UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-7453

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GARRY HINES,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Wilmington. James C. Dever III, District Judge. (7:18-cr-00132-D-2; 7:22-cv-00034-D)

Submitted: June 15, 2023 Decided: June 20, 2023

Before DIAZ, RICHARDSON, and HEYTENS, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Garry Hines, Appellant Pro Se.

PER CURIAM:

Garry Hines seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 motion. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(B). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong. *See Buck v. Davis*, 580 U.S. 100, 115-17 (2017). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the motion states a debatable claim of the denial of a constitutional right. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Hines has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

FILED: June 20, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-7453
(7:18-cr-00132-D-2)
(7:22-cv-00034-D)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

GARRY HINES

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

FILED: September 11, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-7453
(7:18-cr-00132-D-2)
(7:22-cv-00034-D)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

GARRY HINES

Defendant - Appellant

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Nwamaka Anowi, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

GARRY HINES,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

JUDGMENT
Pursuant to 28 U.S.C. § 2255

Criminal Case No. 7:18-CR-132-2-D
Civil Case No: 7:22-CV-34-D

Decision by Court.

This action came before the Honorable James C. Dever, III, United States District Judge, for consideration of the petitioner's Motion for Additional Time to File, [DE-128], respondent's Motion to Dismiss [DE-136], and the petitioner's section 2255 Motion [DE-81].

IT IS ORDERED AND ADJUDGED that the petitioner's Motion for Additional Time to File [DE-128] is granted; the respondent's motion to dismiss [DE-136] is granted; and the petitioner's section 2255 motion is dismissed. The court denies a certificate of appealability.

This Judgment filed and entered on December 19, 2022, for November 14, 2022, with service upon:

Garry Hines
Register # 65285-056
FCI McDowell
PO Box 1009
Welch, WV 24801
via US Mail

John Newby
Assistant US Attorney
(via CM/ECF Notice of Electronic Filing)

December 19, 2022

/s/ PETER A. MOORE, JR.
Clerk, U.S. District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:18-CR-132-D
No. 7:22-CV-34-D

GARRY HINES, Petitioner,	)	
v.	)	**ORDER**
UNITED STATES OF AMERICA, Respondent.	)	

On March 3, 2022, Garry Hines ("Hines" or "petitioner") moved pro se under 28 U.S.C. § 2255 to vacate, set aside, or correct his 276-month sentence [D.E. 129] and filed a memorandum in support [D.E. 130].[1] On May 18, 2022, the government moved to dismiss Hines's section 2255 motion [D.E. 136] and filed a memorandum in support [D.E. 137]. On May 20, 2022, the court notified Hines of the motion to dismiss, the consequences of failing to respond, and the response deadline [D.E. 136]. See Roseboro v. Garrison, 528 F.2d 309, 310 (4th Cir. 1975) (per curiam). On June 17, 2022, Hines responded in opposition [D.E. 141]. As explained below, the court grants Hines's motion for additional time to respond, grants the government's motion to dismiss, and dismisses Hines's section 2255 motion.

I.

On November 14, 2018, Hines, without a written plea agreement, pleaded guilty to

[1] Hines attempted to file his motion earlier, but he inadvertently sent an empty envelope to the court. See [D.E. 127]. After the court informed Hines about his empty envelope, he moved for additional time to file his section 2255 motion [D.E. 128]. The court grants Hines's motion for additional time.

distributing a quantity of heroin and aiding and abetting (count one), distributing a quantity of heroin (count four), and possession with intent to distribute a quantity of heroin (count five). See Rule 11 Tr. [D.E. 91] 2–24. On December 16, 2019, the court held Hines's sentencing hearing, adopted the facts set forth in the Presentence Investigation Report ("PSR"), and resolved Hines's objections. See Fed. R. Crim. P. 32(i)(3)(A)–(B); PSR [D.E. 54]; Sent. Tr. [D.E. 120]. After withholding a reduction for acceptance of responsibility due to Hines's conduct at sentencing, the court calculated Hines's offense level to be 38, his criminal history category to be II, and his advisory guideline range to be 267 to 327 months' imprisonment for each count. See Sent. Tr. 3–98; PSR ¶ 71. After thoroughly considering the arguments of counsel and all relevant factors under 18 U.S.C. § 3553(a), the court sentenced Hines to 276 months' imprisonment on each count to be served concurrently. See Sent. Tr. 98–109; [D.E. 112]. On January 9, 2020, Hines appealed [D.E. 114]. On December 3, 2020, the Fourth Circuit affirmed. See United States v. Hines, 830 F. App'x 413 (4th Cir. 2020) (per curiam) (unpublished); [D.E. 122].

II.

In Hines's section 2255 motion, Hines argues that he was denied effective assistance of counsel because Hines's counsel (1) failed to adequately explain to Hines the advisory guidelines and Hines's potential "sentencing exposure"; (2) failed to pursue plea negotiations; (3) failed to challenge the sentence on each count for exceeding the statutory maximum of 240 months' imprisonment per count; (4) failed to conduct an adequate investigation; (5) objected to the PSR drug-weight calculation at sentencing thereby losing Hines a three-level reduction for acceptance of responsibility; and (6) failed to argue "controlling precedent" on appeal. See [D.E. 130] 5–38; [D.E. 141] 2–12.

A motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure for "failure

to state a claim upon which relief can be granted" tests a complaint's legal and factual sufficiency. See Ashcroft v. Iqbal, 556 U.S. 662, 677–78 (2009); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555–63, 570 (2007); Coleman v. Md. Court of Appeals, 626 F.3d 187, 190 (4th Cir. 2010), aff'd, 566 U.S. 30 (2012); Giarratano v. Johnson, 521 F.3d 298, 302 (4th Cir. 2008); accord Erickson v. Pardus, 551 U.S. 89, 93–94 (2007) (per curiam). In considering a motion to dismiss, a court need not accept a complaint's legal conclusions. See, e.g., Iqbal, 556 U.S. at 678. Similarly, a court "need not accept as true unwarranted inferences, unreasonable conclusions, or arguments." Giarratano, 521 F.3d at 302 (quotation omitted); see Iqbal, 556 U.S. at 677–79. Moreover, a court may take judicial notice of public records without converting a motion to dismiss into a motion for summary judgment. See, e.g., Fed. R. Evid. 201(d); Tellabs, Inc. v. Makor Issues & Rts., Ltd., 551 U.S. 308, 322 (2007); Philips v. Pitt Cnty. Mem'l Hosp., 572 F.3d 176, 180 (4th Cir. 2009). In reviewing a section 2255 motion, the court is not limited to the motion itself. The court may consider "the files and records of the case." 28 U.S.C. § 2255(b); see United States v. McGill, 11 F.3d 223, 225 (1st Cir. 1993). Likewise, a court may rely on its own familiarity with the case. See, e.g., Blackledge v. Allison, 431 U.S. 63, 74 n.4 (1977); United States v. Dyess, 730 F.3d 354, 359–60 (4th Cir. 2013).

The "Sixth Amendment entitles criminal defendants to the effective assistance of counsel—that is, representation that does not fall below an objective standard of reasonableness in light of prevailing professional norms." Bobby v. Van Hook, 558 U.S. 4, 7 (2009) (per curiam) (quotations omitted). The Sixth Amendment right to counsel extends to all critical stages of a criminal proceeding, including plea negotiations, trial, sentencing, and appeal. See, e.g., Lafler v. Cooper, 566 U.S. 156, 164–65 (2012); Missouri v. Frye, 566 U.S. 134, 140 (2012). "[S]entencing is a critical stage of trial at which a defendant is entitled to effective assistance of counsel, and a

sentence imposed without effective assistance must be vacated and reimposed to permit facts in mitigation of punishment to be fully and freely developed." United States v. Breckenridge, 93 F.3d 132, 135 (4th Cir. 1996). To state a claim of ineffective assistance of counsel in violation of the Sixth Amendment, Hines must show that his attorney's performance fell below an objective standard of reasonableness and that he suffered prejudice as a result. See Strickland v. Washington, 466 U.S. 668, 687–91 (1984).

When determining whether counsel's representation was objectively unreasonable, a court must be "highly deferential" to counsel's performance and must attempt to "eliminate the distorting effects of hindsight." Id. at 689. Therefore, the "court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Id. A party also must show that counsel's deficient performance prejudiced the party. See id. at 691–96. A party does so by showing that there is a "reasonable probability" that, but for the deficiency, "the result of the proceeding would have been different." Id. at 694.

When a defendant pleads guilty and later attacks his guilty plea, "to satisfy the 'prejudice' requirement, the defendant must show that there is a reasonable probability 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); see Lee, 137 S. Ct. at 1967. "Surmounting Strickland's high bar is never an easy task, and the strong societal interest in finality has special force with respect to convictions based on guilty pleas." Lee, 137 S. Ct. at 1967 (citations and quotation omitted).

Hines's claim about his counsel's alleged failure to explain the advisory sentencing guidelines and Hines's potential sentencing exposure contradicts his sworn statements during his Rule 11 proceeding, and Hines's sworn statements bind him. See, e.g., Blackledge, 431 U.S. at 74; United States v. Moussaoui, 591 F.3d 263, 299–300 (4th Cir. 2010); United States v. Lemaster, 403

F.3d 216, 221–23 (4th Cir. 2005). At Hines's Rule 11 hearing, the court explained the sentencing process and the advisory guidelines and asked if Hines spoke to his attorney about the sentencing process in federal court. Rule 11 Tr. [D.E. 91] 19. Hines replied "[y]es, sir." Id. Hines also affirmed that he understood the charges, the maximum penalties, the rights he would give up if he pleaded guilty, and all the possible consequences he could face if he pleaded guilty. Id. at 2–18. To the extent Hines's counsel failed to explain any of the process or consequences, the court cured any such deficiency during the Rule 11 hearing and before Hines pleaded guilty. See id. at 2–27. Accordingly, this claim fails. See Strickland, 466 U.S. at 687–96.

As for his other pre-sentencing objections, Hines cites his counsel's alleged failure to pursue plea negotiations and speculates that he could have received a plea agreement in which he pleaded guilty to only one count. See [D.E. 141] 4–5. Hines also claims that all three of his attorneys were deficient for failure to investigate by not "interviewing all potential witnesses, reviewing relevant documents, and going over them with [Hines]." [D.E. 137] 33.

At Hines's Rule 11 hearing, Hines did not raise any concerns with his counsel's performance regarding their investigation or possible plea negotiations. See Rule 11 Tr. at 2–12. Hines does not plausibly allege that counsel failed to conduct an adequate investigation. Cf. Premo v. Moore, 562 U.S. 115, 123–28 (2011); Bobby, 558 U.S. at 10–13; Knowles v. Mirzayance, 556 U.S. 111, 124–27 (2009); United States v. Cronic, 466 U.S. 648, 663–66 (1984); Strickland, 466 U.S. at 687–91; United States v. Stewart, 256 F.3d 231, 246 (4th Cir. 2001). Moreover, Hines does not plausibly allege that the government was prepared to offer a favorable plea agreement to Hines or that counsel withheld a plea offer from Hines. Cf. Frye, 566 U.S. at 145. Simple conclusory assertions and speculation are insufficient to survive dismissal. See Iqbal, 556 U.S. at 678. Simply put, the United States had no obligation to engage in plea negotiations. See Weatherford v. Bursey, 429 U.S. 545,

561 (1997). And, defense counsel had no obligation to sua sponte pursue such negotiations. See, e.g., United States v. Morel, No. 07-CR-4899(DC), 2010 WL 2900318, at *4 (S.D.N.Y. July 22, 2010) (unpublished). Accordingly, Hines has not plausibly alleged deficient performance. See Strickland, 466 U.S. at 687–96.

Hines also contends that his counsel's decision to object to the drug weight in the PSR at sentencing caused Hines to lose acceptance of responsibility at sentencing. The record contradicts Hines's assertion that counsel alone decided to object to the drug weight or that the objection alone caused Hines to lose a three-level reduction for acceptance of responsibility. See Rule 11 Tr. at 2–89. Hines insisted on the objection. See id. Moreover, after Hines insisted on proceeding with the objection and after the court heard evidence on the objection, the court found that Hines falsely denied certain drug weight. See id. at 91–98. It was Hines's egregious false denial, not the objection from counsel, which led to the court to withhold the three-level reduction for acceptance of responsibility. See id. Accordingly, this claim fails. See Strickland, 466 U.S. at 687–96.

Hines also argues that his counsel's failure to object to the sentence above the statutory maximum of 240 months' imprisonment on each count constituted deficient performance. Hines claims that if counsel had objected at sentencing, then the Fourth Circuit would have analyzed Hines's arguments on appeal under a more lenient standard of review. See [D.E. 141] 8.

The court rejects Hines's argument. First, if Hines's counsel objected at sentencing, the court would have sentenced Hines to 240 months' concurrent imprisonment on count one and count four and 36 months' consecutive imprisonment on count five, for a total sentence of 276 months' imprisonment. See U.S.S.G. § 5G1.2(d); United States v. Allen, 491 F.3d 178, 195 (4th Cir. 2007).

Second, the Fourth Circuit noted that "[b]ecause [counsel] failed to present this claim to the district court, it is reviewed only for plain error." Hines, 830 F. App'x at 415. Even had counsel objected to the sentence, Hines has not plausibly alleged prejudice. To prove prejudice from deficient performance at sentencing, a defendant must prove a reasonable probability that the defendant would have received a different total sentence if the deficient performance had not occurred. See Sears v. Upton, 561 U.S. 945, 955–56 (2010) (per curiam); United States v. Carthorne, 878 F.3d 458, 469–70 (4th Cir. 2017). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694.

Hines has not plausibly alleged that he would have received a difference total sentence if counsel had objected at sentencing or if the Fourth Circuit used a more lenient standard of review. As the Fourth Circuit noted on appeal in this case, if counsel had reminded the court of the statutory maximum at sentencing or upon remand, the court would have issued a sentence totaling 276 months' imprisonment on each count by imposing two concurrent 240 month sentences and one 36 month consecutive sentence. See U.S.S.G. § 5G1.2(d); Allen, 495 F.3d at 195. As the Fourth Circuit recognized, "the district court could have lawfully imposed the sentence Hines ultimately received by imposing consecutive terms of imprisonment totaling 276 months." Hines, 830 F. App'x at 415. Moreover, this court's alternative sentence bolsters the conclusion that counsel's lack of objection did not prejudice Hines. See Sent. Tr. at 110; Molina-Martinez v. United States, 578 U.S. 189, 197–201 (2016); United States v. Feldman, 793 F. App'x 170, 173–74 (4th Cir. 2019) (per curiam) (unpublished); United States v. Gomez-Jimenez, 750 F.3d 370, 382–86 (4th Cir. 2014); United States v. Hargrove, 701 F.3d 156, 160–65 (4th Cir. 2012). Thus, because Hines would have received the same total sentence even if counsel had objected, Hines has not plausibly alleged prejudice. See, e.g., Sears, 561 U.S. at 956; Strickland, 466 U.S. at 689–700.

Finally, Hines challenges his counsel's performance on appeal. Hines argues that the Fourth Circuit improperly affirmed this court's sentence due to appellate counsel's failure to challenge the sentence and to cite United States v. Promise, 255 F.3d 150, 160 (4th Cir. 2001) (en banc). See [D.E. 141] 8–9. Appellate counsel, however, argued that the 276-month sentence on each count was improper and the Fourth Circuit directly addressed this argument in its opinion. Brief of Appellant at 6–10, United States v. Hines, 830 F. App'x 413 (4th Cir. 2020); Hines, 830 F. App'x at 415. The Fourth Circuit is aware of its precedent, such as Promise. Moreover, Hines cannot use section 2255 to recharacterize this claim as an ineffective assistance of counsel claim and relitigate an argument that he raised and lost on direct appeal. See Bousley, 523 U.S. at 622–23; United States v. Frady, 456 U.S. 152, 164–65 (1982); Dyess, 730 F.3d at 360; United States v. Roane, 378 F.3d 382, 396 n.7 (4th Cir. 2004); Boeckenhaupt v. United States, 537 F.2d 1182, 1183 (4th Cir. 1976) (per curiam). Thus, the claim fails. See Strickland, 466 U.S. at 691–96.

After reviewing the claims presented in Hines's motion, the court finds that reasonable jurists would not find the court's treatment of Hines's claims debatable or wrong and that the claims do not deserve encouragement to proceed any further. Accordingly, the court denies a certificate of appealability. See 28 U.S.C. § 2253(c); Miller-El v. Cockrell, 537 U.S. 322, 336–38 (2003); Slack v. McDaniel, 529 U.S. 473, 483–84 (2000).

III.

In sum, the court GRANTS petitioner's motion for additional time to file [D.E. 128], GRANTS the government's motion to dismiss [D.E. 136], DISMISSES petitioner's section 2255 motion [D.E. 81], and DENIES a certificate of appealability. The clerk shall close the case.

SO ORDERED. This 11 day of November, 2022.

JAMES C. DEVER III
United States District Judge

GARY HINES
65285-056
FCI MCKEAN
PO BOX 8000
BRADFORD,PA 16701

U.S. Supreme Court Clerk
U.S. Supreme Court
1 First Street N.E.
Washington, D.C. 20543

re: 7:18-cr-00132-d-2

Dear Supreme Court Clerk,

My name is Gary Hines. I am writing in reference to the above named case and about the Writ of Certiorari I mailed to your office in and around October 27,2023. See Exhibit 2

I recently found out on 1/31/24 that this Writ was never filed on your office due to it not being listed on my docket sheet.see Exhibit 3. I have included a copy of my original Writ for you to file on the record. It is not untimely. See Affidavits.

Thank you for your consideration.

Sincerely

Gary Hines

2-8-24
date

FILED: September 19, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-7453
(7:18-cr-00132-D-2)
(7:22-cv-00034-D)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

GARRY HINES

Defendant - Appellant

MANDATE.

The judgment of this court, entered June 20, 2023, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Nwamaka Anowi, Clerk

If Yes, **you must** list below the issues you wish to add to the certificate of appealability issued by the district court. If you do not list additional issues, the Court will limit its review to those issues on which the district court granted the certificate.

4. **Issues on Appeal**

Use the following spaces to set forth the facts and argument in support of the issues you wish the Court to consider on appeal. You must include any issue you wish the Court to consider, regardless of whether the district court granted a certificate of appealability as to that issue. You may cite case law, but citations are not required.

Issue 1.

✓ Defendant was sentenced under incorrect guidelines resulting in an above STATUTORY MAXIMUM sentence in violation of defendant's DUE PROCESS and CONGRESSIONAL INTENT.

Supporting Facts and Argument.

Defendant openly stated and accepted his guilt for the indictment as charged without the benefit of a plea agreement. Upon being presented with the Probation Department's initial PSR Defendant through Counsel questioned specific statements and allegations. The Probation office responded. That should have been the end of it but due to trial counsel's misadvise in regards to the U.S.S.G 3E1.1 Defendant again challenged the relevant conduct. Now, what Defendant in their right mind or with right advice would challenge the application of relevant conduct that if accepted with no challenge would result in a range of 188 - 235 months this is even after a ten level enhancement. But if challenged and informed of doing so the guidelines would then move to 262 - 327 this is not a rationale argument nor one that is sound and able to comport with solid advice from counsel. This also is evident that the Defendant was not aware of this and that is why he begged the judge to consider that he was challenging his relevant conduct because he was informed that he could. He attempted to claim responsibility and recall his challenges. This is not the act of a person who is acting with knowing and informed actions. This all was stated on the record at sentencing. The decision or indecision of Counsel effected the entire outcome of the proceedings and the judges abuse of discretion with regards to stating on the record why he chose to deny the acceptance of responsibility points in light of the U.S.S.G 3553. Defendant ask this Court to review the District's Court's ruling for Abuse of Discretion and failure to state on the record why the court denied the 3E1.1 Acceptance Of Responsibility points after Defendant clearly stated that he was not challenging the Court to be in opposition but because he was informed he had a right to do and that he was not informed that it would effect his Acceptance of the charges. An unintelligent plea is the same as no plea and the defendant was never informed by Counsel the first or second one. Defendant states clearly that he would have not made this decision if he was informed of the collateral consequences. See pg. 98-101 of the sentencing transcripts, (Attachment A).

Issue 2.

✓ Trial Counsel at sentencing who was a different counsel from the pre-sentencing phase failed to inform defendant of the dangers under 3E1.1 of losing his acceptance of responsibility points if he continued to challenge the relevant conduct drug amount.

Supporting Facts and Argument.

Standing Counsel has a duty to properly review the case/work file prior to filing a Motion and or verbally stating on the record a challenge. Counsel could have clearly seen that in the PSR the probation office was clearly persuading the Court to not grant the acceptance of responsibility points if the court deemed the defendant's actions of questioning the relevant conduct drug amount as a "false denial" or "frivolous objection". Counsel either clearly read this and decided to proceed anyway or he did not read it and therefore made a decision to state again what was all ready finalized costing the Defendant years of his life by allowing the court to use the challenge as the rationale for denial of the acceptance of responsibility points. This action of either negligence or willful disregard effected the defendant's substantial rights and the defendant ask this court to review these actions to see if this error was plain and should be remanded for correction.

Issue 3.

Defendant is currently sentenced to an illegal sentence, 3 concurrent sentences of 276 months on 3 counts that all have a statutory maximum of only 240 months, 21 u.s.c. 841(b)(1)(c). The alternative sentence theory says the Court could have sentenced the defendant to two concurrent sentences on two counts and one count for 36 months to amount to an aggregated offense count of 276. The Defendant ask this Honorable Court to remand the sentence back for correction.

Supporting Facts and Argument.

The Defendant has a right to have all of his records down to his PSR and judgement and commitment records reflecting accurate and true statements. If the mere misstatement of an ill-placed word can change the meaning and context along with the syntax and application of the particular sentence. The judge in this instant case admits that had defendant's counsel objected or reminded the Court, then the judge would have sentenced him correctly to a consecutive sentence. See (Attachment B). This statement by the judge effectively shows that the Defendant's counsel was ineffective. This Court is being asked to remand this case back to the lower court with instructions to state on the record the U.S.S.G 3553 factors relied upon to reach the sentence imposed. Incorrect sentencing guidelines are to be corrected and properly stated on the record.

Issue 4.

Supporting Facts and Argument.