APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 23-3355

Jovan Marquis Harris

Petitioner - Appellant

v.

United States of America

Respondent - Appellee

Appeal from U.S. District Court for the District of North Dakota - Eastern
(3:22-cv-00178-PDW)

JUDGMENT

Before LOKEN, SHEPHERD, and GRASZ, 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. Appellant's motion for leave to proceed on appeal in forma pauperis is denied as moot. The appeal is dismissed.

January 23, 2024

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

/s/ Michael E. Gans

APPENDIX Page 1

Local 2255 Judgment (Rev. 6/16)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

Jovan Marquis Harris, Petitioner/Defendant v. United States of America, Respondent/Plaintiff.	**JUDGMENT ON PETITION PURSUANT TO 28 U.S.C. § 2255** Criminal Case No. 3:16-cr-272 Civil Case No. 3:22-cv-178

IT IS ORDERED AND ADJUDGED that the Petitioner's Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 is dismissed, pursuant to the Order filed on August 16, 2023

CLERK OF COURT

Date: August 16, 2023

/s/ Sarah Cook, Deputy Clerk

Signature of Clerk or Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
EASTERN DIVISION

Jovan Marquis Harris, Petitioner,	)	**ORDER DENYING MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE**
vs.	)	
United States of America, Respondent.	)	Case No. 3:22-cv-178

United States of America, Plaintiff,	)	
vs.	)	Case No. 3:16-cr-272
Jovan Marquis Harris, Defendant.	)	

Petitioner Jovan Marquis Harris moves to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. Doc. No. 171. He also moves for a hearing (Doc. No. 181) and for discovery (Doc. No. 182). The United States opposes the motions. Doc. No. 178; Doc. No. 184; Doc. No. 185. As explained below, all three motions are denied.

I. BACKGROUND

On September 1, 2015, J.L. died from a heroin overdose. Around this time, T.M. and M.M. also overdosed on heroin, but both eventually recovered. After investigation, Harris was found to be the source of the heroin that caused these three overdoses. He was indicted on seven drug-related charges stemming from his participation in a heroin distribution conspiracy in the Fargo,

North Dakota area.[1] Doc. No. 2. Following a six-day jury trial, Harris was convicted of six of the seven charged offenses. Harris was sentenced to 300 months imprisonment on counts 1, 2, 3, and 5, and to 240 months imprisonment on counts 6 and 7, with those sentences running concurrently. Harris appealed, and his convictions were affirmed. See United States v. Harris, 966 F.3d 755 (8th Cir. 2020). Harris then filed this § 2255 motion, alleging ineffective assistance of counsel at various stages of his case.

II. LEGAL STANDARDS

A motion under 28 U.S.C. § 2255 provides avenues for relief "in several circumstances, including cases shown to contain jurisdictional errors, constitutional errors, and errors of law." Raymond v. United States, 933 F.3d 988, 991 (8th Cir. 2019) (citing 28 U.S.C. § 2255(b)). "Habeas review is an extraordinary remedy and will not be allowed to do service for an appeal." Fletcher v. United States, 858 F.3d 501, 505 (8th Cir. 2017) (quoting Jennings v. United States, 696 F.3d 759, 762 (8th Cir. 2012)).

Harris bases his § 2255 motion on claims of ineffective assistance of counsel. To obtain relief on an ineffective assistance of counsel claim, a petitioner must satisfy the two-prong test articulated in Strickland v. Washington, 466 U.S. 668, 687 (1984). For the first prong, a petitioner must establish constitutionally deficient representation, meaning counsel's performance fell below an objective standard of reasonableness. Meza-Lopez v. United States, 929 F.3d 1041, 1044 (8th Cir. 2019) (citing Strickland, 466 U.S. at 687-88). "This requires showing that counsel made errors

[1] Conspiracy to possess with intent to distribute and distribute a controlled substance resulting in serious bodily injury and death, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), and 846, and 18 U.S.C. § 2 (count one); distribution of a controlled substance resulting in death, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C), and 18 U.S.C. § 2 (count two); distribution of a controlled substance resulting in serious bodily injury, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C), and 18 U.S.C. § 2 (counts three, four, and five); and distribution of a controlled substance, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2 (counts six and seven).

so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Strickland, 466 U.S. at 687. "Judicial scrutiny of counsel's performance must be highly deferential." Id. at 689. Courts view the representation from counsel's perspective at the time of the alleged error to avoid the effects of hindsight and second-guessing. Kemp v. Kelley, 924 F.3d 489, 500 (8th Cir. 2019) (citing Strickland, 466 U.S. at 489). A petitioner must overcome a strong presumption that defense counsel provided "adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690; see also Camacho v. Kelley, 888 F.3d 389, 394 (8th Cir. 2018). Strategic decisions made after a thorough investigation of the law and facts are virtually unchallengeable. United States v. Orr, 636 F.3d 944, 950 (8th Cir. 2011).

To satisfy the second prong, a petitioner must demonstrate that prejudice resulted from the deficient representation. Strickland, 466 U.S. at 687. To do so, a petitioner must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Adejumo v. United States, 908 F.3d 357, 361 (8th Cir. 2018) (quoting Strickland, 466 U.S. at 694). A reasonable probability is one "sufficient to undermine confidence in the outcome." Wiggins v. Smith, 539 U.S. 510, 534 (2003) (quoting Strickland, 466 U.S. at 694). When evaluating the probability of a different result, courts view the totality of the evidence to gauge the effect of the error. Williams v. United States, 452 F.3d 1009, 1013 (8th Cir. 2006) (citing Strickland, 466 U.S. at 495). Where a petitioner raises multiple ineffective assistance of counsel claims, each claim must be examined independently rather than collectively. Hall v. Luebbers, 296 F.3d 685, 692-93 (8th Cir. 2002) (citing Wainwright v. Lockhart, 80 F.3d 1226, 1233 (8th Cir. 1996)). Cumulative error will not justify habeas relief. Middleton v. Roper, 455 F.3d 838, 851 (8th Cir. 2006).

The court may dismiss a § 2255 motion without a hearing if "(1) the petitioner's allegations, accepted as true, would not entitle the petitioner to relief, or (2) the allegations cannot be accepted as true because they are contradicted by the record, inherently incredible, or conclusions rather than statements of fact." Tinajero-Ortiz v. United States, 635 F.3d 1100, 1105 (8th Cir. 2011). "The movant bears the burden to prove each ground entitling relief." Golinveaux v. United States, 915 F.3d 564, 567 (8th Cir. 2019) (citation omitted). Whether to grant or deny an evidentiary hearing is committed to the discretion of the district court. See id.

III. DISCUSSION

While his claims overlap at times, Harris makes seven ineffective assistance of counsel claims:

(1) Ineffective assistance of counsel for allegedly failing to object or raise on appeal that Harris's actions were not the "but for" cause of J.L.'s death. Doc. No. 172 at 26-28.

(2) Ineffective assistance of counsel for failing to argue that no evidence supported that M.M. and T.M. had suffered substantial bodily injury as a result of their heroin overdoses. Id. at 41-43.

(3) Ineffective assistance of counsel for an alleged failure to object to the Court's response to a question from the jury. Id. at 44-48.

(4) Ineffective assistance of counsel for failing to challenge the composition of jury as not drawn from a fair cross-section of the community. Id. at 49-52.

(5) Ineffective assistance of counsel for an alleged failure to investigate the case. Id. at 53-56.

(6) Ineffective assistance of counsel for not arguing that the evidence was nothing more than inference upon inference. Id. at 57-62.

(7) Ineffective assistance of counsel for an alleged failure to object to the admission of hearsay statements of Zach Spieker. Id. at 18-24.

At times, Harris's claims are more properly framed as a challenge to the merits of his conviction. The United States generally argues that Harris has not met his burden to demonstrate ineffective assistance of counsel.

A. Causation of J.L.'s Death

Count 2 charged Harris with distribution of a controlled substance resulting in J.L.'s death. Harris claims that both appellate and trial counsel were ineffective for failing to argue at trial or to raise on appeal that Harris's actions were not the "but for" cause of J.L.'s death. Doc. No. 172 at 26-28. However, the record directly contradicts that claim. Trial counsel specifically made motion for acquittal under Rule 29 of the Federal Rules of Criminal Procedure, arguing the United States had not sufficiently tied the heroin that caused J.L.'s death to Harris. Doc. No. 151 at 141:6-144:10. That motion was denied. Id. at 144:6-10. A similar argument from trial counsel was made again during closing arguments. Doc. No. 152 at 82:15-84:5.

As for appellate counsel, he specifically argued that Harris had not been shown to be the source of the heroin that caused J.L.'s death beyond a reasonable doubt. Harris, 966 F.3d at 761-62. However, the Eighth Circuit Court of Appeals disagreed and affirmed the conviction, as this issue was a question of fact for the jury. Id. at 762. Harris's claim that trial and appellate counsel failed to raise the issue of causation of J.L.'s death is contradicted by the record. The claim fails under Strickland because Harris cannot demonstrate constitutionally deficient representation. Additionally, to the extent Harris is arguing the merits of this issue, it cannot be relitigated. United States v. Lee, 715 F.3d 215, 224 (8th Cir. 2013) (claims that were addressed on direct appeal cannot be relitigated under 28 U.S.C. § 2255.).

B. M.M.'s and T.M.'s Substantial Bodily Injury

Harris goes on to argue trial counsel failed to argue that there was no evidence in the record to support his convictions on counts 3 and 5 for causing serious bodily injury to M.M and T.M. Doc. No. 172 at 41-43. Harris also argues appellate counsel was deficient for not raising the issue on appeal. Id. at 43. But Harris's framing of the record is inaccurate. Trial counsel (Doc. No. 152

at 79:25-81:3) and appellate counsel (Harris, 966 F.3d at 762) each argued the United States had not proven that Harris was the source of the heroin connected to M.M.'s and T.M.'s overdoses.

To the extent Harris is suggesting counsel should have argued that M.M. and T.M. did not suffer serious bodily injury, the claim also fails. The Eighth Circuit has affirmed verdicts where juries found serious bodily injury under similar circumstances. See United States v. Cooper, 990 F.3d 576, 583-83 (8th Cir. 2021). And it is well-settled that an attorney is not ineffective for failing to make a meritless argument. See United States v. Thomas, 951 F.2d 902, 904-05 (8th Cir. 1991). Further, the decision to focus on the source of the heroin that caused the injuries, rather than extent of the overdoes injuries, appears to have been a sound strategic choice from both trial and appellate counsel and is considered "virtually unchallengeable." Orr, 636 F.3d at 950 (quoting Strickland, 466 U.S. at 690). Lastly, to the extent Harris is making a merits-based argument that the evidence was insufficient to show he caused M.M. and T.M. serious bodily injury, the issue was raised on appeal and cannot be relitigated. Lee, 715 F.3d at 224. All in all, this claim also fails under Strickland.

C. Response to the Jury Question

For his next claim, Harris asserts trial counsel did not object to the Court's proposed response to a question from the jury and that this issue should have been raised on appeal. Doc. No. 172 at 44-48. Once again, though, Harris's position misstates the trial record.

The record reflects that during deliberations, the jury asked a question, seeking clarification regarding whether they were required to find Harris simply distributed heroin on or about September 1, 2015, or whether they needed to find that Harris sold heroin to J.L. on or about that date. Doc. No. 95-2. The attorneys were presented with the Court's intended response. Doc. No. 152 at 101:21-25. Trial counsel objected to the Court's initial proposed response and argued the response should include language indicating that the heroin at issue needed to have been

transferred to J.L. at some point. Id. at 102:11-103:3. After much discussion (id. at 102:11-109:23), the Court responded with the following:

> The answer to your question can be found by looking at elements one, two, and three in Instruction No. 7. The heroin resulting in death or serious bodily injury for Counts One through Five must have been distributed by Mr. Harris or a conspirator, but it did not have to be transferred directly to the person who died or suffered.

Doc. No. 95-3. The record shows that trial counsel objected to the Court's proposed response.

Harris's theory, as far as one can tell, is that he was potentially convicted of aiding and abetting a conspiracy, that this was improper, and that both trial and appellate counsel were deficient for failing to raise this. However, that is not the case. The jury instructions required Harris to be found guilty of actual participation in the heroin dealing conspiracy and, as a separate matter, that Harris or a co-conspirator distributed the heroin that ultimately led to J.L.'s death. Doc. No. 92. This is an accurate statement of the law, and neither trial counsel nor appellate counsel were ineffective for failing to raise Harris's meritless argument. Thomas, 951 F.2d at 904-05. Even assuming *arguendo* that counsel should have objected more strenuously, and that the instruction given to the jury was incorrect (and it was not), without more, an improper jury instruction is not cognizable in a § 2255 proceeding. Clemmons v. Delo, 177 F.3d 680, 685 (8th Cir. 1999); Merrill v. United States, 599 F.2d 240, 243 (8th Cir. 1979). Counsel was not constitutionally deficient, and this claim also fails under Strickland.

D. Racial Makeup of the Jury

Harris claims that trial counsel's representation was ineffective because he failed to object to the racial makeup of the jury. Harris also claims appellate counsel was ineffective for failure to raise this issue on appeal. Specifically, Harris suggests the lack of African American individuals in the jury pool violated his right to a fair trial.

The Sixth Amendment guarantees those accused of a crime the right to an impartial jury drawn from a fair cross-section of the community. See Taylor v. Louisiana, 419 U.S. 522, 527 (1975). "The Constitution does not guarantee a defendant a proportionate number of his racial group on the jury panel or the jury which tries him; it merely prohibits deliberate exclusion of an identifiable racial group from the juror selection process." United States v. Jefferson, 725 F.3d 829, 835 (8th Cir. 2013). To show deliberate exclusion of a racial group, counsel would have needed to show:

> (1) that the group alleged to be excluded is a "distinctive" group in the community;
>
> (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and
>
> (3) that this under-representation is due to systematic exclusion of the group in the jury-selection process.

Jefferson, 725 F.3d at 835 (citations omitted).

The District of North Dakota randomly selects potential jurors from a list of individuals who voted in the most recent presidential election. United States v. Garcia, 674 F. App'x 585, 587 (8th Cir. 2016). This selection process has been upheld by the Eighth Circuit several times while considering whether racial minorities are systematically excluded in the jury selection process. Id.; United States v. Greatwalker, 356 F.3d 908, 911 (8th Cir. 2004); United States v. Morin, 338 F.3d 838, 843 (8th Cir. 2003). Harris's argument fails to show the necessary systematic exclusion. Given the well-settled nature of this issue, Harris's attorneys were not ineffective for failing to raise this meritless argument. See Thomas, 951 F.2d at 904-05 (8th Cir. 1991). And as a result, the claim fails under Strickland because the representation did not fall below an objective standard of reasonableness, and there was no prejudice.

E. Trial Counsel's Investigation, Defense, and Failure to Call Witnesses

Harris goes on to suggest counsel was ineffective at trial for failure to properly investigate the case. More specifically, he asserts that counsel did not subpoena certain phone records and call certain witnesses. Doc. No. 172 at 53-56. The record shows otherwise.

Alexis Centers was an associate of J.L., and they discussed his purchase of heroin the night before his overdose. Doc. No. 148 at 191:13-199:18. Centers confirmed that J.L. was with Zach Spieker the night prior to J.L.'s death. Id. Harris argues counsel was ineffective for failing to obtain Centers's phone records to confirm whether they took place at the times she testified to. While the phone records were not entered into evidence, Harris provides only conclusory speculation that the phone records would have shown the text messages occurred at a time that would contradict Centers's testimony. Along with Centers's testimony about the time of those text messages, screen shots of a missed call, as well as an incoming call from J.L., were entered into evidence and corroborated her testimony. Id.; Doc. No. 95-1. Harris has not shown that the records would have contradicted Centers's testimony or that this would have changed the outcome of his trial.

Along these same lines, Harris posits that there were several individuals ready to testify in his favor that counsel failed to subpoena or refused to call as witnesses. Doc. No. 172 at 55. However, "[t]he decision not to call a witness is a virtually unchallengeable decision of trial strategy." Ford v. United States, 917 F.3d 1015, 1024 (8th Cir. 2019). Complaints of uncalled witnesses are also disfavored in federal habeas corpus review because allegations of what the witness would have testified to is speculative. Evans v. Cockrell, 285 F.3d 370, 377 (5th Cir. 2002). Such is the case here. Harris has not provided affidavits or any documentation showing what these individuals would have testified to. Instead he offers only self-serving statements that certain friends and family members would have testified that he was not in Fargo at the time of the

overdoses.[2] Without more, Harris's argument is insufficient to overcome the deference afforded to counsel's strategic decisions. See Ford, 917 F.3d at 1025.

The Court has reviewed the record and trial counsel appears to have thoroughly investigated this case and put forth a zealous defense of Harris. The standard is not whether counsel could have theoretically done more. See United States v. White, 341 F.3d 673, 680 (8th Cir. 2003). Instead, "[t]he burden of proving ineffective assistance of counsel rests with the defendant." United States v. Cronic, 466 U.S. 648, 658 (1984). This claim fails as he has not shown his representation was constitutionally deficient under Strickland.

F. Failure to Object to "Inferences"

Harris's next claim is that trial and appellate counsel failed to argue that the circumstantial nature of the evidence connecting J.L. to Harris was insufficient to convict on count 2. Doc. No. 172 at 57-62. This also appears to be a merit-based challenge to the sufficiency of the evidence, which was already addressed on appeal and cannot be relitigated here. See Lee, 715 F.3d at 224. So, to the extent Harris is challenging the sufficiency of his conviction, the claim fails. Additionally, his argument that trial counsel (Doc. No. 151 at 141:6-144:10) and appellate counsel (Harris, 966 F.3d at 761-62) did not address the attenuated connection between J.L. and Harris is contradicted by the record. Accordingly, the claim fails.

G. Admission of Statement by Zach Spieker

Zach Spieker was an associate of J.L. Spieker was interviewed by Detective Chris Martin of the Moorhead Police Department Detective during the investigation of J.L.'s overdose and death. Spieker died prior to Harris's trial. At trial, Detective Martin testified to a statement made by Spieker that J.L. was in a car with him purchasing heroin at a Fargo convenience store on

[2] Notably, the testimony of several witnesses and a Cass County booking sheet support that Harris was in the Fargo area around the time of the overdoses.

August 31, 2015. Doc. No. 148 at 138:4-14. Harris argues trial counsel was ineffective for failing to properly object to this hearsay statement. Doc. No. 172 at 18. He also alleges appellate counsel was ineffective for failing to address the issue on appeal. Id. Within this claim, Harris suggests that these failures of counsel violated the Confrontation Clause of the Sixth Amendment of the United States Constitution. Id.

Any contention that trial counsel did not object to the statement as hearsay or raise the Harris's Sixth Amendment right to confront witnesses is directly contradicted by the record. Defense counsel filed a motion in limine to exclude any statements of Spieker (Doc. Nos. 81, 82)[3] and objected to the statement at trial. During trial, counsel argued the statement should not be admitted because there was no opportunity to cross examine or confront the witness. Doc. No. 148 at 135:19-22. While the Court did not allow any other statements of Spieker into evidence, the Court determined Spieker's statement about taking part in a heroin transaction was a statement against interest—an exception to the rule against hearsay—and allowed Detective Martin to testify to the statement over counsel's objection. Id. at 137:15-21. In sum, the record contradicts Harris's argument that trial counsel did not properly object to Spieker's statement or raise his right to confront any witness against him, and that claim fails.

On appeal, however, Harris and appellate counsel did not raise the admission of Spieker's statement and the Sixth Amendment argument, so the first inquiry is whether the substantive claim is procedurally defaulted. "Where a defendant has procedurally defaulted a claim by failing to raise it on direct review, the claim may be raised in habeas only if the defendant can first demonstrate either cause and actual prejudice or that he is actually innocent." Bousley, 523 U.S. at 622. To establish cause, a defendant must show that the procedural default resulted from "something

[3] The motion in limine raises Harris's right to confront all witnesses against him.

external . . . that cannot fairly be attributable to him." Coleman v. Thompson, 501 U.S. 722, 753 (1991) (emphasis omitted) (citing Murray v. Carrier, 477 U.S. 478, 488 (1986)). Actual prejudice exists if the complained-of error "worked to [the defendant's] actual and substantial disadvantage." United States v. Frady, 456 U.S. 152, 170 (1982) (emphasis omitted). Actual innocence "means factual innocence, not mere legal insufficiency." Bousley, 523 U.S. at 623 (citation omitted).

Harris does not assert actual innocence, so he must demonstrate cause and prejudice for the procedural default. Cause exists because the default cannot be fairly attributable to Harris. Indeed, the lack of raising the claim on appeal is a result of the external actions of his appellate counsel. But as to actual prejudice, even assuming *arguendo* that there was a Sixth Amendment violation in admitting Spieker's statement through the officer, the Eighth Circuit Court of Appeals found that multiple other witnesses identified Harris as J.L.'s heroin source. See Harris, 966 F.3d at 762. Given that Spieker's statement to law enforcement was not the sole evidence that Harris was J.L.'s heroin source, one cannot conclude that the error worked to Harris's actual and substantive disadvantage.

As to the ineffective assistance of appellate counsel claim, the claim also fails on the prejudice prong of the Strickland for similar reasons. Recall that the prejudice prong requires a petitioner to demonstrate that prejudice resulted from the deficient representation. Strickland, 466 U.S. at 687. To do so, a petitioner must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Adejumo v. United States, 908 F.3d 357, 361 (8th Cir. 2018) (quoting Strickland, 466 U.S. at 694). A reasonable probability is one "sufficient to undermine confidence in the outcome." Wiggins v. Smith, 539 U.S. 510, 534 (2003) (quoting Strickland, 466 U.S. at 694). When evaluating the probability of a different result, courts view the totality of the evidence to gauge the effect of the

error. Williams v. United States, 452 F.3d 1009, 1013 (8th Cir. 2006) (citing Strickland, 466 U.S. at 495).

There is no dispute that appellate counsel did not raise the hearsay admission and Confrontation Clause issue on appeal, even though the admission of Spieker's statement was objected to at trial and the Court commented it was a "close call." Doc. No. 148 at 130:17-137:21. But even assuming that was deficient representation by appellate counsel, when viewing the totality of the evidence, including the transcripts and trial record, there is not a reasonable probability that the result of the trial would have been different. That is because, as noted above and by the Eighth Circuit, several other witnesses identified Harris as J.L.'s heroin source. See Harris, 966 F.3d at 762. So, even if Spieker's statement was excluded, the totality of the evidence established that fact for the jury and the effect of the error was minimal, given the substantial amount of evidence against Harris at trial. There is not a reasonable probability that the admission of Spieker's statement was an error "sufficient to undermine confidence in the outcome." See Wiggins, 539 U.S. at 534. Harris cannot demonstrate prejudice, and his ineffective assistance of counsel claim fails under the prejudice prong of Strickland. As such, this claim also fails.

H. Motion for Discovery

Harris also filed a motion for discovery. Doc. No. 182. Generally, "[a] habeas petitioner, unlike the usual civil litigant in federal court, is not entitled to discovery as a matter of ordinary course." Newton v. Kemna, 354 F.3d 776, 783 (8th Cir. 2004) (quoting Bracy v. Gramley, 520 U.S. 899, 904 (1997)). The Court "may, for good cause, authorize a party to conduct discovery under the Federal Rules of Criminal Procedure or Civil Procedure, or in accordance with the practices and principles of law." Rule 6(a), Rules Governing Section 2255 Cases in the United States District Courts ("2255 Rules"). To determine whether good cause exists, the Court must:

> identify the essential elements of the petitioner's substantive claim, evaluate whether specific allegations . . . show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is . . . entitled to relief, and, if the petitioner has made such allegations, provide the necessary facilities and procedures for an adequate inquiry.

Newton, 354 F.3d at 783 (alterations in original) (internal citations and quotation marks omitted). The party requesting discovery must also provide reasons for the request and must specify any requested documents. Rule 6(b), § 2255 Rules. "Federal habeas discovery is the exception rather than the rule." Prentice v. Baker, No. 3:10–cv–00743, 2013 WL 1182065, at *2 (D. Nev. Mar. 19, 2013).

Here, Harris has not met the good cause requirement because the proposed discovery Harris seeks would not show that he is entitled to habeas relief. As explained above, some of Harris's claims are procedurally defaulted and nearly all are contradicted by the record. Discovery is unwarranted, and the Court denies the motion for discovery (Doc. No. 182).

I. Evidentiary Hearing

Section 2255(b) requires an evidentiary hearing "[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." No hearing is necessary "if (1) the petitioner's allegations, accepted as true, would not entitle the petitioner to relief, or (2) the allegations cannot be accepted as true because they are contradicted by the record, inherently incredible, or conclusions rather than statements of fact." Sanders v. United States, 341 F.3d 720, 722 (8th Cir. 2003).

After careful review of the file and all of Harris's substantive § 2255 claims, the files and records of the case decisively refutes each claim presented by him. As such, dismissal without an evidentiary hearing is warranted. See Calkins v. United States, 795 F.3d 896, 900 (8th Cir. 2015).

IV. CONCLUSION

The Court has reviewed the record, the parties' filings, and the relevant legal authority. For the reasons above, Harris's motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 (Doc. No. 171), motion for evidentiary hearing (Doc. No. 181), and motion for discovery (Doc. No. 182) are **DENIED**. This matter is **DISMISSED** without an evidentiary hearing.

The Court certifies that an appeal from the denial of the motion may not be taken in forma pauperis because such an appeal would be frivolous and cannot be taken in good faith. Coppedge v. United States, 369 U.S. 438, 444-45 (1962). Based upon the entire record, dismissal of the motion is not debatable, reasonably subject to a different outcome on appeal, or otherwise deserving of further proceedings. Therefore, the Court will not issue a certificate of appealability. Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983); Tiedeman v. Benson, 122 F.3d 518, 520-22 (8th Cir. 1997). If Harris desires further review of his motion, he may request a certificate of appealability from a circuit judge of the Eighth Circuit Court of Appeals.

IT IS SO ORDERED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 16th day of August, 2023.

/s/ Peter D. Welte
Peter D. Welte, Chief Judge
United States District Court