NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

ANTOINNE LEE WASHINGTON - PETITIONER

VS.

UNITED STATES OF AMERICA - RESPONDENT

On Petition For Writ Of Certiorari

To The United States Court Of Appeals For The Eighth Circuit

APPENDIX

Antoinne Lee Washington

Pro-se Petitioner

Reg. No. 18267-030

P.O. Box 1000

Talladega, AL 35160

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-1087

Antoinne Lee Washington, also known as Antionne Lee Washington

Petitioner - Appellant

v.

United States of America

Respondent - Appellee

Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:22-cv-00216-SMR)

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. The motion for leave to conduct discovery is denied as moot.

February 29, 2024

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

/s/ Michael E. Gans

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-1087

Antoinne Lee Washington, also known as Antionne Lee Washington

Appellant

v.

United States of America

Appellee

Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:22-cv-00216-SMR)

ORDER

Antoinne Lee Washington's motion for leave to conduct discovery is hereby ordered taken with the case for consideration by the panel to which this case is submitted for disposition on the merits.

February 23, 2024

Order Entered Under Rule 27A(a):
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

24-1087 Antoinne Washington v. United States

Eighth Circuit Court of Appeals

PRO SE Notice of Docket Activity

The following was filed on 02/23/2024

Case Name: Antoinne Washington v. United States
Case Number: 24-1087

Docket Text:
MOTION for Leave to Conduct Discovery Pursuant to Rules Governing Section 2255., filed by Appellant Antoinne Lee Washington w/service 02/12/2024. [5366771] [24-1087]

The following document(s) are associated with this transaction:
Document Description: Motion for leave to conduct discovery
Document Description: envelope

Notice will be mailed to:

Antoinne Lee Washington
FEDERAL CORRECTIONAL INSTITUTION
18267-030
P.O. Box 1000
Talladega, AL 35160-1000

Notice will be electronically mailed to:

Amy L Jennings: amy.jennings2@usdoj.gov,
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APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

ANTOINNE LEE WASHINGTON, Petitioner, v. UNITED STATES OF AMERICA, Respondent.	)	Case No. 4:22-cv-00216-SMR Crim. No. 4:17-cr-00198-SMR-CFB-1 ORDER ON MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE

Petitioner Antoinne Lee Washington filed this Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. He seeks to challenge the sentence imposed in his criminal case. *United States v. Washington*, No. 4:17-cr-00198-SMR-CFB (S.D. Iowa) ("Crim. Case"). The Court takes judicial notice of the proceedings in that case.

I. BACKGROUND

Washington was indicted by a grand jury on charges of sex trafficking by force, fraud, and coercion and transportation for prostitution. Indictment, Crim. Case, ECF No. 17 (sealed). He proceeded to trial, after which a jury convicted him on both counts. Jury Verdict, Crim. Case, ECF No. 57. The Court sentenced Washington to 327 months' incarceration on the sex trafficking count and 120 months' on the transportation for prostitution count with the sentences to be served concurrently. J., Crim. Case, ECF No. 105. He filed a direct appeal of his conviction to the United States Court of Appeals for the Eighth Circuit.

On appeal, Washington alleged error based on the admission of testimony regarding prior bad acts as well as expert testimony about sex trafficking. *United States v. Washington*, 810 Fed.

App'x 478, 479 (8th Cir. 2020). The panel affirmed the conviction and sentence in its entirety. *Id.* at 481.

Washington now brings a motion pursuant to Section 2255 asserting multiple grounds for relief. He argues: (1) prosecutorial misconduct; (2) violation of the Confrontation Clause; (3) ineffective assistance of his trial counsel; and (4) ineffective assistance of his appellate counsel. [ECF No. 1]. The Government rejects the claims and seeks dismissal of the motion. [ECF No. 11].

II. DISCUSSION

A. Section 2255 Standard

A federal inmate may file a motion under 28 U.S.C. § 2255 for relief "upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack." 28 U.S.C. § 2255(a). Section 2255 is intended to provide federal prisoners with "a remedy identical in scope to federal habeas corpus." *Sun Bear v. United States*, 644 F.3d 700, 704 (8th Cir. 2011) (quoting *Davis v. United States*, 417 U.S. 333, 343 (1974)). Section 2255 does not provide a remedy for "all claimed errors in conviction and sentencing." *Id.* (quoting *United States v. Addonizio*, 442 U.S. 178, 185 (1979)). The errors redressed by Section 2255 are constitutional and jurisdictional errors or ones that are so fundamental that the result is a "complete miscarriage of justice." *Hill v. United States*, 368 U.S. 424, 428 (1962); *see also Sun Bear*, 644 F.3d at 704 (describing the scope of relief available under Section 2255 as "severely limited").

If "the files and records of the case conclusively show" that a petitioner is not entitled to relief, no evidentiary hearing is required. *Voytik v. United States*, 778 F.2d 1306, 1308 (8th Cir. 1985); *see also Franco v. United States*, 762 F.3d 761, 763 (8th Cir. 2014) (finding that no

hearing is required when a claim is "inadequate on its face or if the record affirmatively refutes the factual assertions upon which it is based.").

B. Claim for Prosecutorial Misconduct

1. Legal Standard

Generally, prosecutorial misconduct is not a cognizable claim for relief on a Section 2255 motion unless the misconduct was so extensive that it amounted to a denial of due process. *Stringer v. Hedgepeth*, 280 F.3d 826, 829 (8th Cir. 2002) (quoting *Louisell v. Dir. of Iowa Dep't of Corr.*, 178 F.3d 1019, 1023 (8th Cir. 1999)). This requires a claimant seeking relief on prosecutorial misconduct grounds to "show that there is a reasonable probability that the error complained of affected the outcome of the trial." *Id.* (quoting *Anderson v. Goeke*, 44 F.3d 675, 679 (8th Cir. 1995)).

It has long been established that the prosecution is prohibited from using or soliciting false evidence or "allow it to go uncorrected." *United States v. Funchess*, 422 F.3d 698, 701 (8th Cir. 2005); *see also Wilson v. Lawrence Cnty.*, 260 F.3d 946, 954 (8th Cir. 2001) (holding that if "officers use false evidence . . . to secure a conviction, the defendant's due process is violated"). To establish a due process violation based on the use of false evidence, a defendant must show that (1) the prosecution used false evidence; (2) it knew or should have known the evidence was false; and (3) there was a reasonable likelihood that the false evidence "could have affected the jury's verdict." *United States v. Pickens*, 58 F.4th 983, 989 (8th Cir. 2023) (quoting *United States v. Bass*, 478 F.3d 948, 951 (8th Cir. 2007)). Any conviction based on false testimony or evidence must be set aside if "there is any reasonable likelihood that the false [evidence] could have affected the judgment of the jury." *United States v. Clay*, 720 F.3d 1021, 1025 (8th Cir. 2013) (quoting *United States v. Agurs*, 427 U.S. 97, 103 (1976)).

2. Analysis

Washington rests his allegations of prosecutorial misconduct on three claims. First, he contends that the Government knowingly offered false testimony by the victim in the case, C.S., and Detective Don Vestal. Second, Washington argues that the Government misrepresented a book that was entered into evidence. And finally, he maintains that prosecutors made improper comments in its opening statement and closing argument. The Government argues that this ground is procedurally defaulted because it could have been, but was not, raised on direct appeal. Washington replies that it was not raised because his appellate counsel "refused" to raise the issue. [ECF No. 1 at 4].

a. Allegedly perjured testimony

There is nothing in the record which supports the claim that the Government knowingly introduced false testimony. As it points out in the response, prosecutors did in fact elicit prior statements by C.S. which were inconsistent with her trial testimony, which included her previously recanting the allegations in a text message. Trial Transcript, Crim. Case, ECF No. 93 at 21. She explained on the witness stand her reasoning for the initial recantation of her prior statements to law enforcement. She also acknowledged her testimony at trial was under oath and affirmed to its veracity.

The inconsistency of her statements was a prominent issue during trial and it was addressed by prosecutors and defense counsel. *See United States v. Villalpando*, 259 F.3d 934, 939 (8th Cir. 2001) (observing that courts "generally entrust cross-examination techniques, like other matters of trial strategy, to the professional discretion of counsel"). Washington's contention is unavailing that the fabrication of her testimony is evidenced by the fact she was arrested on a material witness warrant pending trial. Courts within the Eighth Circuit view the recantation of a

material witness's *sworn* testimony with "disfavor." *United States v. Papajohn*, 212 F.3d 1112, 1117 (8th Cir. 2000) (rejecting a motion for a new trial based on an "alleged recantation of a material witness"). Here, C.S.'s recantation was an unsworn text message which she subsequently backtracked from during her testimony under oath. It was the duty of the jury, as the fact-finder, to assess witness credibility. *United States v. Colombe*, 964 F.3d 755, 758–59 (8th Cir. 2020); *see also United States v. Poitra*, 60 F.4th 1098, 1103 (8th Cir. 2023) (concluding that a jury's verdict reflected its credibility assessment of witnesses). Based on the jury's verdict, the testimony of C.S. was determined to be credible.

Washington also insists that the testimony by Detective Vestal that he saw an "abrasion" on C.S.'s face is evidence of perjury. He bases this claim on the fact that another witness testified that they did not recall if there was such an injury. This claim does not establish perjury or the knowing presentation of false testimony by prosecutors. It is not directly contradictory that one witness said they observed a fact which a different witness did not. The jury received photographic exhibits of the incident to which Detective Vestal responded, along with numerous other photographic exhibits which the Government introduced to show that C.S. had been assaulted by Washington. There is no error here, much less one that so "infect[ed] the trial with enough unfairness" to render the trial a denial of due process. *Stringer*, 280 F.3d at 829.

b. Remaining claims of prosecutorial misconduct

The other two grounds offered by Washington for prosecutorial misconduct are unavailing. He claims that the Government's introduction of a book pertaining to pimping was misleading and introduced to confuse the jury. Washington contends that prosecutors also discussed a different book, which C.S. took notes from, causing confusion to the jury. Both the book and C.S.'s journal were entered into evidence and the jury was entitled to decide the source of her notes. Washington

does not explain how the jury would have been confused or why this would have led to a wrongful verdict amounting to a denial of his due process.

Washington asserts that prosecutors made comments during opening and closing statements which were improper, contradictory, misleading, and misstatements of fact. [ECF No. 1 at 22–23]. Review of the trial transcript reflects that none of the comments made during either argument were improper, much less so outside acceptable trial practice that it requires a mistrial on due process grounds. *Clemons v. Luebbers*, 381 F.3d 744, 757 (8th Cir. 2004) (finding that relief is only available "if the prosecutor's closing argument was so inflammatory and so outrageous that any reasonable trial judge would have *sua sponte* declared a mistrial"); *see also Moore v. Wyrick*, 760 F.2d 884, 886 (8th Cir. 1985) (holding that improper remarks by a prosecutor must be "so egregious that they fatally infect the proceedings and render . . . the entire trial fundamentally unfair").

Washington's minor quibbles regarding the Government's comments to the jury were not improper. Closing arguments serve the purpose of allowing both parties to describe the evidence introduced at trial to the jury and explain what inferences they believe are reasonably warranted from that evidence. *United States v. Karam*, 37 F.3d 1280, 1289 (8th Cir. 1994). Comments made by counsel before and after the presentation of the evidence are not evidence and the jury is admonished accordingly. *Poitra*, 60 F.4th at 1103–04 (finding no indication that a jury failed to follow instructions after the court had instructed that "[s]tatements, arguments, questions, and comments by lawyers are not evidence"). There are no meritorious grounds for relief based on prosecutorial misconduct.

C. Confrontation Clause Claims

1. Legal Standard

The Sixth Amendment's Confrontation Clause provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI. The Confrontation Clause is not limited only to in-court testimony. *Crawford v. Washington,* 541 U.S. 36, 51 (2004). The right to confrontation bars "admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination." *Id.* at 53–54.

A testimonial statement is one where the declarant is a "witness" within the meaning of the Confrontation Clause. *Davis v. Washington*, 547 U.S. 813, 821 (2006). The Supreme Court has not provided a complete list of testimonial statement categories, however, statements such as "plea allocutions, grand jury testimony, prior trial testimony, preliminary hearing testimony, and police interrogations are testimonial statements." *United States v. Lee*, 374 F.3d 637, 644 (8th Cir. 2004) (cleaned up).

2. Analysis

Washington bases his claim of Confrontation Clause violations on the fact that: (1) the Government referenced anticipated testimony by M.Z. in its opening statement, but she did not ultimately testify; (2) prosecutors elicited testimony from C.S. about conversations she had with M.Z.; (3) photographs of M.Z. were admitted into evidence; and (4) text messages between C.S. and a different person who did not testify at trial were admitted into evidence. [ECF No. 1 at 46–50].

None of these grounds constitute "testimonial statements of a witness" as defined under relevant case law. *United States v. Tucker*, 533 F.3d 711, 714 (8th Cir. 2008). The statement made

by prosecutors during their opening statement is not evidence, therefore, it is not evidence that was introduced against Washington. Similarly, the photograph of M.Z. is also not "testimony" but exhibitory evidence. Neither implicate the protections of the Confrontation Clause.

The conversation between C.S. and M.Z. recounted by C.S. was not "testimonial" because it must have a "primary purpose" of "establish[ing] or prov[ing] past events potentially relevant to later criminal prosecution." *Davis*, 547 U.S. at 822. The fact that the statement was inculpatory against Washington does not make it "testimonial" for constitutional purposes. *Lee*, 374 F.3d at 644 (finding that casual statements between acquaintances "are not testimonial") (cleaned up). The same analysis applies to the text message conversation identified by Washington.

D. Ineffective Assistance of Counsel

1. Legal Standard

Washington also brings a claim asserting violation of his right to counsel protected by the Sixth Amendment to the United States Constitution. The Sixth Amendment provides the right to counsel in all criminal prosecutions, which the United States Supreme Court has interpreted as encompassing effective assistance of counsel at "critical stages of a criminal proceeding." *Lafler v. Cooper,* 566 U.S. 156, 165 (2012) (citation omitted). The standard for whether counsel was unconstitutionally ineffective was established by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). To demonstrate ineffective assistance of counsel under the *Strickland* standard, a movant must show (1) counsel's performance was deficient, and (2) the deficiency was prejudicial. *Id* at 687. A court is not required to address both components of the *Strickland* standard if a movant makes an insufficient showing on one of the prongs. *Id.* at 697; *Gianakos v. United States*, 560 F.3d 817, 821 (8th Cir. 2009) ("Unless a defendant makes both

showings, it cannot be said that the conviction" was the result of "a breakdown in the adversary process that renders the result unreliable") (citation omitted).

To establish the deficiency prong, a movant must show that counsel's performance fell below an objective standard of reasonableness. *Id.* at 688. The Supreme Court has recently reiterated that "[t]he benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper function of the adversarial process that the trial cannot be relied on as having produced a just result." *Cullen v. Pinholster*, 563 U.S. 170, 189 (2011) (quoting *Strickland*, 466 U.S. at 686).

A court measures the reasonableness of counsel's performance according to "prevailing professional norms." *Id.* The inquiry into an attorney's representation is "whether it deviated from best practices or most common custom." *Harrington v. Richter*, 562 U.S. 86, 105 (2011) (quoting *Strickland*, 466 U.S. at 690). There is a strong presumption that representation by counsel was objectively reasonable, and a court must be highly deferential during its evaluation. *Strickland*, 466 U.S. at 689; *Rompilla v. Beard*, 545 U.S. 374, 381 (2005) (noting that "hindsight is discounted by pegging adequacy to counsel's perspective at the time" and by providing "a heavy measure of deference to counsel's judgment"). This means that strategic choices by counsel are "virtually unchallengeable" if they are made after thorough investigation of the law and facts—even strategic choices that are "made after less than complete investigation" are reasonable provided that reasonable professional judgment supports those limitations on the investigation. *Id.* at 690–91. Prejudice can be established by a showing of "a reasonable probability that, but for counsel's professional errors, the result of the proceeding would have been different." *Id.* at 694. A reasonable probability must be one that is "sufficient to undermine confidence in the outcome" of

the result. *Id.* The ultimate focus of this inquiry is the fundamental fairness of the proceeding. *Id.* at 696.

2. Analysis

a. Exclusion of Evidence

Washington argues that his trial counsel, Attorney Joseph Herrold, was ineffective for failing to move for exclusion of certain evidence introduced at trial. He also claims that Attorney Herrold failed to present an adequate defense in general. [ECF No. 1 at 49–54, 60–62]. Washington identifies five pieces of evidence which he claims should have been excluded: (1) evidence from the cell phones seized from the hotel room during his arrest; (2) the domestic abuse allegation from El Paso, Texas; (3) sex trafficking expert testimony; (4) the *Pimpology* book; and (5) screenshots of a website.

Attorney Herrold filed an affidavit addressing Washington's allegations of ineffective assistance of counsel. [ECF No. 6]. He explains the actions he took in his representation and offered his assessment of the merits of the asserted grounds for relief offered now.

First, Washington contends that neither cell phone belonged to him and were not seized from him. Nevertheless, he makes vague assertions that the data on the phones was altered. Attorney Herrold responded that although messages on the phone were deleted, they were forensically recovered by law enforcement and disclosed during discovery. [ECF No. 6 at 6]. Attorney Herrold rejects there was any legal basis to raise a challenge to the reliability of the information on the phones, or other spoliation of evidence claim. Washington does not offer any *prima facie* ground to believe that the evidence from the cell phones were unreliable other than the fact they were in the possession of C.S. following his arrest. This bare assertion by Washington does not amount to ineffective assistance of counsel.

Washington also raises an argument that evidence regarding a domestic disturbance in El Paso should have been excluded from trial. Attorney Herrold responds that there was no constitutional basis to exclude such evidence but points out that he did seek to prevent its introduction through a motion in limine before trial. Mtn. in Limine, Crim. Case, ECF No. 39. Washington basis his challenge of this evidence on the fact that C.S. provided the responding officer the name of her ex-boyfriend when she was asked who had assaulted her. [ECF No. 1 at 51]. As with other evidence introduced at trial, this was within the purview of the jury to weigh the relevance and credibility of the testimony regarding the identity of the man who had assaulted C.S.

Next, Washington alleges that his counsel should have moved to exclude the sex trafficking expert testimony. Attorney Herrold responds that he did, in fact, seek to exclude the evidence on the basis that it improperly bolstered the testimony of C.S. Mtn. in Limine, Crim. Case, ECF No. 39. The Court rejected his arguments. Unsuccessful strategy is not ineffective assistance of counsel. *See Flieger v. Delo*, 16 F.3d 878, 886 (8th Cir. 1994) (citing *Riley v. Wyrick*, 712 F.2d 382, 385 (8th Cir. 1983)). There is no ineffective assistance when counsel raised the issue and lost. This issue is not of a magnitude warranting Section 2255 relief anyway. *Sun Bear*, 644 F.3d at 704 (describing relief under Section 2255 as being reserved for cases entailing "a fundamental defect which inherently results in a complete miscarriage of justice") (citation omitted).

Washington also argues that the *Pimpology* book was improperly admitted into evidence which led to jury confusion. Responding to any basis for ineffective assistance of counsel on this point, Attorney Herrold states that there was no basis to object that the source of either of the "laws" contained in the different books and reflected in C.S.'s notebook was relevant. Rather, he argued to the jury that they should consider inconsistencies in the testimony when reviewing the

evidence and find reasonable doubt on that basis. As discussed earlier, there is no error here, much less an error warranting relief under Section 2255.

The final piece of evidence that Washington asserts that counsel should have moved to exclude was screenshots of the website for Mile High Entertainment, a website trial testimony established that he created and maintained. He argues that they were taken after he had been arrested and taken into custody. Washington does not offer any basis why a screenshot of a publicly available website violates his constitutional rights. He later contends that the evidence was unreliable because there was "overwhelming evidence" that "C.S. altered, and tampered with the content of this website" prior to the screenshots being taken. [ECF No. 12 at 11–12]. There is no basis to conclude that Attorney Herrold's representation on this issue fell below an objective standard of reasonableness. Washington again only offers his own assertions that evidence was fabricated.

b. Failure to Present a Defense

Washington advances a claim that Attorney Herrold failed to provide a defense by not introducing direct exculpatory evidence. [ECF No. 1 at 42–44]. Attorney Herrold explains in his affidavit that he believed the best defense for Washington was to fight the elements of force, coercion, and duress in the sex trafficking charge. [ECF No. 6 at 10]. He writes that he did not think it would be credible to the jury to assert that Washington was unaware of C.S.'s prostitution activities or did not participate in them. *Id.* Rather, Attorney Herrold says that his strategy was to argue that Washington and C.S. were business partners and there was no coercion involved. Washington instead rejected this strategy, leaving Attorney Herrold to a "scavenger hunt" defense by pointing out holes in the Government's case without presenting a coherent story for the defense. *Id.* at 11.

Trial strategy is not something a court may second-guess on a post-conviction motion. *United States v. Ledezma-Rodriguez*, 423 F.3d 830, 836 (8th Cir. 2005); *United States v. Rice*, 449 F.3d 887, 897 (8th Cir. 2006) (describing strategic choices by counsel as "virtually unchallengeable" if made after investigation of law and facts). Furthermore, strategic choices by counsel does not constitute ineffective assistance because it is unsuccessful. *Graham v. Dormire*, 212 F.3d 437, 440 (8th Cir. 2000) (citing *James v. Iowa*, 100 F.3d 586, 590 (8th Cir. 1996)). In this case, Attorney Herrold provides a reasonable and persuasive explanation for his proposed trial strategy. No constitutional violation occurred here.

E. Ineffective Assistance of Appellate Counsel

1. Legal Standard

A criminal defendant is also constitutionally entitled to the effective assistance of counsel on direct appeal. *Evitts v. Lucey*, 469 U.S. 387, 396 (1985). Claims for ineffective assistance of counsel on appeal are analyzed under the same framework as during trial. *Henderson v. Sargent*, 926 F.2d 706, 709–10 (8th Cir. 1991). The decision of an appellate attorney are considered in light of their duty to eliminate weaker claims for their client. *Roe v. Delo*, 160 F.3d 416, 418 (8th Cir. 1998) (noting that "effective appellate advocacy often entails screening out weaker issues, the Sixth Amendment does not require that appellate counsel raise every colorable or non-frivolous issue on appeal"); *Jones v. Barnes*, 463 U.S. 745, 751 (1983) (observing that "[e]xperience advocates since time beyond memory have emphasized the importance of winnowing out weaker arguments on appeal"). Courts do not consider whether counsel's decision to omit an appeal argument was an intelligent or effective choice "but rather whether his decision was an unreasonable one which only an incompetent attorney would adopt." *Anderson v. United States*, 393 F.3d 749, 754 (8th Cir. 2005) (cleaned up). Accordingly, courts assume that the decision of

appellate counsel to not raise a claim is "sound appellate strategy" in the absence of contrary evidence. *Sidebottom v. Delo*, 46 F.3d 744, 759 (8th Cir. 1995). A petitioner asserting ineffective assistance of counsel on appeal must establish that the result of the proceeding would have been different if counsel raised a specific issue on appeal. *United States v. Brown*, 528 F.3d 1030, 1033 (8th Cir. 2008) (quoting *Becht v. United States*, 403 F.3d 541, 546 (8th Cir. 2005)).

2. Analysis

The final ground for relief sought by Washington is ineffective assistance of his appeal counsel. He asserts that he received ineffective assistance because counsel should have challenged the sufficiency of the evidence. A sufficiency of the evidence argument would have been subject to plain-error review, because it was not raised in the district court, as Washington acknowledges. *United States v. Clarke*, 564 F.3d 949, 957 (8th Cir. 2009). Plain-error review requires a party to "establish that (1) the district court committed an error, (2) the error is clear and obvious, and (3) the error affect[ed] his substantial rights. *United States v. Chastain*, 979 F.3d 586, 592 (8th Cir. 2020) (citing *United States v. Coleman*, 961 F.3d 1024, 1027 (8th Cir. 2020)). Even if a party meets that difficult standard, an error will be corrected under plain-error review only if it "seriously affects the fairness, integrity or public reputation of judicial proceedings." *Id.* (citation omitted). Courts will "rarely conclude that an appellate attorney's performance was constitutionally deficient for not raising" a claim subject to plain-error review. *Roe*, 160 F.3d at 418.

Washington does not come close to meeting this standard. He relies on certain excerpts of C.S.'s testimony for support that she was not subject to force, fraud, or coercion during the commercial sex acts. Washington's recounting of the testimony ignores significant evidence introduced by the Government at trial that establishes those elements. Journal entries, acts of violence, and cell phone records all amount to substantial evidence that C.S. was subject to those

elements. Appellate counsel's decision to not argue sufficiency of the evidence was not so unreasonable that it was a strategy that "only an incompetent attorney would adopt." *Anderson*, 393 F.3d at 754. Washington is not entitled to relief on this ground.

III. CONCLUSION

For the reasons discussed above, Washington's Motion to Vacate, Set Aside, or Correct Sentence is DENIED. [ECF No. 1]. The other pending motions filed by Washington are denied as moot. [ECF Nos. 5, 8, 14].

Pursuant to Rule 11(a) of the Rules Governing Section 2255 Proceedings in the United States Courts, the Court must issue or deny a Certificate of Appealability when it enters a final order adverse to the movant. District courts have the authority to issue certificates of appealability under 28 U.S.C. § 2253(c) and Fed. R. App. P. 22(b). A certificate of appealability may issue only if the defendant "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A substantial showing is a showing "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (citation omitted). Washington has not made a substantial showing of the denial of a constitutional right on his claims. He may request issuance of a certificate of appealability by a judge with the Eighth Circuit. *See* Fed. R. App. P. 22(b).

IT IS SO ORDERED.

Dated this 3rd day of January, 2024.

Stephanie M. Rose

STEPHANIE M. ROSE, CHIEF JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

Antoinne Lee Washington

CIVIL NUMBER: 4:22-cv-00216-SMR

Petitioner,

v.

JUDGMENT IN A CIVIL CASE

United States of America

Respondent,

☑ **DECISION BY COURT.** This action came before the Court. The matter has been fully submitted and a decision has been rendered.

IT IS ORDERED AND ADJUDGED:

Petitioner's Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 is denied. Judgment entered in favor of respondent against petitioner. Case closed. Certificate of appealability will not issue.

Date: January 4, 2024

CLERK, U.S. DISTRICT COURT

/s/ B.German

By: Deputy Clerk

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-1087

Antoinne Lee Washington, also known as Antionne Lee Washington

Appellant

v.

United States of America

Appellee

Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:22-cv-00216-SMR)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

April 24, 2024

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

/s/ Stephanie N. O'Banion

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-1087

Antoinne Lee Washington, also known as Antionne Lee Washington

Appellant

v.

United States of America

Appellee

Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:22-cv-00216-SMR)

MANDATE

In accordance with the judgment of February 29, 2024, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

May 01, 2024

Acting Clerk, U.S. Court of Appeals, Eighth Circuit

24-1087 Antoinne Washington v. United States

Eighth Circuit Court of Appeals

PRO SE Notice of Docket Activity

The following was filed on 04/03/2024

Case Name: Antoinne Washington v. United States
Case Number: 24-1087

Docket Text:
PETITION for enbanc rehearing and also for rehearing by panel filed by Appellant Antoinne Lee Washington w/service 04/03/2024 by USCA8. [5379937] [24-1087]

The following document(s) are associated with this transaction:
Document Description: Petition for enbanc rehearing and also for rehearing by panel

Notice will be mailed to:

Antoinne Lee Washington
FEDERAL CORRECTIONAL INSTITUTION
18267-030
P.O. Box 1000
Talladega, AL 35160-1000

Notice will be electronically mailed to:

Amy L Jennings: amy.jennings2@usdoj.gov,
janna.colvin@usdoj.gov,dawn.thomas@usdoj.gov,andrew.kahl@usdoj.gov,caseview.ecf@usdoj.gov,hillary.kruse@usdoj.gov

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