

**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

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No: 24-1223

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Caesar V. Vaca

Movant - Appellant

v.

United States of America

Respondent - Appellee

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Appeal from U.S. District Court for the Western District of Missouri - Kansas City  
(4:22-cv-00604-DGK)

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**JUDGMENT**

Before LOKEN, GRUENDER, and KOBES, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

February 14, 2024

Order Entered at the Direction of the Court:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans

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Appellant

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Appellee

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**ORDER**

The petition for rehearing by the panel is denied.

March 28, 2024

Order Entered at the Direction of the Court:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans

## Orders on Motions

4:22-cv-00604-DGK Vaca v. USA

CASE CLOSED on 01/17/2023

CLOSED,GAD,PPROSE

U.S. District Court

Western District of Missouri

### Notice of Electronic Filing

The following transaction was entered on 1/2/2024 at 12:48 PM CST and filed on 1/2/2024

Case Name: Vaca v. USA

Case Number: 4:22-cv-00604-DGK

Filer:

**WARNING: CASE CLOSED on 01/17/2023**

Document Number: 26(No document attached)

#### Docket Text:

ORDER that Movant's motion for relief from judgment (Doc. [25]) is denied. This Court entered its Order and Judgment denying Movant's motion for 28 U.S.C. § 2255 relief on January 17, 2023. Docs. [14], [15]. Movant's subsequent appeal to the Eighth Circuit was dismissed on April 24, 2023 (Doc. [23]) and his petition for writ of certiorari was denied by the United States Supreme Court on October 10, 2023. Movant fails to set forth any appropriate reason or authority on which to disturb those rulings. Rather, Movant continues to fail to establish that he is entitled to § 2255 relief for the reasons set forth in this Court's January 17, 2023, Order (Doc. [14]). This case remains closed. Signed on 1/2/2024 by District Judge Greg Kays. This is a TEXT ONLY ENTRY. No document is attached. (Doty, Greg)

#### 4:22-cv-00604-DGK Notice has been electronically mailed to:

William A. Alford, III    [trey.alford@usdoj.gov](mailto:trey.alford@usdoj.gov), [CaseView.ECF@usdoj.gov](mailto:CaseView.ECF@usdoj.gov), [USAMOW.ECFNVC@usdoj.gov](mailto:USAMOW.ECFNVC@usdoj.gov), [ashley.calderon@usdoj.gov](mailto:ashley.calderon@usdoj.gov)

#### 4:22-cv-00604-DGK It is the filer's responsibility for noticing the following parties by other means:

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UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

CAESAR V. VACA, )  
 )  
 Movant, )  
 )  
 vs. ) Case No. 22-00604-CV-W-DGK-P  
 ) (Crim. Case No. 18-00140-01-CR-W-DGK)  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 Respondent. )

**ORDER DENYING RELIEF PURSUANT TO 28 U.S.C. § 2255  
AND DECLINING TO ISSUE A CERTIFICATE OF APPEALABILITY**

A jury found Movant guilty of being a felon in possession of a firearm and possession of cocaine, and the Court sentenced him to a total of 156 months' imprisonment. Crim. Doc. 173 (judgment).<sup>1</sup> Movant appealed, and the Court of Appeals affirmed this Court's judgment. *United States v. Vaca*, 38 F.4<sup>th</sup> 718 (8<sup>th</sup> Cir. 2022). Movant now seeks to vacate his sentence pursuant to 28 U.S.C. § 2255. Doc. 1 (§ 2255 motion).

As his six primary grounds for relief, Movant claims he was denied effective assistance of trial and appellate counsel. Doc. 1, pp. 4-8 (§ 2255 motion); Doc. 2, pp. 3-18 (attachment to § 2255 motion). Movant faults trial counsel for not (1) arguing that Movant's civil rights were restored following his Kansas conviction for aggravated battery, (2) challenging the testimony of Government witness Anna Mora as perjurious, (3) calling Ted Liberda as a witness, and (4) objecting to this Court's upward variance. Doc. 2, pp. 3, 8-10. Movant criticizes appellate counsel for not appealing (5) this Court's denial of his motion for a new trial based on a *Rehaif* claim, and (6) the admission of the prior Kansas conviction under Federal Rule of Evidence 404(b). Doc. 2, pp. 12, 15. To prevail on these claims, Movant must show that the performance of counsel was both constitutionally deficient and prejudicial. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Evitts v. Lucey*, 469 U.S. 387, 396 (1985) (citing *Strickland*, criminal defendant is entitled to effective assistance of counsel on the "first appeal as of right").

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<sup>1</sup>"Crim. Doc." refers to filings in Movant's criminal case. "Doc." refers to filings in this § 2255 case.

Respondent argues that Movant has not shown a denial of his right to effective assistance of trial counsel because (1) any error regarding the admission into evidence of his Kansas conviction was harmless given the overwhelming evidence of his guilt, (2) the record fails to show that Mora's testimony constituted perjury, (3) counsel made a legitimate, strategic choice in not calling Liberda as a witness, and (4) any objection regarding the upward variance would not have changed Movant's sentence. Doc. 10, pp. 11-18 (response); *see Reed v. Norris*, 195 F.3d 1004, 1006 (8th Cir. 1999) (unnecessary to discuss reasonableness of counsel's conduct given the overwhelming evidence of guilt, making it impossible for the prisoner to demonstrate *Strickland* prejudice). Respondent argues that Movant has not shown a denial of his right to effective assistance of appellate counsel because (5) an argument based on *Rehaif* would not have succeeded on appeal, and (6) counsel actually and unsuccessfully challenged the admission of the Kansas conviction. Doc. 10, pp. 18-21 (response). The Court agrees with Respondent's argument and finds that Movant did not suffer ineffective assistance of trial or appellate counsel.

As a supplemental ground for relief, Movant argues that his firearm conviction is invalidated by *New York Rifle & Pistol Assn v. Bruen*, 142 S.Ct. 2111 (2022): “[T]he felon-in-possession statute [cannot] constitutionally apply to people with non-violent felony convictions[.]” Doc. 5-1, p. 4 (addendum to § 2255 motion). However, as Respondent correctly notes, other courts that have considered the same argument have rejected it. Doc. 10, p. 31 (response); *see Range v. Attorney General*, 53 F.4<sup>th</sup> 262 (3d Cir. 2022). As explained in *Range*, *New York Rifle & Pistol* provides Movant with no basis for relief.

The Court has considered all arguments not specifically addressed herein and finds that none would affect the outcome of this case. For the reasons set out above, the Court denies Movant's motion for relief pursuant to 28 U.S.C. § 2255. The Court also declines to issue a certificate of appealability. *See* 28 U.S.C. § 2253(c)(2) (certificate of appealability may be issued “only if [Movant] has made a substantial showing of the denial of a constitutional right”). The Clerk of the Court shall enter judgment accordingly and dismiss this case.

So ORDERED.

/s/ Greg Kays  
GREG KAYS  
UNITED STATES DISTRICT JUDGE

Dated: January 17, 2023.

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