

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-10328

ALFREDO FELIPE RASCO,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Georgia
D.C. Docket No. 4:14-cv-00171-WTM-CLR

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Order of the Court

23-10328

Before JORDAN and NEWSOM, Circuit Judges.

BY THE COURT:

Alfredo Rasco has filed a motion for reconsideration of this Court's June 14, 2023, order denying a certificate of appealability on appeal from the district court's denial of his *pro se* 28 U.S.C. § 2255 motion. Upon review, Rasco's motion is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

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

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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June 14, 2023

Clerk - Southern District of Georgia
U.S. District Court
124 BARNARD ST
SAVANNAH, GA 31401

Alfredo Felipe Rasco
628 SW 3RD ST
HALLANDALE BEACH, FL 33009

Appeal Number: 23-10328-A
Case Style: Alfredo Rasco v. USA
District Court Docket No: 4:14-cv-00171-WTM-CLR
Secondary Case Number: 4:08-cr-00100-WTM-CLR-1

The enclosed copy of this Court's order denying the application for a Certificate of Appealability is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Any pending motions are now rendered moot in light of the attached order.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

ORDER:

Alfredo Rasco is a federal prisoner serving a 133-month sentence after pleading guilty to conspiracy to commit health care fraud and aggravated identity theft. In 2014, he filed a *pro se* 28 U.S.C. § 2255 motion to vacate, correct, or set aside sentence, raising 12 claims. The district court adopted a magistrate judge's report and recommendation ("R&R") and denied the motion. On appeal, this Court determined that the R&R did not discuss Rasco's Claim 4, in violation of *Clisby v. Jones*, 960 F.2d 925 (11th Cir. 1992) (*en banc*). Accordingly, this Court remanded the case to the district court so it could address the merits of Claim 4, in which Rasco asserted that his plea was involuntary because his attorney provided ineffective assistance of counsel by failing to advise him of the immigration consequences of his plea. On remand, the district court denied the claim. Rasco has appealed, and he now seeks a certificate of appealability ("COA") from this Court.

To obtain a COA, a movant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The movant satisfies this requirement by demonstrating that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong" or that the issues "deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

To make a successful claim of ineffective assistance of counsel, a defendant must show both that (1) his counsel's performance was deficient, and (2) the deficient performance prejudiced his

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defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). In determining whether counsel gave adequate assistance, “counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* at 690. Counsel’s performance was deficient only if it fell below the wide range of competence demanded of attorneys in criminal cases. *Id.* at 688. To make such a showing, a defendant must demonstrate that “no competent counsel would have taken the action that his counsel did take.” *United States v. Freixas*, 332 F.3d 1314, 1319-20 (11th Cir. 2003) (quotation marks omitted).

The Sixth Amendment right to effective assistance of counsel requires counsel to inform his client whether his plea carries a risk of removal. *Padilla v. Kentucky*, 559 U.S. 356, 374 (2010). Both affirmative misadvice and omissions by counsel are considered deficient performance by counsel under the *Strickland* analysis. *Id.* at 369-70.

To prove prejudice, “[t]he defendant 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 one sufficient to undermine confidence in the outcome. *Id.* It is not enough for the defendant to show that the error had some conceivable effect on the outcome of the proceeding. *Id.* at 693. To establish that counsel’s deficient performance affected the outcome of the plea process, “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).

Here, reasonable jurists would not debate the district court’s denial of Rasco’s Claim 4 on remand. *See Slack*, 529 U.S. at 484. In 1997, an immigration judge ordered Rasco’s deportation for unrelated, prior convictions, and, in 1998, the Board of Immigration Appeals affirmed that removal order. Thus, at the time he pled guilty to the current charges, Rasco already was subject to deportation for his prior convictions. Therefore, even assuming that his counsel’s performance was deficient in failing to properly advise him of the immigration consequences of his current plea, Rasco failed to demonstrate that he was prejudiced by such performance. *See Strickland*, 466 U.S. at 694. The district court correctly came to the same conclusion.

Accordingly, Rasco’s motion for a COA is DENIED.

/s/ Kevin C. Newsom

UNITED STATES CIRCUIT JUDGE