IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 22-12379-A

DONTAVIOUS BLAKE,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

ORDER:

Dontavious Blake is a federal prisoner serving a 324-month sentence after a jury convicted him for sex trafficking of children and conspiracy to sex traffic children. He seeks a certificate of appealability ("COA") to appeal the district court's order denying his *pro se* 28 U.S.C. § 2255 motion. In that motion, he raised the following grounds for relief: (1) trial counsel was allegedly ineffective during the pretrial plea-bargaining process by misadvising him concerning the consequences of pleading guilty; (2) trial counsel was allegedly ineffective during trial for failing to object to his codefendant's counsel's prejudicial tactics against him, which created a conflict of interest; (3) trial counsel was allegedly ineffective for failing to file a motion for judgment of

acquittal at the close of the government's case; and (4) the district court judge should disqualify himself concerning any further proceedings associated with the § 2255 motion for previously exhibited partiality.

To obtain a COA, a movant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The movant satisfies this requirement by demonstrating that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong" or that the issues "deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Here, reasonable jurists would not debate the district court's denial of Blake's § 2255 motion. The district court conducted an evidentiary hearing on Claim 1, in which the government presented various advisory letters sent to Blake by counsel and counsel's notes. A review of that documentary evidence reveals that counsel's advice was consistent, reasonable, and cannot be said to have constituted deficient performance. Accordingly, Blake failed to make the requisite showing in the § 2255 proceeding that "no competent counsel would have taken the action that his counsel did take." *United States v. Freixas*, 332 F.3d 1314, 1319-20 (11th Cir. 2003) (quotation omitted).

Claim 2 fails because counsel objected on three of the four instances cited by Blake. Although counsel did not object on the fourth occasion, any objection would have been without merit. *See Bolender v. Singletary*, 16 F.3d 1547, 1573 (11th Cir. 1994). Moreover, even if Blake could show that counsel was deficient for failing to object on that occasion, he failed to demonstrate that he was prejudiced by such deficient performance, especially when considering that the district court ultimately varied downward to impose a sentence below the guideline imprisonment range.

The district court correctly denied Claim 3 because the record clearly indicates that counsel did move for judgment of acquittal on all counts at the close of the government's presentation of evidence, which the district court granted as to Counts 4-6 and denied as to Counts 1-3.

Finally, reasonable jurists would not debate the district court's denial of Claim 4. The comments cited by Blake as evidence of bias were made at sentencing by the same district-court judge who had presided over the trial. As the district court itself noted, those statements were made based on information acquired in the course of the criminal proceedings. Thus, the judge's comments could form the basis for a meritorious bias motion only if they displayed a "deep-seated favoritism or antagonism that would make fair judgment impossible." *Liteky v. United States*, 510 U.S. 540, 554-55 (1994). Given the seriousness of the offenses at issue in this case and the overwhelming evidence of Blake's guilt presented at trial, combined with the fact that the district court varied below the guideline imprisonment range in imposing Blake's sentence, Blake did not establish any bias or prejudice to the extent that the district court judge should have recused himself from the collateral proceedings. *See* 28 U.S.C. § 455(a).

Accordingly, Blake's motion for a COA is DENIED.

/s/ Robin S. Rosenbaum
UNITED STATES CIRCUIT JUDGE