

No.

IN THE  
SUPREME COURT OF THE UNITED STATES

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STEPHEN CHRISTOPHER PLUNKETT - PETITIONER

VS.

UNITED STATES OF AMERICA - RESPONDENT

---

APPENDIX TO  
MOTION FOR EXTENSION OF TIME

Submitted by:

 12/15/23

Stephen Christopher Plunkett  
Petitioner, Pro Se  
36265-177  
FCC FOX - MEDIUM  
1301 Dale Bumpers Rd.  
Forrest City, AR 72335

APPENDIX

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United States Court of Appeals  
for the Fifth Circuit

No. 23-10139

United States Court of Appeals  
Fifth Circuit

**FILED**

July 26, 2023

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

STEPHEN CHRISTOPHER PLUNKETT,

*Defendant—Appellant.*

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

UNPUBLISHED ORDER

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

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

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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 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.

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, 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

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(2000). The inquiry “is not coextensive with a merits analysis.” *Buck v. Davis*, 580 U.S. 100, 115 (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 Court of Appeals***  
FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

October 19, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

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USDC No. 3:20-CV-640

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

*Lisa E. Ferrara*

By: \_\_\_\_\_  
Lisa E. Ferrara, Deputy Clerk  
504-310-7675

Mr. Brian W. McKay  
Mr. Stephen Christopher Plunkett

United States Court of Appeals  
for the Fifth Circuit

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No. 23-10139

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

STEPHEN CHRISTOPHER PLUNKETT,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:20-CV-640

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ON PETITION FOR REHEARING EN BANC

UNPUBLISHED ORDER

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

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.

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