

## APPENDIX

- 1) Habeas Corpus Case filed in Ocala Division, Middle District Court; refusing to address issue of VOID judgment, in reliance on McCarthan Holdings from 11th Cir. en banc.
  
- 2) 2255 MOTION docketed erroneously as Civil case: (1:18-CV-20822-UU) with Judge Ursula Ungaro, making multiple substantive errors:

Judge Ungaro cites her sentencing transcription(DE 82), admitting the recommended sentence would be unequal: "I also want to say, in addition to the fact that imposing the guideline would create a gross disparity,.." (14th/5th amendment protections)

However Judge Ungaro overlooks this basic fact: 18 U.S.C. § 3041 only allowed an arrest for "Any offense against the United States...". further she avoids § 3231's requirement that an "actual offense against the Law(s) of the United States..." be self-originated, not State/ATF created and induced. (21 U.S.C. § 846 is the basis for ALL alleged and all "framed" criminal actions). Such conduct would never be allowed at the State's level.

Judge Ungaro later states: "A prisoner is entitled to relief under § 2255 if the court imposed a sentence that (1) violated the Constitution or laws of the United States;"

Judge Ungaro never once checked her Article III authority, to ever rule in the first of cases (criminal) nor the second of cases (civil 2255). Had she done so, a totally different outcome would have occurred. No conviction for a Non-injurious, non-actual crime.

"Crime prevention" does not allow for the enticement to commit crime, followed by the arrest and imprisonment, before crime is committed. Analogous to this: "I pulled you over to give you a speeding ticket, because traffick patterns indicate that you may be heading towards a speeding incident in the next 5 miles." (Traffic Police analogy)

- 3) Exhibit A: Motion to reinstate Habeas Corpus as above (# 1) in appendix.

(1)

**JOHN LENARD TAYLOR, Petitioner, v. WARDEN, FCC COLEMAN - LOW, Respondent.**  
**UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, OCALA DIVISION**  
**2023 U.S. Dist. LEXIS 2688**  
**Case No: 5:23-cv-5-TPB-PRL**  
**January 6, 2023, Decided**  
**January 6, 2023, Filed**

**Editorial Information: Prior History**

Taylor v. United States, 2020 U.S. Dist. LEXIS 120625 (S.D. Fla., July 7, 2020)

**Counsel** {2023 U.S. Dist. LEXIS 1} John Lenard Taylor, Petitioner, Pro se,  
COLEMAN, FL.

**Judges:** TOM BARBER, UNITED STATES DISTRICT JUDGE.

**Opinion**

**Opinion by:** TOM BARBER

**Opinion**

**ORDER OF DISMISSAL WITHOUT PREJUDICE**

Petitioner, a federal inmate incarcerated at the Coleman Federal Correctional Complex, initiated this civil action by filing a Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 (Doc. 1). On July 12, 2017, in the Southern District of Florida, Petitioner entered a guilty plea to conspiracy to commit Hobbs Act robbery (count one), attempt to commit Hobbs Act robbery (count two), conspiracy to possess with intent to distribute cocaine (count three), possession of a firearm in furtherance of a drug trafficking crime (count five), and felon in possession of a firearm and ammunition (count six).<sup>1</sup> *United States v. Taylor*, No. 1:17-cr-20218-KMW-1 (S.D. Fla. 2017). The trial court sentenced Petitioner to concurrent 128-month terms of incarceration as to counts one, two, three, and six, followed by a consecutive 60-month term of incarceration as to count five. *Id.* Petitioner did not file a direct appeal. Petitioner later filed with the sentencing court a motion to vacate under 28 U.S.C. § 2255, which the sentencing court summarily denied on the merits in July 2020. See *Taylor v. United States*, No. 1:18-cv-20822-UU (S.D. Fla. July 8, 2020). Petitioner did not appeal the sentencing court's order. Petitioner is in BOP{2023 U.S. Dist. LEXIS 2} custody with a release date of July 13, 2030. See Federal Bureau of Prisons, Inmate Search, available at [www.bop.gov](http://www.bop.gov) (last visited Jan. 6, 2023).

In his Petition, Petitioner argues: (1) the sentencing court lacked Article III standing for his "hypothetical case"; (2) officers were without authority to arrest him; (3) his conviction for count five is illegal because it is a "hypothetical offense"; (4) his convictions for counts one and two are illegal because his actions did not meet all the elements of the offenses; (5) his conviction for count three violates due process; and (6) his conspiracy convictions are illegal because the government lacked the evidence to support the crimes. See generally Doc. 1.

Rule 12(h)(3) of the Federal Rules of Civil Procedure provides that "[i]f the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action." See also Rule 12,

Rules Governing Section 2255 proceedings. The Eleventh Circuit has held that 28 U.S.C. § 2241 is unavailable to challenge the validity of a sentence except on very narrow grounds. *McCarthan v. Director of Goodwill Industries-Suncoast, Inc.*, 851 F.3d 1076, 1079 (11th Cir. 2017); *Bernard v. FCC Coleman Warden*, 686 F. App'x 730 (11th Cir. 2017) (citing *McCarthan*, 851 F.3d at 1092-93). None of those grounds are present here, and thus Petitioner may not proceed under § 2241. As such, this case is due to be dismissed.

Accordingly, it is

**ORDERED AND ADJUDGED:**

1. This case is **DISMISSED without prejudice.**
2. The Clerk{2023 U.S. Dist. LEXIS 3} shall enter judgment accordingly, terminate any pending motions, and close this case.

**DONE AND ORDERED** in Tampa, Florida, this 6th day of January, 2023.

/s/ Tom Barber

**TOM BARBER**

**UNITED STATES DISTRICT JUDGE**

(2)

**JOHN LENARD TAYLOR, Petitioner, v. UNITED STATES OF AMERICA, Respondent.**  
**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA**

2020 U.S. Dist. LEXIS 120625

Case No. 1:18-cv-20822-UU,Crim. No. 1:17-cr-20218-UU-1

July 7, 2020, Decided

July 8, 2020, Filed

**Editorial Information: Subsequent History**

Writ of habeas corpus dismissed, Without prejudice Taylor v. Warden, FCC Coleman - Low, 2023 U.S. Dist. LEXIS 2688 (M.D. Fla., Jan. 6, 2023)

**Editorial Information: Prior History**

United States v. Robinson, 2018 U.S. App. LEXIS 16255 (11th Cir. Fla., June 15, 2018)

**Counsel** {2020 U.S. Dist. LEXIS 1}John Lenard Taylor, Plaintiff, Pro se,  
Coleman, FL.

For United States of America, Defendant: Noticing 2255 US

Attorney, LEAD ATTORNEY; Jessica Kahn Obenauf, US Attorney's Office, Miami, FL.

**Judges:** URSULA UNGARO, UNITED STATES DISTRICT JUDGE.

**Opinion**

**Opinion by:** URSULA UNGARO

**Opinion**

**ORDER**

This Cause is before the Court upon Petitioner's *pro se* Second Amended Motion to Vacate Sentence Under 28 U.S.C. § 2255 (D.E. 12) (the "Motion").

THE COURT has considered the Motion, pertinent portions of the record, and is otherwise fully advised in the premises.

**BACKGROUND**

On March 23, 2017, a federal grand jury in the Southern District of Florida returned a seven-count Indictment charging the Petitioner with conspiracy to commit Hobbs Act robbery, in violation of 18 U.S.C. § 1951(a) (Count 1); attempt to commit Hobbs Act robbery, in violation of 18 U.S.C. § 1951(a) (Count 2); conspiracy to possess with intent to distribute cocaine, in violation of 21 U.S.C. § 846 (Count 3); attempt to possess with intent to distribute cocaine, in violation of 21 U.S.C. § 846 (Count 4); possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. 924(c)(1)(A) (Count 5); and felon in possession of a firearm and ammunition, in violation of 18 U.S.C. § 922(g)(1) (Count 6). CR-DE 10. The 18 U.S.C. § 924(c) count was predicated upon Counts 3 and 4. *Id.* at 4 (Defendant "did knowingly {2020 U.S. Dist. LEXIS 2} possess a firearm in furtherance of a drug trafficking crime, a felony offense for which the defendant may be prosecuted in a court of the United States, that is, a violation of Title 21, United States Code, Section 846, as charged in Counts 3 and 4 of this Indictment . . .").

(2)

On July 12, 2017, the Petitioner entered a plea of guilty to Counts 1, 2, 3, 5, and 6 of the Indictment pursuant to a written plea agreement. CR-DE 54. The United States Probation Office ("USPO") prepared a presentence investigation report ("PSI") that stated that the Petitioner qualified as a career offender based upon a 2004 conviction for cocaine distribution, PSI ¶ 37, and a 2008 conviction for trafficking cocaine (200 grams or more, but less than 400 grams), *id.* ¶¶ 39, 40. As such, the PSI stated that the Petitioner's guideline imprisonment range was 322 to 387 months, which included the mandatory minimum consecutive 60-month term for the § 924(c) conviction. *Id.* ¶ 80.

On October 12, 2017, counsel for the Petitioner filed objections to the USPO's assessment of the career offender enhancement and "probation's conclusion that his prior drug offenses qualify as 'controlled substance offenses' under the career offender guideline. CR-DE 57 at 1. Counsel{2020 U.S. Dist. LEXIS 3} acknowledged that his objections were "foreclosed" but preserved the issues for "further review." *Id.*

On October 23, 2017, the Court sentenced the Petitioner. CR-DE 63; CR-DE 82 (sentencing transcript). Prior to pronouncing sentence, the Court made the following comments:

THE COURT: So Mr. Taylor's guidelines are 322 to 387 months - that's including the 60-month consecutive [sentence] on Count 5 - and his criminal history category is much less than [his codefendant's]. So while it may be true that Mr. Taylor had a somewhat greater role in the planning of the offense, his criminal history is less. So I think it all washes out and they ought to get the same sentence.

....

THE COURT: I also want to say, in addition to the fact that imposing the guideline sentence would create a gross disparity, that I believe that characterizing him as a career offender overstates his criminal history.CR-DE 82 at 2:3-9; *id.* at 2:24-3:2. The Court then sentenced the Petitioner to 128 months' imprisonment as to Counts 1, 2, 3 and 6, all to be served concurrently, followed by a consecutive 60 months' imprisonment as to Count 5. CR-DE 63. The Petitioner did not file a direct appeal. On March 2, 2018, the Petitioner{2020 U.S. Dist. LEXIS 4} timely filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255, CR-DE 78, which he amended with leave of Court on May 10, 2018. CV-DE 12.

In his Motion, Petitioner asserts: (1) that the district court lacked jurisdiction to sentence him for a § 924(c) conviction predicated on a 21 U.S.C. § 841(a) violation because 21 U.S.C. § 841(a) does not describe a "felony" offense since the penalties are separately enumerated in subsection (b); (2) that his § 924(c) conviction must be vacated because the predicate offense, 21 U.S.C. § 841(a), is unconstitutional; (3) that his Sixth Amendment right to effective assistance of counsel was violated when counsel failed to challenge the validity of the § 924(c) conviction based on claims 1 and 2 as stated above; (4) that his constitutional rights were violated when counsel failed to object to Petitioner's "erroneous career offender classification" under the Sentencing Guidelines, "where Petitioner's instant offense [under] 21 U.S.C. § 841(a) was not categorically a federal felony offense";1 and (5) that his Sixth Amendment right to effective assistance of counsel was violated when counsel "failed to argue that Petitioner's prior drug trafficking offenses under Fla. Stat. § 893.135 were not 'controlled substance' offenses pursuant to USSG § 4B1.2(b)." CV-DE 12. The Court later allowed Petitioner to supplement{2020 U.S. Dist. LEXIS 5} his Motion to argue that his conviction on Count 6 for being a felon in possession of a firearm and ammunition in violation of 18 U.S.C. 922(g)(1) should be vacated based on *Rehaif v. United States*, 139 S. Ct. 2191, 204 L. Ed. 2d 594 (2019). CV-DE 20; CV-DE 24.

## LEGAL STANDARD

Section 2255 states in relevant part that "[a] prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution . . . may move the court which imposed the sentence to vacate, set aside, or correct the sentence." 28 U.S.C. § 2255. Because collateral review is not a substitute for direct appeal, the grounds for collateral attack on final judgments pursuant to § 2255 are extremely limited. A prisoner is entitled to relief under § 2255 if the court imposed a sentence that (1) violated the Constitution or laws of the United States, (2) exceeded its jurisdiction, (3) exceeded the maximum authorized by law, or (4) is otherwise subject to collateral attack. 28 U.S.C. § 2255(a); *McKay v. United States*, 657 F.3d 1190, 1194 n.8 (11th Cir. 2011). If a court finds a claim under § 2255 to be valid, the court "shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate." 28 U.S.C. § 2255(b).

## ANALYSIS

### I. Petitioner's 924(c) Conviction{2020 U.S. Dist. LEXIS 6} was Properly Predicated on Petitioner's Conviction on Count 3, Attempt to Possess with Intent to Distribute Cocaine in Violation of 21 U.S.C. §§ 841(a), 846.

Petitioner argues that the district court "exceeded its jurisdiction" when it imposed his conviction and sentence pursuant to 18 U.S.C. § 924(c). CV-DE 12 at 3. Citing *Moncrieffe v. Holder*, 569 U.S. 184, 133 S. Ct. 1678, 185 L. Ed. 2d 727 (2013), and *Mathis v. United States*, 136 S. Ct. 2243, 195 L. Ed. 2d 604 (2016), he appears to argue that a violation of 21 U.S.C. § 841(a) can never be considered a predicate federal felony offense for a § 924(c) conviction because the penalty provision accompanying § 841(a) is codified in subsection (b). CV-DE 12 at 7 (claiming that "841(a) can never be said to be a 'federal' felony offense as such provision, from its offense elements alone, fails to include any penalty provision at all"); *id.* at 9-10 ("The Supreme Court makes clear that § 841(a) and § 841(b) are totally unrelated in defining offenses elements. Therefore, when focusing on the offense elements of § 841(a) and not the underlying conduct within § 841(b), § 841(a) is not a federal felony as defined within § 924(c).").

The United States argues, and the undersigned agrees, that Petitioner is incorrect as a matter of law. There simply can be no dispute that a violation of 21 U.S.C. § 841(a) qualifies as a "felony punishable under the Controlled Substances Act (21 U.S.C. § 801 et. seq.)." 18 U.S.C. § 924(c)(2).

The Court recognizes that, on its face, § 841 differentiates between the elements{2020 U.S. Dist. LEXIS 7} of the offense and the prescribed penalties by enumerating the elements in subsection (a) and the penalties in subsection (b). However, the penalty applicable to Petitioner's subsection (a) criminal conduct (conspiracy to possess with intent to distribute more than 5 kilograms of cocaine) is above the threshold for imposition of a felony sentence, *i.e.*, one year. Therefore, when Petitioner pled guilty to Count 3, he agreed that he engaged in conduct that amounted to a "felony punishable under the Controlled Substances Act." See 18 U.S.C. § 924(c)(2); 21 U.S.C. § 846. Moreover, as the United States points out, numerous federal criminal statutes are structured so that the elements are contained in one statutory section or subsection and the corresponding penalty provision set forth in another.<sup>2</sup>

There is simply nothing in *Mathis*, *Moncrieffe*, or anywhere else that would call into question the district court's jurisdiction to predicate Petitioner's § 924(c) conviction on his 21 U.S.C. §§ 841(a), 846 conviction. Accordingly, Petitioner's Motion to Vacate on the first ground will be denied.

## II. 21 U.S.C. § 841(a) is Constitutional.

Petitioner's next argument is essentially the same as his first: that 21 U.S.C. § 841(a) is unconstitutional because the absence of penalties is subsection (a) renders it a "non-offense" which cannot serve as a{2020 U.S. Dist. LEXIS 8} predicate for Petitioner's 18 U.S.C. § 924(c) conviction. But in the annals of the law there is no constitutional infirmity in Congress's decision to proscribe drug trafficking by describing the offensive conduct in subsection (a) and the penalties based on drug quantities in subsection (b).

## III. Counsel Was Not Ineffective.

Petitioner next argues that counsel was ineffective because his counsel: (1) failed to challenge the use of his 21 U.S.C. § 841(a) conviction as a predicate for his 18 U.S.C. § 924(c) conviction; (2) failed to object to Petitioner's "erroneous career offender classification" under the Sentencing Guidelines, "where Petitioner's instant offense [under] 21 U.S.C. § 841(a) was not categorically a federal felony offense"; and (3) "failed to argue that Petitioner's prior drug trafficking offenses under Fla. Stat. § 893.135 were not 'controlled substance' offenses pursuant to USSG § 4B1.2(b)." CV-DE 12 at 14, 18, 20.

The Supreme Court has established a two-part test for determining if a petitioner is entitled to habeas relief based on an allegation of ineffective assistance of counsel. Under that test, a petitioner must show (1) that his counsel's representation was deficient, and (2) that this deficient representation prejudiced the petitioner. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). In determining whether the first portion of the test has{2020 U.S. Dist. LEXIS 9} been met, the proper standard is "reasonably effective assistance[.]" or "whether counsel's representation fell below an objective standard of reasonableness." *Weeks v. Jones*, 26 F.3d. 1030, 1036 (11th Cir. 1994). Application of this standard requires that judicial scrutiny of counsel's performance be highly deferential; a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. *Id.* Accordingly, "the defendant bears the burden of proving that counsel's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." *Id.*

Even if a court finds some deficiency in the performance of counsel, a petitioner is not entitled to relief on ineffective assistance grounds unless the second prong of the *Strickland* test is met. *United States v. Hilliard*, 752 F.2d 578, 580 (11th Cir. 1985). Under the second prong, a petitioner must 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.* When a petitioner fails to make a sufficient showing of prejudice, a court need not even address the adequacy{2020 U.S. Dist. LEXIS 10} of counsel's performance. *Id.* at 697; *Tafero v. Wainwright*, 796 F.2d 1314, 1319 (11th Cir. 1986).

### A. Counsel Was Not Ineffective for Failing to Object to 21 U.S.C. § 841(a) as a Predicate for the § 924(c) Conviction.

Petitioner alleges that his counsel was ineffective for not raising a challenge to 21 U.S.C. § 841(a) as a predicate for a violation of § 924(c). CV-DE 12 at 14. For reasons stated *supra*, such claim is meritless, and an attorney is not ineffective for failing to raise or preserve a meritless issue. *Ladd v. Jones*, 864 F.2d 108, 109-10 (11th Cir. 1989); *United States v. Winfield*, 960 F.2d 970, 974 (11th Cir. 1992). If counsel had raised the issue, there was no basis in the law that would have allowed the district court to grant it. Consequently, Petitioner is unable to establish that his counsel was actually deficient, or that he has suffered any actual prejudice.

**B. Counsel Did Object to Petitioner's Career Offender Classification and Was Not Ineffective for Failing to Object to the Florida "Trafficking" Conviction as a Career Offender Predicate.**

As the United States points out, Petitioner's counsel did object to the career offender classification in writing but prudently recognized that his argument was foreclosed by binding precedent. CR-DE 57 at 1 ("Mr. Taylor objects to probation's conclusion that his prior drug offenses qualify as 'controlled substance offenses' under § 4B1.2(b). However, Mr. Taylor understands{2020 U.S. Dist. LEXIS 11} that his objection is foreclosed, but raises his objection to preserve the issue for further review."). Indeed, at the time of Petitioner's sentence, the Eleventh Circuit had held, applying a modified categorical approach, that a violation under Florida Statute Section 893.135 qualified as a "controlled substance offense" once a defendant possesses 28 grams or more of cocaine. See *United States v. Rodriguez*, 572 F. App'x 884, 887 (11th Cir. 2014) ("We have held § 893.135(1)(b) necessarily infers an intent to distribute once a defendant possesses 28 grams or more of cocaine . . . .") (citing *United States v. James*, 430 F.3d 1150, 1155-56 (11th Cir. 2005); see also *United States v. Shannon*, 631 F.3d 1187, 1189 (11th Cir. 2011).

In any event, Petitioner cannot demonstrate prejudice. The undersigned did not sentence the Petitioner based on the career offender guidelines. See CR-DE 82. Had the Petitioner been sentenced as a career offender, the lowest total sentence that the Court could have imposed would have been 322 months. PSI ¶ 80. Instead, the Court imposed a sentence of 188 months. CR-DE 63.

**IV. Petitioner's *Rehail* Claim Fails.**

After Petitioner filed the instant Motion to Vacate, he moved to amend to assert a *Rehail* claim arguing: (1) the indictment was fatally defective because it omitted a jurisdictional element; i.e., that Petitioner knew he was a convicted felon when he engaged in the charged conduct; and (2) that{2020 U.S. Dist. LEXIS 12} his guilty plea to Count 6 was not "knowingly made" because his counsel failed to advise him that knowledge of his status as a convicted felon was an essential element of the offense charged in Count 6. CV-DE 20 at 6-9.

In *Rehail*, the Supreme Court held that, in a prosecution for possession of a firearm by a restricted person in violation of 18 U.S.C. §§ 922(g) and 924(a), the government must prove both that the defendant knew he possessed the firearm and that he knew he belonged to the relevant category of restricted persons (in this case, that he had been convicted in any court of a crime punishable by imprisonment for a term exceeding one year). 139 S. Ct. at 2200.

The Supreme Court has made clear that a defendant may properly claim in a § 2255 motion that, based on a court decision that resulted in a change in the law after affirmance of his conviction, his "conviction and punishment were for an act that the law does not make criminal." *Davis v. United States*, 417 U.S. 333, 346, 94 S. Ct. 2298, 41 L. Ed. 2d 109 (1974). Because *Rehail* narrows the "class of persons that the law punishes" under Sections 922(g) and 924(a), the United States points out, "it is retroactive on collateral review." CV-DE 22 at 2 (quoting *Welch v. United States*, 136 S. Ct. 1257, 1267, 194 L. Ed. 2d 387 (2016)). Further, the Petitioner timely seeks to raise his *Rehail* claim within one year, under Section 2255(f)(3).

While the indictment did not{2020 U.S. Dist. LEXIS 13} allege explicitly that Petitioner knew that he was a convicted felon prohibited from possessing a firearm, the absence of the allegation is not a jurisdictional defect. See *United States v. Moore*, 954 F.3d 1322, 1332-37 (11th Cir. 2014) (extensively reviewing precedent and rejecting the argument that the absence of the knowledge-of-status element in an indictment constitutes a jurisdictional defect). Therefore, Petitioner's first *Rehail* claim fails.

As to Petitioner's second *Rehail* claim, Petitioner did not preserve a knowledge-of-status objection in the district court or on direct appeal. As a "general rule," claims not raised at trial or on direct appeal "may not be raised on collateral review." *Massaro v. United States*, 538 U.S. 500, 504, 123 S. Ct. 1690, 155 L. Ed. 2d 714 (2003). Accordingly, the Petitioner procedurally defaulted this claim. See *Wainwright v. Sykes*, 433 U.S. 72, 85-86, 97 S. Ct. 2497, 53 L. Ed. 2d 594 (1977) (claim defaulted when no contemporaneous objection was lodged at trial); *Murray v. Carrier*, 477 U.S. 478, 490-492, 106 S. Ct. 2639, 91 L. Ed. 2d 397 (1986) (claim not raised on direct appeal is procedurally defaulted).

To overcome this procedural default, Petitioner must either show both "cause" for the default and "actual prejudice" from the asserted *Rehail* error, or that he is actually innocent. *Bousley v. United States*, 523 U.S. 614, 622, 118 S. Ct. 1604, 140 L. Ed. 2d 828 (1998) (citations omitted). While binding precedent foreclosed the position adopted by the Supreme Court in *Rehail*, see *United States v. Jackson*, 120 F.3d 1226 (11th Cir. 1997), "futility cannot constitute cause if it means simply{2020 U.S. Dist. LEXIS 14} that a claim was unacceptable to that particular court at that particular time," *Bousley*, 523 U.S. at 623 (citation omitted). While a defendant can establish cause for not bringing a "claim that 'is so novel that its legal basis is not reasonably available to counsel,'" *id.* at 622-23 (quoting *Reed v. Ross*, 468 U.S. 1, 16, 104 S. Ct. 2901, 82 L. Ed. 2d 1 (1984)), the question presented in *Rehail* was thoroughly and repeatedly litigated in the courts of appeals over the last three decades. As such, it does not qualify under the novelty exception and the Petitioner cannot establish cause. *Id.* at 622 ("Indeed, at the time of petitioner's plea, the Federal Reporters were replete with cases involving challenges to the notion that 'use' is synonymous with mere 'possession.'" (citations omitted)).

Nor can Petitioner establish actual prejudice. To demonstrate prejudice, the Petitioner "must shoulder the burden of showing, not merely that the errors at his trial [or sentencing] created a possibility of prejudice, but that they worked to his actual and substantial disadvantage, infecting his entire trial [or sentencing] with error of constitutional dimensions." *Brown v. United States*, 720 F.3d 1316, 1333 (11th Cir. 2013) (citation omitted). Thus, the Petitioner must show that there is a reasonable probability that, but for the error, his sentence would have been different.{2020 U.S. Dist. LEXIS 15} See *Mincey v. Head*, 206 F.3d 1106, 1147 (11th Cir. 2000). Here, Petitioner was sentenced to 128 months' imprisonment for Counts 1, 2, 3, and 6, all to be served concurrently. CR-DE 63. Even without the § 922(g) conviction, the Court could have lawfully imposed the same sentence.<sup>3</sup> See *United States v. Hester*, 287 F.3d 1355, 1357 (11th Cir. 2002) (denying relief on direct appeal under a plain error standard because "[w]hen the ultimate sentence . . . does not exceed the aggregate statutory maximum for the multiple convictions . . . no effect on substantial rights has occurred that must be remedied" and "the fairness, integrity, and public reputation of the judicial proceedings are not subject to serious question") (citations omitted); *Brown v. Warden, FCC Coleman-Low*, 817 F.3d 1278, 1284 (11th Cir. 2016) (denying relief under the savings clause of § 2255(e) because "there is no fundamental defect when a prisoner is not serving more time, in total, than authorized by law"). Removing the § 922(g) conviction from the sentencing calculus would not change Petitioner's guideline imprisonment range. Petitioner did not receive any enhancements for being a felon in possession of a firearm, rather his sentencing guideline range was determined by the drug and career offender guidelines. PSI ¶¶ 19-30, 80. Petitioner cannot establish actual prejudice because he is unable to show that his § 922(g) conviction had{2020 U.S. Dist. LEXIS 16} any impact on his overall sentence.

Finally, Petitioner does not claim that he did not know he was a convicted felon at the time of the offense; therefore, he has not asserted actual innocence as a basis to vacate the guilty plea. See CV-DE 15 at 7-9. And he is not otherwise capable of demonstrating prejudice. Petitioner

(2)

acknowledged at his plea colloquy that he was guilty as charged of being a felon in possession of a firearm, and his PSI reflected that at the time of the offense, he was a two-time felon. Thus, the alleged errors did not affect Petitioner's substantial rights.

Accordingly, for the reasons stated herein, it is hereby

ORDERED AND ADJUDGED that the Motion, D.E. 12, is DENIED. It is further

ORDERED AND ADJUDGED that Magistrate Judge Reid is no longer referred to this case. It is further

ORDERED AND ADJUDGED that this case is CLOSED. No certificate of appealability shall issue. No evidentiary hearing shall be held.

DONE AND ORDERED in Chambers in Miami, Florida this 7th day of July, 2020.

/s/ Ursula Ungaro

URSULA UNGARO

UNITED STATES DISTRICT JUDGE

#### Footnotes

1

In Claim 4, Petitioner asserts that his due process rights were violated for counsel's failure to object to Petitioner's career offender classification, and in Claim 6, Petitioner asserts that his Sixth Amendment right to effective assistance of counsel was violated for counsel's failure to object to Petitioner's career offender classification. CV-DE 12 at 15, 20. The Court interprets the Claims as duplicative and will treat them as one Claim for ease of reference.

2

See, e.g., 18 U.S.C. §§ 922 and 924 (setting forth unlawful acts in § 922 and penalties in § 924); 18 U.S.C. § 795 (setting forth elements of offense of photographing defense installations in § 795(a) and penalties in § 795(b)); 18 U.S.C. § 2701 (setting forth offense elements in subsection(a) and punishment in subsection (b)).

3

See 18 U.S.C. § 1951(a) (20 year statutory maximum of imprisonment for Hobbs Act robbery and conspiring to commit Hobbs Act robbery); 21 U.S.C. § 841(b)(1)(A)(ii) (10 year minimum/mandatory and up to life imprisonment for attempting and conspiring to possess with intent to distribute five kilograms or more cocaine); 18 U.S.C. § 924(c)(1)(A) (five year minimum/mandatory and up to life imprisonment for possessing a firearm in furtherance of a drug trafficking crime).

EXHIBIT A

Evidence of Existing McCarthian Opposition to  
access true Habeas Corpus, Constitutional relief.

**United States District Court**  
**Southern District of Florida**  
**MIAMI DIVISION**

**UNITED STATES OF AMERICA**

**JUDGMENT IN A CRIMINAL CASE**

v.

**Case Number - 1:17-20218-CR-UNGARO-**

**JOHN LENARD TAYLOR**

**USM Number: 14585-104**

Counsel For Defendant: Joaquin Padilla, AYPD  
 Counsel For The United States: Jessica Obenauf, AUSA  
 Court Reporter: William Romanishin

The defendant pleaded guilty to Count(s) One, two, Three, Five and Six of the Indictment.  
 The defendant is adjudicated guilty of the following offense(s):

| <b><u>TITLE/SECTION NUMBER</u></b>    | <b><u>NATURE OF OFFENSE</u></b>   | <b><u>OFFENSE ENDED</u></b> | <b><u>COUNT</u></b> |
|---------------------------------------|---|-----------------------------|---------------------|
| Title 18 USC 1951                     | Conspiracy to commit a Hobbs Act Robbery  | 3/7/17                      | One                 |
| Title 18 USC 1951(a)                  | Attempt to commit a Hobbs Act Robbery   | 3/7/17                      | Two                 |
| Title 21 USC 846 and 841(b)(1)(A)(ii) | Conspiracy to possess with intent to distribute five kilograms or more of cocaine | 3/7/17                      | Three               |
| Title 18 USC 924(c)(1)(A)             | Possession of a firearm in furtherance of a drug trafficking crime                | 3/7/17                      | Five                |
| Title 18 USC 922(g)(1)                | Felon in possession of a firearm and ammunition                                   | 3/7/17                      | Six                 |

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

Count(s) All remaining Count(s) are dismissed on the motion of the United States.

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

Date of Imposition of Sentence:  
10/13/2017

Ursula Ungaro  
URSULA UNGARO  
United States District Judge

October 23, 2017

DEFENDANT: JOHN LENARD TAYLOR  
CASE NUMBER: 1:17-20218-CR-UNGARO-

### **IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **ONE HUNDRED AND TWENTY-EIGHT (128) MONTHS** as to Counts One, Two, Three and Six all to be served **CONCURRENTLY** and **SIXTY (60) MONTHS** as to Count Five to be served **CONSECUTIVELY** to Counts One, Two, Three and Six. Total term of imprisonment is 188 months.

The defendant is remanded to the custody of the United States Marshal.

### **RETURN**

I have executed this judgment as follows:

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Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

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UNITED STATES MARSHAL

By: \_\_\_\_\_  
Deputy U.S. Marshal

DEFENDANT: JOHN LENARD TAYLOR  
CASE NUMBER: 1:17-20218-CR-UNGARO-

### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of **THREE (3) YEARS** as to Counts One, Two and Six and **FIVE (5) years** as to Counts Three and Five all to be served **CONCURRENTLY**.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

**The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.**

**The defendant shall cooperate in the collection of DNA as directed by the probation officer.**

**If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.**

If this judgment imposes a fine or a restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as any additional conditions on the attached page.

### **STANDARD CONDITIONS OF SUPERVISION**

1. the defendant shall not leave the judicial district without the permission of the court or probation officer;
2. the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
3. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. the defendant shall support his or her dependents and meet other family responsibilities;
5. the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. the defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment;
7. the defendant shall refrain from the excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11. the defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
12. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: JOHN LENARD TAYLOR  
CASE NUMBER: 1:17-20218-CR-UNGARO-

### SPECIAL CONDITIONS OF SUPERVISION

The defendant shall also comply with the following additional conditions of supervised release:

**Financial Disclosure Requirement** - The defendant shall provide complete access to financial information, including disclosure of all business and personal finances, to the U.S. Probation Officer.

**Permissible Search** - The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

**Substance Abuse Treatment** - The defendant shall participate in an approved treatment program for drug and/or alcohol abuse and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

DEFENDANT: JOHN LENARD TAYLOR  
CASE NUMBER: 1:17-20218-CR-UNGARO-

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on the Schedule of Payments sheet.

| <u>Total Assessment</u> | <u>Total Fine</u> | <u>Total Restitution</u> |
|-------------------------|-------------------|--------------------------|
| \$500.00                | \$                | \$                       |

\*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JOHN LENARD TAYLOR  
CASE NUMBER: 1:17-20218-CR-UNGARO-

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A. Lump sum payment of \$ due immediately, balance due

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

**The assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:**

**U.S. CLERK'S OFFICE  
ATTN: FINANCIAL SECTION  
400 NORTH MIAMI AVENUE, ROOM 8N09  
MIAMI, FLORIDA 33128-7716**

**The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.**

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

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