

APPENDIX A

CONTENTS

1. Unpublished Order Denying COA	1-2
2. Unpublished Order Denying Re-Hearing	3
3. District Court Memorandum Opinion and Order	4-15
4. Magistrate's R&R Recommending Denial and Dismissal	16-43
5. District Court Order on IFP (Certification)	44-45
6. Magistrate's Recommendation on IFP (Certification)	46-47

UNITED STATES OF AMERICA, Plaintiff-Appellee, versus STEPHEN CHRISTOPHER PLUNKETT,
Defendant-Appellant.

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

2023 U.S. App. LEXIS 21532

No. 23-10139

July 26, 2023, Filed

Notice:

**PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING
THE CITATION TO UNPUBLISHED OPINIONS.**

Editorial Information: Subsequent History

Reconsideration denied by, Rehearing denied by, En banc United States v. Plunkett, 2023 U.S. App. LEXIS 27988 (5th Cir. Tex., Oct. 19, 2023)

Editorial Information: Prior History

{2023 U.S. App. LEXIS 1}Application for Certificate of Appealability the United States District Court for the Northern District of Texas. USDC No. 3:20-CV-640, USDC No. 3:14-CR-239-1. Plunkett v. United States, 2020 U.S. Dist. LEXIS 243750, 2020 WL 7753725 (N.D. Tex., July 9, 2020)

Counsel For United States of America, Plaintiff - Appellee: Brian W. McKay, Esq., Assistant U.S. Attorney, U.S. Attorney's Office, Dallas, TX.
Stephen Christopher Plunkett, Defendant - Appellant, Pro se, Forrest City, AR.

Judges: BEFORE HAYNES, ENGELHARDT, and OLDHAM, Circuit Judges.

Opinion

Per Curiam:

Stephen Christopher Plunkett, federal prisoner # 36265-177, seeks a certificate of appealability (COA) to appeal the denial and dismissal of his 28 U.S.C. § 2255 motion challenging his two convictions for bank robbery. Plunkett argues that (i) the district court erred in denying his motions to amend his § 2255 motion, to conform the record, for recusal, for an evidentiary hearing, and for discovery; (ii) his trial counsel, Doug Morris, provided ineffective assistance when he advised Plunkett that his federal sentences on account of his robbery convictions would run concurrently with a state sentence imposed on account of a Georgia robbery conviction; (iii) Morris provided ineffective assistance when he refused to file a motion to withdraw Plunkett's guilty plea; (iv) his trial (2023 U.S. App. LEXIS 2) counsel, Chris Lewis, provided ineffective assistance when he (a) advised Plunkett not to file a motion to withdraw his plea; (b) advised Plunkett to reject the Government's sentencing offer; (c) failed to object to the district court's consideration of the wrong portion of the Guidelines; (d) made improper and inflammatory statements during the sentencing hearing; (e) failed to object to the Government's perjury and dishonest testimonial statements at sentencing; and (f) failed to object to the unreasonableness of Plunkett's sentence; and (v) his appellate counsel rendered ineffective assistance when he failed to raise various issues on appeal.

CIRHOT

1

© 2023 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved. Use of this product is subject to the restrictions and terms and conditions of the Matthew Bender Master Agreement.

36265177

As a preliminary matter, Plunkett raised several claims in his § 2255 motion that he does not reprise in his COA motion. His failure to do so results in the abandonment of those claims. See *Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999). Additionally, Plunkett did not raise in his amended § 2255 motion, and the district court did not address, his claims that counsel's cumulative errors resulted in the structural denial of counsel and that Morris and Lewis provided ineffective assistance when they respectively advised Plunkett not to-or refused to-file a motion to withdraw his guilty plea. As such, {2023 U.S. App. LEXIS 3} this court lacks jurisdiction to consider those claims. See *Black v. Davis*, 902 F.3d 541, 545-46 (5th Cir. 2018).

To obtain a COA, Plunkett must make "a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), by showing that reasonable jurists would find the district court's assessment of his constitutional claims debatable, see *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000). The inquiry "is not coextensive with a merits analysis." *Buck v. Davis*, 580 U.S. 100, 115, 137 S. Ct. 759, 197 L. Ed. 2d 1 (2017).

Plunkett has failed to make the requisite showing. See *Slack*, 529 U.S. at 484. As such, a COA is DENIED. Plunkett's motion to proceed in forma pauperis on appeal is likewise DENIED. Because Plunkett fails to make the necessary showing for the issuance of a COA, we do not reach the questions whether the district court erred by failing to hold an evidentiary hearing or by denying his motions for discovery. See *United States v. Davis*, 971 F.3d 524, 534 (5th Cir. 2020).

A COA is not necessary for us to review Plunkett's challenge to the district court's denial of his motion to recuse. See *Trevino v. Johnson*, 168 F.3d 173, 177-78 (5th Cir. 1999). The district court's denial of the motion for recusal is AFFIRMED.

UNITED STATES OF AMERICA, Plaintiff-Appellee, versus STEPHEN CHRISTOPHER PLUNKETT,
Defendant-Appellant.

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
2023 U.S. App. LEXIS 27988
No. 23-10139
October 19, 2023, Filed

Notice:

**PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING
THE CITATION TO UNPUBLISHED OPINIONS.**

Editorial Information: Prior History

{2023 U.S. App. LEXIS 1}Appeal from the United States District Court for the Northern District of Texas.
USDC No. 3:20-CV-640.

Counsel For United States of America, Plaintiff - Appellee: Brian W. McKay,
Esq., Assistant U.S. Attorney, U.S. Attorney's Office, Dallas, TX.
Stephen Christopher Plunkett, Defendant - Appellant, Pro se,
Forrest City, AR.

Judges: Before HAYNES, ENGELHARDT, and OLDHAM, Circuit Judges.

Opinion

UNPUBLISHED ORDER

Per Curiam:

Treating the petition for rehearing en banc as a motion for reconsideration (5th Cir. R. 35 I.O.P.), the motion for reconsideration is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (Fed. R. App. P. 35 and 5th Cir. R. 35), the petition for rehearing en banc is DENIED.

No. _____

IN THE
UNITED STATES SUPREME COURT

STEPHEN CHRISTOPHER PLUNKETT,
PETITIONER

v.

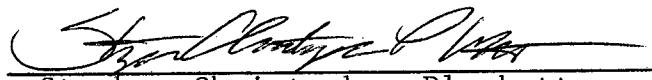
UNITED STATES OF AMERICA,
RESPONDENT

DECLARATION OF INMATE FILING

I, Stephen Christopher Plunkett, am an inmate incarcerated at Administrative Complex Forrest City. I have filed the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR WRIT OF CERTIORARI as of the date indicated below by my signature using the "Mailbox Rule." I deposited the enclosed in an envelope containing the above documents with Mailroom Staff at this facility on the date indicated below at the Legal Mail Open House at approximately 7:00 AM. The envelope was properly addressed to the Office of the Clerk of the United States Supreme Court, 1 First Street, NE, Washington, DC 20543-0001 and with Certified, Priority First-Class Flat-Rate, Return Receipt Requested (Green Card) postage prepaid.

I declare under penalty of perjury that all of the foregoing is true and correct. (See 28 U.S.C. §1746; 18 U.S.C. §1621).

Executed on January , 2024.



Stephen Christopher Plunkett

36265-177

Administrative Complex Forrest City
1301 Dale Bumpers Rd.
Forrest City, AR 72335

