INDEX OF APPENDICES

Appendix A

Opinion of the Fifth Circuit Court of Appeals.
Case No. 21-10233

United States Court of Appeals
for the Fifth Circuit

No. 21-10233

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHRISTIAN WINCHEL,

Defendant-Appellant.

Appeal from the United States District Court for the
Northern District of Texas
USDC No. 3:19-CV-2290

(Filed May 18, 2023)

Before JOLLY, JONES, and HO, *Circuit Judges*.

E. GRADY JOLLY, *Circuit Judge*:*

Christian Winchel, a federal prisoner, was convicted on his plea of guilty to child pornography crimes. After sentencing, Winchel filed this 28 U.S.C. § 2255 motion, challenging the validity of his guilty plea, on

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* This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

the basis that he received ineffective assistance of counsel ("IAC"). Therefore, he argues that his guilty plea was involuntary, and that his conviction should be vacated.

The district court denied his motion. On appeal, Winchel contends that the district court erred in denying his IAC claims and abused its discretion in denying his requests for discovery and for an evidentiary hearing. For the reasons set forth below, we AFFIRM.

I.

We begin with an overview of the investigation that led to Winchel's conviction. Between 2012 and 2014, the Federal Bureau of Investigation ("FBI") investigated "Website A." Website A allowed users to post and access images and videos depicting child pornography. During their investigation, the FBI determined that one account on Website A bore Winchel's IP address. The FBI used this information to support a search warrant of Winchel's residence, and a search led to the discovery and seizure of computers, tapes, and other digital storage equipment that contained thousands of videos and images depicting sexually graphic and exploitative images of children. In an interview with the FBI, Winchel ultimately admitted that he was producing child pornography videos so that he could trade the videos online.

A grand jury charged Winchel with (1) production of child pornography; (2) transporting and shipping child pornography; and (3) two counts of possession of

prepubescent child pornography. Winchel later pleaded guilty to all charges except for one count of possession of prepubescent child pornography, which the Government dismissed pursuant to his plea agreement. Winchel's plea agreement contained a waiver of his appellate and postconviction rights.

At his rearraignment, Winchel stated that he was "glad it was over" and that there were no excuses for his "completely inappropriate and unacceptable behavior." Winchel's counsel advised the court that Winchel "chose on his own" to forgo trial, despite having "nothing to lose," and that he pleaded guilty, in part out of consideration for the families and victims. His counsel argued for mitigation because of his decision. Winchel also stated that he understood the nature of the charges against him, was satisfied with counsel's advice and representation, and was pleading guilty voluntarily. The district court sentenced him to a total of 600 months of imprisonment and entered a restitution order.

Later, Winchel had second thoughts. After his 600-month sentence began, he moved for post-conviction relief under 28 U.S.C. § 2255. He attacked the validity of his plea based on two primary IAC claims, which in his mind rendered his plea involuntary. First, he alleged that counsel failed to retain an expert to investigate tactics used by law enforcement to obtain his IP address. Second, he alleged that counsel failed to move for suppression of the evidence based on

the "international silver-platter doctrine."[1] Winchel claimed that but for these deficiencies, he would not have entered the plea and would have demanded a jury trial. Winchel also requested discovery and an evidentiary hearing on this motion.

The magistrate judge rejected Winchel's arguments. First, the magistrate judge determined that Winchel's guilty plea was knowing and voluntary. The magistrate judge further found that Winchel's plea agreement waived his pre-plea IAC claims because his claims were "not fundamentally related to the entry of his voluntary plea."

The magistrate judge then addressed Winchel's requests for discovery and an evidentiary hearing. The magistrate judge concluded that because Winchel's claims regarding the voluntary nature of his plea "lack[ed] merit for reasons wholly supported by the record," an evidentiary hearing was unnecessary and discovery was moot.

The district court adopted the findings, conclusions, and recommendation of the magistrate judge and denied Winchel's § 2255 motion. This appeal followed.

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[1] The "international silver platter doctrine" is a term that the Second Circuit adopted with respect to potential exclusion of evidence obtained from foreign law enforcement sources. *United States v. Getto*, 729 F.3d 221, 227-28 (2d Cir. 2013).

II.

We review a district court's factual findings for clear error and its legal conclusions de novo. *See United States v. Cavitt*, 550 F.3d 430, 435 (5th Cir. 2008). "[W]e may affirm for any reason supported by the record, even if not relied on by the district court." *United States v. Gonzalez*, 592 F.3d 675, 681 (5th Cir. 2009) (per curiam).

III.

A.

We first address whether the district court erred when it adopted the magistrate judge's finding that Winchel's IAC claims were not related to the entry of his voluntary plea and were therefore barred by his plea agreement.

It is true that "once a guilty plea has been entered, all nonjurisdictional defects in the proceedings against a defendant are waived." *Cavitt*, 550 F.3d at 441 (quoting *Smith v. Estelle*, 711 F.2d 677, 682 (5th Cir. 1983)). And this waiver "includes claims of ineffective assistance of counsel." *United States v. Glinsey*, 209 F.3d 386, 392 (5th Cir. 2000). But there is an exception to this rule that applies here: A guilty plea does not waive IAC claims when "[counsel's] ineffectiveness is alleged to have rendered the guilty plea involuntary." *Id.*

Here, Winchel alleged that his plea was involuntary because of counsel's constitutionally-ineffective performance. Specifically, Winchel alleged that, but for

counsel's failure to investigate the Government's tactics used to obtain his IP address and move for suppression of that evidence, he would not have pleaded guilty, and instead, he would have proceeded to trial. Stated differently, in challenging the competency of counsel's performance with regards to filing a motion to suppress, Winchel challenged the voluntariness of his guilty plea.

The magistrate judge, however, did not see it that way. The magistrate judge instead concluded that Winchel's claims were "not fundamentally related to the entry of his voluntary plea" and that therefore his plea agreement waived his IAC claims. But the magistrate judge was mistaken because this court treats allegations of counsel's failure to investigate viable grounds for suppressing evidence, as challenges to the validity of a guilty plea. *See*, *e.g.*, *United States v. Shepherd*, 880 F.3d 734, 741-46 (5th Cir. 2018) (finding counsel's failure to investigate exculpatory evidence affected voluntariness of plea). Accordingly, the district court erred in adopting the magistrate judge's finding that Winchel's IAC claims were not related to the voluntariness of his plea and were therefore barred by his plea agreement.

B.

Thus, having held that the district court erred in concluding that Winchel's plea agreement barred any consideration of his IAC claims, we must now ask whether to remand to allow the district court to first

consider those claims. Here, we think that remand is unnecessary because other independent grounds in the record allow us to affirm the district court's denial, *see Day v. Quarterman*, 566 F.3d 527, 537 (5th Cir. 2009) (citing *Scott v. Johnson*, 227 F.3d 260, 262 (5th Cir. 2000)); that is, Winchel has failed to provide contemporaneous evidence showing that counsel's alleged deficient performance caused him prejudice.

To prevail on his IAC claims, Winchel must show that (1) counsel's performance "fell below an objective standard of reasonableness" and (2) that he was prejudiced as a result. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). To demonstrate prejudice in the context of his guilty plea, Winchel must show that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). But we must be cautious not to upset Winchel's guilty plea solely because of his "post hoc assertions" that he would not have pleaded guilty but for counsel's deficient performance. *Lee v. United States*, 137 S. Ct. 1958, 1967 (2017). To address this concern, we look to "contemporaneous evidence to substantiate a defendant's expressed preferences" at the time of his pleading. *Id.*

Here, Winchel argues that he would not have pleaded guilty if counsel (1) had hired an expert and investigated the Government's IP evidence, and (2) had moved to suppress evidence, asserting the "international silver-platter doctrine." The record, however, does not support these arguments.

To the contrary, the record shows that counsel *did* investigate the Government's IP evidence and that counsel *did* hire an expert to evaluate Winchel's claims. The Government submitted an unchallenged affidavit from counsel indicating that (1) he was paid to hire a computer expert, and that (2) he hired and consulted with that expert. *See also United States v. Newton*, No. 19-11196, 2022 WL 4116914, at *2 (5th Cir. Sept. 9, 2022) (per curiam) (citing counsel's affidavit as grounds for upholding the denial of relief on an IAC claim). Counsel's affidavit also indicates that following the expert's investigation, Winchel and counsel discussed options on how to proceed, including filing a motion to suppress. Ultimately, the record shows they jointly decided against filing such a motion.

And even if counsel "erred" as Winchel alleges, Winchel has not provided contemporaneous evidence that but for those errors, he would have insisted on going to trial. Indeed, the record shows that Winchel rejected filing a motion to suppress. He instead chose to plead guilty primarily to focus on mitigating his sentence. For example, at sentencing, Winchel's counsel argued for a reduced sentence in the light of Winchel's decision to forgo trial and spare his victims and their families. Moreover, it is relevant to Winchel's state of mind that only after the judge sentenced him to 600 months in prison did he express dissatisfaction with his plea agreement and counsel's performance. *See Young v. Spinner*, 873 F.3d 282, 287 (5th Cir. 2017) (noting that defendant's failure to seek to withdraw plea

prior to sentencing weighs against a finding of prejudice).

Accordingly, because Winchel cannot show that he was prejudiced by counsel's performance, we affirm the district court's denial of Winchel's § 2255 motion.

IV.

To sum up: We hold that the district court was incorrect to conclude that Winchel's plea agreement barred his IAC claims. Nevertheless, the district court's judgment denying Winchel's § 2255 motion is affirmed because Winchel has failed to show that he was prejudiced by counsel's purportedly deficient performance. Accordingly, the district court's judgment denying Winchel's § 2255 motion is AFFIRMED.[2]

AFFIRMED.

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[2] Because we have held that the record shows Winchel's IAC claims are facially meritless, we also hold that the district court did not abuse its discretion in denying Winchel's request for an evidentiary hearing. *United States v. Reed*, 719 F.3d 369, 374 (5th Cir. 2013) (citing *Cavitt*, 550 F.3d at 442) ("A defendant is entitled to an evidentiary hearing on his § 2255 motion only if he presents 'independent indicia of the likely merit of [his] allegations.' "). For the same reasons, the district court did not err in denying Winchel's request for discovery because Winchel has failed to demonstrate good cause for additional discovery. *United States v. Webster*, 392 F.3d 787, 801 (5th Cir. 2004).

Appendix B

Order of the Fifth Circuit Court of Appeals
Granting a Certificate of Appealability.
Case No. 21-10233

United States Court of Appeals
for the Fifth Circuit

No. 21-10233

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHRISTIAN WINCHEL,

Defendant-Appellant.

Application for Certificate of Appealability
from the United States District Court
for the Northern District of Texas
USDC No. 3:19-CV-2290

(Filed Jan. 4, 2022)

Before HIGGINBOTHAM, HAYNES, and HO, *Circuit Judges*.

PER CURIAM:

Christian Winchel, federal prisoner # 49167-177, pleaded guilty, pursuant to a plea agreement to one count of production of child pornography, one count of transporting and shipping child pornography, and one

count of possession of prepubescent child pornography. He filed a timely 28 U.S.C. § 2255 motion, asserting that, inter alia, his trial counsel rendered ineffective assistance when he failed to hire an expert to determine if Winchel's computer had been hacked by the government, challenge the veracity of the search warrant affidavit, and pursue a motion to suppress based on these alleged violations. The district court dismissed his motion, finding that his ineffective assistance claims were waived by his knowing and voluntary guilty plea. He now seeks a certificate of appealability (COA) to appeal the dismissal of those claims, and he challenges the denial of his requests for discovery and an evidentiary hearing.

A COA may be issued only if the movant "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). When a district court rejects a claim on procedural grounds, this court will issue a COA only if the movant "shows, at least, that jurists of reason would find it debatable whether the [motion] states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack*, 529 U.S. at 484.

Winchel has demonstrated that jurists of reason could find that the district court applied the incorrect standard in applying the plea waiver to his ineffective assistance of counsel claims, as the voluntariness of his plea depends on whether counsel's advice was "within the range of competence demanded of attorneys in

criminal cases." *McMann v. Richardson*, 397 U.S. 759, 771 (1970); *see also United States v. Glinsey*, 209 F.3d 386, 392 (5th Cir. 2000). In addition, reasonable jurists would debate whether Winchel has stated a valid claim of the denial of a constitutional right with respect to his claims that counsel rendered ineffective assistance. *See Houser v. Dretke*, 395 F.3d 560, 561 (5th Cir. 2004). Accordingly, a COA is GRANTED on these issues.

Appendix C

Order of the District Court for the
Northern District of Texas Adopting
Magistrate's Report and Recommendation.
Case No. 3:19-cv-02290-D-BK

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

CHRISTIAN WINCHEL, **Movant,**	§	
v.	§	**CIVIL NO. 3:19-CV-2290-D (CRIMINAL NO. 3:15-CR-079-D-1)**
UNITED STATES OF AMERICA, **Respondent.**	§	

ORDER

(Filed Feb. 25, 2021)

The United States Magistrate Judge made findings, conclusions, and a recommendation in this case. Movant filed objections, and the undersigned district judge has made a *de novo* review of those portions of the proposed findings, conclusions, and recommendation to which objection was made. The objections are overruled, and the court adopts the findings, conclusions, and recommendation of the United States Magistrate Judge.

Considering the record in this case and pursuant to Fed. R. App. P. 22(b), Rule 11(a) of the Rules Governing §§ 2254 and 2255 proceedings, and 28 U.S.C.

§ 2253(c), the court denies a certificate of appealability. The court adopts and incorporates by reference the magistrate judge's findings, conclusions, and recommendation filed in this case in support of its finding that the movant has failed to show (1) that reasonable jurists would find this court's "assessment of the constitutional claims debatable or wrong," or (2) that reasonable jurists would find "it debatable whether the petition states a valid claim of the denial of a constitutional right" and "debatable whether [this court] was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S.473, 484 (2000).

If movant files a notice of appeal,

( ) movant may proceed *in forma pauperis* on appeal.

(**X**) movant must pay the $505.00 appellate filing fee or submit a motion to proceed *in forma pauperis*.

SO ORDERED.

February 25, 2021.

/s/ Sidney A. Fitzwater
SIDNEY A. FITZWATER
SENIOR JUDGE

Appendix D

Findings, Conclusions and Recommendation
of the United States Magistrate Judge.
Case No. 3:19-cv-02290-D-BK

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CHRISTIAN WINCHEL, **MOVANT,**	§	
	§	**CIVIL NO.**
v.	§	**3:19-CV-2290-D-BK**
	§	**(CRIMINAL NO.**
UNITED STATES OF AMERICA,	§	**3:15-CR-079-D-1)**
RESPONDENT.	§	
	§	

FINDINGS, CONCLUSIONS AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

(Filed Jan. 25, 2021)

Pursuant to 28 U.S.C. § 636(b) and *Special Order 3*, Movant Christian Winchel's motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 was referred to the undersigned United States magistrate judge for case management, including the issuance of findings and a recommended disposition where appropriate. As detailed here, the motion should be **DENIED**.

I. BACKGROUND

Winchel pled guilty under the terms of a plea agreement to producing child pornography (Count 1),

transporting and shipping child pornography (Count 2), and possessing child pornography (Count 3). Crim. Doc. 82 at 1.[1] He was sentenced to consecutive terms of 360 months on Count 1, 120 months on Count 2, and 120 months on Count 3—for an aggregate term of 600 months' imprisonment. Crim. Doc. 82 at 2. Winchel was also ordered to pay $2000 in restitution. Crim. Doc. 82 at 7.[2]

On September 25, 2019, Winchel timely filed this Section 2255 motion alleging (1) his 600-month sentence represented an unwarranted sentencing disparity, and (2) his counsel rendered ineffective assistance in (a) failing to hire an expert to investigate further Winchel's claim that a foreign government had hacked Winchel's computer devices and to discover bases to challenge the lawfulness of the investigation and (b) failing to move to suppress evidence based on the "international silver-platter doctrine." Doc. 5 at 9-21. The Government has filed a response opposing Section 2255 relief. Doc. 11. Winchel has filed a reply. Doc. 15.

Upon review, the Court finds that (1) Winchel's sentencing disparity claim is waived and procedurally barred, (2) his ineffective assistance of counsel claims

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[1] All "Crim. Doc." citations refer to the related criminal case: *United States v. Winchel*, No. 3:15-CR-079-D-1 ((N.D. Tex. July 22, 2016).

[2] Upon subsequent remand from the Court of Appeals for the Fifth Circuit, the judgment was amended to reduce the restitution amount from $1,443,619.63; however, the remainder of the judgment was not modified. *See United States v. Winchel*, 896 F.3d 387 (5th Cir. 2018)).

were waived by his voluntary guilty plea, and (3) neither an evidentiary hearing nor discovery is warranted.

II. ANALYSIS

A. Sentence Disparity Claim is Waived and Procedurally Defaulted

Winchel argues that there is an unwarranted sentencing disparity between his 50-year sentence and the sentences received by defendants in other geographical regions who used the same child pornography website. Doc. 5 at 20 (arguing his sentence is "substantially harsher than other significant cases"). However, this claim does not fall within an exception to Winchel's voluntary waiver of his right to appeal and to seek other post-conviction relief in his Plea Agreement with the Government, which the Court accepted at sentencing. Under his appeal waiver, Winchel reserved only the rights to (a) appeal a sentence exceeding the statutory maximum, (b) challenge the voluntariness of any guilty plea or the waiver, or (c) contest the ineffective assistance of counsel. Crim. Doc. 27 at 6-7. Winchel does not challenge the voluntariness of his appeal waiver and only suggests in his reply that he "could not have known of the sentencing disparity when he agreed to the appeal waiver" or prior to sentencing, Doc. 15 at 8. However, as discussed in detail *infra*, Winchel knowingly and voluntarily entered into the Plea Agreement, which included the appeal waiver. Thus, his argument is frivolous.

Notwithstanding the foregoing, because Winchel did not present his sentencing-disparity claim on direct appeal, it is procedurally barred, absent a showing of cause and prejudice or that he is "actually innocent" of the crime for which he was convicted. *See United States v. Logan*, 135 F.3d 353, 355 (5th Cir. 1998) (*citing United States v. Frady*, 456 U.S. 152, 168 (1982)). Winchel does not satisfy the cause-and-actual prejudice exception to excuse his failure to raise the claim on direct appeal. Indeed, he does not suggest his actual innocence of the offenses of conviction or offer anything in his motion or reply in attempt to meet that heavy burden. Doc. 15.

B. Ineffective Assistance of Counsel Claims Waived by Voluntary Guilty Pleas

Next, Winchel asserts counsel rendered ineffective assistance in failing to (1) hire an expert to inspect if his computer devices had been hacked by governmental entities, (2) challenge the lawfulness of the investigation, including the veracity of the affidavit in support of the search warrant, and (3) file a motion to suppress evidence based on violation of the "international silver-platter doctrine." Doc. 5 at 8-17. However, as the Government correctly argues, Doc. 11 at 14-15, these claims of ineffective assistance based on events that allegedly occurred before Winchel entered his voluntary guilty pleas are waived. Moreover, Winchel's

current assertions that his guilty pleas were not voluntary, Doc. 15 at 3-4, are belied by the record.[3]

1. *Winchel's guilty pleas were knowing and voluntary*

To be constitutionally valid, a guilty plea must be knowingly, voluntarily, and intelligently made. *United States v. Hernandez*, 234 F.3d 252, 254 (5th Cir. 2000). In determining the voluntariness of a plea, the court considers all relevant circumstances, including whether the defendant: (1) had notice of the charges against him; (2) understood the constitutional protections he was waiving; and (3) had access to competent counsel. *United States v. Shepherd*, 880 F.3d 734, 740-41 (5th Cir. 2018); *see also Boykin v. Alabama*, 395 U.S. 238, 244 (1969) (finding that to be knowing and intelligent, the defendant must have "a full understanding of what the plea connotes and of its consequence").

In addition, when challenging the validity of his guilty plea, a movant ordinarily may not refute his sworn testimony given at a plea hearing while under oath. *United States v. Cervantes,* 132 F.3d 1106, 1110

[3] Although the Court does not reach the merits of Winchel's claims, with its Response, the Government submits an affidavit from Winchel's defense counsel who avers that (1) he was paid to hire a computer expert, (2) he hired and consulted with that expert, (3) he discussed with Winchel his options on how to proceed with his case, following the investigation, and (4) Winchel strategically decided to plead guilty and declined a motion to suppress, which resulted in the favorable dismissal of one count and avoided prosecution of any additional offenses. Doc. 12 at 3-4.

(5th Cir. 1998). The movant must also overcome the presumption of regularity and "great evidentiary weight" accorded court records. *United States v. Abreo*, 30 F.3d 29, 32 (5th Cir. 1994) (holding that signed, unambiguous plea agreement "is accorded great evidentiary weight" when determining whether a plea is entered voluntarily and knowingly).

The record in this case refutes Winchel's self-serving assertions that his plea was unknowing and involuntary. In the written Plea Agreement, Winchel declared that his plea of guilty was freely and voluntarily made and that he was fully satisfied with his lawyer's legal explanations of the plea agreement, his rights affected by the agreement, as well as alternatives available to him other than entering into the plea agreement. Crim. Doc. 27 at 6-7 (*Plea Agreement*). Winchel repeated these affirmations at rearraignment. Crim. Doc. 71 at 8-9 (*Rearraignment Tr.*). He admitted under oath that he understood the elements of the offense to which he was pleading guilty and confirmed that: (1) he had reviewed the plea agreement with counsel and understood all of its provisions; (2) no one had made any promises to induce him to enter into the plea agreement; and (3) he was freely and voluntarily pleading guilty. Crim. Doc. 71 at 8-9. Also, Winchel confirmed that he reviewed the factual resume before signing it, and that the stipulated facts contained in it were true. Crim. Doc. 71 at 23-25. He further averred that he was fully satisfied with his counsel's advice. Crim. Doc. 71 at 7. Winchel likewise acknowledged that he had discussed the sentencing guidelines with

counsel. Crim. Doc. 71 at 19. He indicated that he understood that the Court would determine and assess his sentence, after considering the PSR and consulting the Sentencing Guidelines, and that he would be bound by his plea even if the sentence was higher than he expected. Crim. Doc. 71 at 20.

In addition, Winchel had ample time—nearly ten months between rearraignment and his sentencing hearing—to advise the Court that his guilty plea was involuntary or that he was dissatisfied with defense counsel's conduct, but he did not do so. Similarly at sentencing, he voiced no objection about the voluntariness of his guilty plea or concern about his counsel's advice and allegedly deficient performance. Crim. Doc. at 74 (*Sentencing Tr.*). This is ample indication that Winchel's claims are thus driven by "buyer's remorse" rather than any defect in the guilty plea procedure.

Winchel is also wrong on the applicability of the case law he cites in support of his arguments that his guilty pleas were not voluntary. The alleged errors of counsel here are in no way analogous to that found of defense counsel in *Lee v. United States*, ___ U.S. ___, 137 S. Ct. 1958 (2017), where counsel's error of failing to adequately advise the defendant that deportation was a possible consequence of pleading guilty was "one that affected Lee's understanding of the consequences of pleading guilty." *Lee v. United States*, ___ U.S. ___, 137 S. Ct. 1958, 1965 (2017). The Supreme Court emphasized "deportation was the determinative issue in Lee's decision whether to accept the plea deal," as reflected by his responses during the plea colloquy. *Id.* at

1967. Here, Winchel complains only that counsel did not "vigorously test the government's case . . . [and] advised Defendant to enter a plea," not that counsel's alleged ineffective assistance caused him to enter an unknowing and involuntary plea. Doc. 5 at 13. Unlike the defendant in *Lee*, Winchel never gave any indication during the plea colloquy or afterwards that counsel's purported failures impacted his (Winchel's) understanding of the consequences of his guilty pleas. Simply stated, Winchel pleads no specific "connection between counsel's alleged errors and his guilty plea[s]." *Cf. United States v. Glinsey*, 209 F.3d 386, 392-93 (5th Cir. 2000) (concluding defendant had pled a sufficient connection because he explicitly challenged the voluntariness of the plea and sought to withdraw his guilty plea due to the ineffective assistance of counsel and his involuntary plea).

It is well established that "[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies," and "should instead look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Lee*, 137 S. Ct. at 1967. Again, Winchel presents no "contemporaneous evidence"—only self-serving, belated assertions—that his plea was unknowing and involuntary due to counsel's allegedly ineffective assistance. *See also United States v. Crain*, 877 F.3d 637, 650 (5th Cir. 2017) ("self-serving post hoc assertions about how [the defendant] would have pled" do not negate the contemporaneous comments at the plea hearing); *Cervantes*, 132 F.3d at 1110

(requiring "independent indicia of the likely merit of [movant's] allegations" to overcome arraignment testimony and plea agreement, which refuted his allegations).

Finally, in a somewhat disjointed and circular argument, Winchel reiterates that "*he would not have entered a plea* had trial counsel conducted proper investigation of Defendant's computer devices . . . [and] advised [him] of the viability of a motion to suppress." Doc. 15 at 2 (emphasis in original). Moreover, his argument is premised on the ineffective-assistance standard in *Hill v. Lockhart*, 474 U.S. 52 (1985), rather than the voluntary-plea standard discussed *supra*. Doc. 15 at 2-3. Winchel argues that the *Hill* prejudice prong does "not require a defendant to specifically allege that counsel's ineffectiveness 'rendered the plea involuntary' "—a position wholly contrary to his burden here. *Id.*

In sum, Winchel's belated arguments that counsel was ineffective and his guilty pleas were thus involuntary are simply insufficient to contradict his sworn testimony at rearraignment, which is entitled to a strong presumption of truthfulness. *See United States v. Lampazianie*, 251 F.3d 519, 524 (5th Cir. 2001) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977)); *see also United States v. McClinton*, 782 F. App'x 312, 314-15 (5th Cir. 2019) (per curiam) (affirming denial of Section 2255 motion without evidentiary hearing where "contemporaneous evidence" at rearraignment conclusively negated movant's *post hoc* assertions).

Therefore, the Court concludes that Winchel's guilty plea was knowing and voluntary.

2. *Voluntary plea waived pre-plea ineffective-assistance claims*

A guilty plea generally waives constitutional deprivations occurring prior to the plea. A knowing and voluntary guilty plea also waives all non-jurisdictional defects that occurred prior to the plea. *Tollett v. Henderson*, 411 U.S. 258, 267 (1973) ("When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. He may only attack the voluntary and intelligent character of the guilty plea. . . ."); *United States v. Bell*, 966 F.2d 914, 915 (5th Cir. 1992) ("[B]y entering a plea of guilty, a defendant ordinarily waives all non-jurisdictional defects in the proceedings below."). Such a waiver includes all claims of ineffective assistance of counsel "except insofar as the ineffectiveness is alleged to have rendered the guilty plea involuntary." *Glinsey*, 209 F.3d at 392; *see also Smith v. Estelle*, 711 F.2d 677, 682 (5th Cir. 1983) ("This [waiver] includes all claims of ineffective assistance of counsel *except* insofar as the alleged ineffectiveness relates to the voluntariness of the giving of the guilty plea." (cited cases omitted and emphasis in the original)).

As noted *supra*, the record confirms that Winchel's guilty plea was knowing and voluntary and that his claims of ineffective assistance of counsel are not fundamentally related to the entry of his voluntary plea. Winchel contends that it is "unjust to deny [his] claims for failing to present 'contemporaneous evidence' to support his allegations" without first affording him an opportunity to substantiate his allegations through an evidentiary hearing and with the evidence requested. Doc. 15 at 4-5. This contention rings hollow, as conspicuously absent from his motion and reply is any assertion that counsel's actions essentially caused Winchel to enter an unknowing and involuntary plea. *See United States v. Palacios*, 928 F.3d 450, 456 (5th Cir. 2019) (finding ineffective assistance claim waived where the defendant "never asserted" that the alleged ineffective assistance "somehow rendered [the] guilty plea involuntary").

Based on the foregoing, the Court finds that Winchel's voluntary guilty plea waived all of his pre-guilty plea claims, including his ineffective assistance of counsel claims premised on allegations of non-jurisdictional defects in the proceedings.

III. EVIDENTIARY HEARING NOT REQUIRED

Winchel contends he is entitled to an evidentiary hearing to resolve his ineffective assistance claims. Doc. 5 at 21; Doc. 15 at 7, 9. However, "[w]hen the files and records of a case make manifest the lack of merit of a Section 2255 [motion], the trial court is not

required to hold an evidentiary hearing." *United States v. Hughes*, 635 F.2d 449, 451 (5th Cir. 1981); *see also United States v. Reed*, 719 F.3d 369, 373-74 (5th Cir. 2013) ("A defendant is entitled to an evidentiary hearing on his § 2255 motion only if he presents 'independent indicia of the likely merit of [his] allegations.'" (quoting *Cavitt*, 550 F.3d at 442). Because Winchel's claims lack merit for reasons wholly supported by the record, as previously noted herein, no evidentiary hearing is required. *See McClinton*, 782 F. App'x at 314-15 (affirming denial of § 2255 motion without evidentiary hearing because "contemporaneous evidence" at rearraignment conclusively negated movant's *post hoc* assertions).

IV. CONCLUSION

Winchel's Section 2255 motion should be **DENIED**, and this case should be **DISMISSED WITH PREJUDICE**.

SO RECOMMENDED on January 25, 2021.

/s/ Renee Harris Toliver
RENEE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE

Appendix E

Order Terminating Motion for Discovery as Moot.
Case No. 3:19-cv-02290-D-BK

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CHRISTIAN WINCHEL, MOVANT,	§	
	§	**CIVIL NO. 3:19-CV-2290-D-BK (CRIMINAL NO. 3:15-CR-079-D-1)**
v.	§	
UNITED STATES OF AMERICA, RESPONDENT.	§	
	§	
	§	

ORDER

(Filed Jan. 25, 2021)

Winchel's motion for discovery, Doc. 4, is superseded by his amended motion and is thus **TERMINATED**. Further, in light of the contemporaneous recommendation of the undersigned that Winchel's amended Section 2255 motion be denied, Winchel's amended motion for discovery, Doc. 6, is **TERMINATED AS MOOT**. Should the district judge decline to accept the recommendation of the undersigned magistrate judge, Winchel may re-urge his amended motion for discovery.[1]

[1] Winchel seeks extensive discovery in support of his claims, including: (1) an examination of all computer devices for evidence of unlawful government intrusion, (2) any documentation between the government and "FLA 1" relating to the investigation of the child pornography website and Winchel's username and (3) copies of the website server(s) allegedly provided to the government by "FLA 1"). Doc. 6 at 5.

SO ORDERED on January 25, 2021.

/s/ Renee Harris Toliver
RENEE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE

Appendix F

Judgment Under Review.
Case No. 3:19-cv-02290-D-BK

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

CHRISTIAN WINCHEL, Movant,	§	
	§	
	§	**CIVIL NO. 3:19-CV-2290-D (CRIMINAL NO. 3:15-CR-079-D-1)**
v.	§	
	§	
UNITED STATES OF AMERICA,	§	
	§	
Respondent.	§	

JUDGMENT

(Filed Feb. 25, 2021)

The court has entered its order adopting the findings, conclusions, and recommendation of the United States Magistrate Judge in this case. It is therefore ordered and adjudged that the motion to vacate sentence under 28 U.S.C. § 2255 is denied, and the case is dismissed with prejudice.

Done at Dallas, Texas February 25, 2021.

/s/ Sidney A. Fitzwater
SIDNEY A. FITZWATER
SENIOR JUDGE