raise this exact argument. Rather, on appeal, she asserted that her convictions for multiple counts of health care fraud violated double jeopardy. *See Sosa-Baladron*, 800 F. App'x at 322-24. Petitioners' § 2255 motion, on the other hand, argues that their convictions for health care fraud and *mail fraud* violate double jeopardy. As such, the Court must conduct a *Blockburger* analysis to determine whether the offenses of health care fraud and mail fraud are multiplicitous in violation of the Double Jeopardy Clause. *See Blockburger v. United States*, 284 U.S. 299, 304 (1932).

Under *Blockburger*, there is no double jeopardy violation if "[e]ach of the offenses created requires proof of a different element." *Id.* Specifically, "[t]he applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." *Id.* In regard to Petitioners' argument, the Court must compare the elements of health care fraud versus mail fraud and determine whether "each . . . requires proof of a different element." *Id.*

As the Sixth Circuit outlined in Petitioners' direct appeal, a defendant commits health care fraud, in violation of 18 U.S.C. § 1347, when he "(1) knowingly devised a scheme or artifice to defraud a health care benefit program in connection with the delivery of or payment for health care benefits, items, or services; (2) executed or attempted to execute this scheme or artifice to defraud; and (3) acted with intent to defraud." *Sosa-Baladron*, 800 F. App'x at 322. Further, the elements of mail fraud, in violation of 18 U.S.C. § 1341, are that "(1) the defendant knowingly participated in or devised a scheme to defraud in order to

obtain money; (2) the scheme included material misrepresentations or concealment of a material fact; (3) the defendant had the intent to defraud; and (4) the defendant used the mail or caused another to use the mail in furtherance of the scheme." *Id.* at 317-18.

Each of these offenses requires proof of a different element. To commit health care fraud, the defendant must devise a scheme to "defraud a health care benefit program." *Id.* at 322. And to commit mail fraud, the defendant must "use[] the mail or cause[] another to use the mail in furtherance of the scheme." *Id.* at 317-18. These elements are distinct to each offense: Health care fraud does not require the defendant to use the mail during the scheme, and mail fraud does not require the defendant to devise a scheme to defraud a health care benefit program. Accordingly, health care fraud and mail fraud are separate and distinct offenses for purposes of double jeopardy. This argument is also without merit.

Grounds Two and Three of Petitioners' § 2255 motions (*see Exhibits B and C*, ECF Nos. 487-2, 487-3, 489-2, 489-3) raise evidentiary issues. They challenge the admissibility of certain evidence admitted at trial: text messages between Belkis and Acuna-Rosa (a co-conspirator) and photographs of Petitioners' home in Florida. Petitioners argue that this evidence was improperly admitted because it was unduly prejudicial. Yet, Belkis raised these exact arguments on appeal, and the Sixth Circuit held that both the text messages and the photographs were properly admitted during trial. *See Sosa-Baladron*, 800 F. App'x at 324-28. As such, Belkis is not permitted to relitigate these arguments in a § 2255 motion. *See DuPont*, 76 F.3d at 110. Similarly, David failed to raise these arguments on appeal, and he has provided no justification as to why he failed to do so. Accordingly, David has

procedurally defaulted on these arguments. *See Massaro*, 538 U.S. at 504. Therefore, Petitioners are also not entitled to relief on Grounds Two and Three of their motions.[2]

Ground Four of the motions (*see Exhibit D*, ECF No. 487-4, 489-4) challenges Petitioners' sentence enhancements (for obstruction of justice, risk of serious bodily injury, and leadership role in the offense), applied by this Court pursuant to the United States Sentencing Commission Guidelines Manual. But on direct appeal, Petitioners also challenged these sentence enhancements, and the Sixth Circuit rejected their arguments: "[W]e hold that the district court properly found that the sentence enhancements applied and thus affirm the defendants' sentences." *Sosa-Baladron*, 800 F. App'x at 328. Again, Petitioners may not relitigate these same arguments on collateral appeal.

Finally, Ground Four vaguely raises a claim of ineffective assistance of counsel. Petitioners argue that "there is the issue regarding attorney representation" in that a co-defendant allegedly informed Belkis's trial attorney that he "had made prior fraud claims" (ECF Nos. 487-4 at PageID.5126; 489-4 at PageID.5159). Petitioners take issue with the fact that Belkis's attorney "never used" this "evidence" in a motion to suppress[3] or during the sentencing phase (*see id.*).

As explained above, to succeed on an ineffective-assistance-of-counsel claim, Petitioners must show that (1) their counsels' performance fell below an objective standard of reasonableness, and (2) but for counsels' errors, there is a reasonable probability that the

[2] Moreover, evidentiary issues are not cognizable on collateral review unless they amount to a constitutional error. *See, e.g., Cofield*, 233 F.3d at 407. Petitioners have not argued that this Court's admission of the text messages and photographs constituted a constitutional error.

[3] It is unclear exactly what evidence Petitioners believe should have been suppressed, let alone how this co-defendant's alleged statement would have helped them suppress such evidence.

outcome of the proceeding would have been different. *See Strickland*, 466 U.S. at 694. Petitioners have failed to carry their burden under either prong of *Strickland*. Petitioners' motion is entirely unclear in how Belkis's attorney's performance was deficient. Even if this co-defendant did inform Belkis's attorney that he had engaged in fraud before, Petitioners do not argue how this information could have been beneficial to them during the course of their trials. Moreover, Petitioners do not assert that, had Belkis's attorney used their co-defendant's alleged statement, the outcome of their jury trials or sentencing would have been different. As such, Petitioners have failed to show both deficient performance and prejudice under *Strickland*, and they are not entitled to relief on this argument either.

IV. Hearing and Certificate of Appealability

The Court finds no merit to any of Petitioners' arguments. Because Petitioners' arguments are contrary to law, the Court need not hold a hearing on their motions. Consequently, the Court will deny their motions under § 2255.

Under 28 U.S.C. § 2253(c), the Court must determine whether to issue a certificate of appealability. A certificate should issue if the movant has demonstrated "a substantial showing of a denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The Sixth Circuit has disapproved the issuance of blanket denials of a certificate of appealability. *Murphy v. Ohio*, 263 F.3d 466, 467 (6th Cir. 2001). The district court must "engage in a reasoned assessment of each claim" to determine whether a certificate is warranted. *Id.* Each issue must be considered under the standards set forth by the Supreme Court in *Slack v. McDaniel*, 529 U.S. 473 (2000). *Murphy*, 263 F.3d at 467. Under *Slack*, to warrant a grant of the certificate,

a defendant "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." 529 U.S. at 484.

The Court has carefully considered the issues under the *Slack* standard and concludes that reasonable jurists could not find that this Court's denial of Petitioners' claims was debatable or wrong. Accordingly, the Court will deny a certificate of appealability.

ORDER

IT IS HEREBY ORDERED that Petitioners' motions to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 (ECF No. 487, 489) are **DENIED.**

IT IS SO ORDERED.

A judgment will enter consistent with this opinion.

Date: September 16, 2022

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff,	)	
	)	No. 1:16-cr-62
V.	)	
	)	Honorable Paul L. Maloney
BELKIS SOCA-FERNANDEZ and DAVID SOSA-BALADRON, Defendants.	)	

JUDGMENT

In accordance with the order entered on this date pursuant to Fed. R. Civ. P. 58 and *Gillis v. United States*, 729 F.3d 641, 643 (6th Cir. 2013), **JUDGMENT ENTERS.**

IT IS SO ORDERED.

Date: September 16, 2022

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff,	)	
	)	No. 1:16-cr-62
V.	)	
	)	Honorable Paul L. Maloney
BELKIS SOCA-FERNANDEZ and DAVID SOSA-BALADRON, Defendants.	)	

ORDER TRANSFERRING MOTION TO SIXTH CIRCUIT

Petitioners Belkis Soca-Fernandez and David Sosa-Baladron (collectively, "Petitioners") filed identical motions to vacate, set aside, or correct their sentences under 28 U.S.C. § 2255 (ECF Nos. 487, 489). This Court recently denied those motions and declined to issue certificates of appealability (ECF Nos. 510, 511). Petitioners have now each filed a "notice of appeal" (ECF Nos. 512, 513) regarding the denial of their § 2255 motions, as well as a joint motion for a certificate of appealability (ECF No. 514). Because this Court already denied issuing certificates of appealability to Petitioners, their motion for a certificate of appealability must be transferred to the Sixth Circuit. *See* 28 U.S.C. § 2253(c).

Accordingly, the Court **TRANSFERS** Petitioners' motion for a certificate of appealability (ECF No. 514) to the Sixth Circuit Court of Appeals.

IT IS SO ORDERED.

Date: September 30, 2022

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge

Additional material from this filing is available in the Clerk's Office.