

UNITED STATES OF AMERICA
SUPREME COURT

IN RE : BRYAN LEE GREGORY

APPENDIX

(A). UNITED STATES DISTRICT COURT OF WESTERN MISSOURI SOUTHERN DIVISION
20-3294-CV-S-SRB-P: Judgement, pages -1 of 4, Document 55, filed
05/18/21. Criminal No: 17-03044-01-CR-S-SRB

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

BRYAN L. GREGORY,

Movant,

vs.

UNITED STATES OF AMERICA,

Respondent.

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) Case No. 20-3294-CV-S-SRB-P
) (Criminal No. 17-03044-01-CR-S-SRB)
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ORDER DENYING MOTION TO VACATE SENTENCE (28 U.S.C. § 2255)
AND DECLINING TO ISSUE A CERTIFICATE OF APPEALABILITY

Movant pled guilty to being a felon in possession of a firearm, and the Court sentenced him to 120 months' imprisonment. Crim. Doc. 97 (judgment). Movant appealed, and the Court of Appeals affirmed, concluding that Movant knowingly and voluntarily pled guilty, that his challenge regarding the denial of a suppression motion was foreclosed by his valid guilty plea, and that there was no error regarding the sentence imposed. Crim. Doc. 111-1 (unpublished opinion). This case involves Movant's motion to vacate sentence pursuant to 28 U.S.C. § 2255, filed *pro se*, in which he asserts numerous grounds for relief. See Docs. 16 and 18 (amended motion and supplemental statement).¹

At the outset, the Court notes that a "plea of guilty is a solemn act not to be disregarded because of belated misgivings about its wisdom." *United States v. Green*, 521 F.3d 929, 931 (8th Cir. 2008) (citations omitted). The Court also notes that Movant bears the burden of proving his claims for relief under § 2255. *Kress v. United States*, 411 F.2d 16, 20 (8th Cir. 1969).

¹As Respondent correctly notes, "Gregory misnumbers [some of] his grounds[.]" Doc. 22, p. 1, n.1 (suggestions in opposition to § 2255 relief). For example, it appears that Movant identifies no claims as grounds 33, 36, and 37, see Doc. 16, pp. 59-65, 71-73 (amended motion), and that he has identified two claims as ground 18, see *id.* at 25-27, and two claims as ground 40, see *id.* at 75. The Court will address Movant's claims as he has numbered them.

In ground 20, Movant claims his attorney withheld from him certain evidence that was presented at the suppression hearing. *Id.* at 31-33. In grounds 21-23, 27, and 30, Movant claims, albeit unclearly, that his attorney suffered from conflicts of interest. *Id.* at 33-38, 46-47, and 50-51. In grounds 24 and 40, Movant faults his attorney for not challenging the indictment. *Id.* at 39-40, 75. In ground 39, Movant claims he received no benefit from the plea agreement negotiated by his attorney. *Id.* at 73-75. As to all of these claims, having carefully reviewed the record, the Court finds that Movant suffered no *Strickland/Hill* prejudice. This finding is bolstered by the Court of Appeals' determination that Movant "knowingly and voluntarily entered his guilty plea[.]" Doc. 111-1, p. 2 (unpublished opinion). Relief is denied on grounds 15, 16, 20-24, 27, 30, 39, and 40.

In grounds 5, 17-19, 35, 38, and 41, Movant claims he was the victim of government misconduct because the prosecutor violated the plea agreement regarding the enhancement of Movant's sentence and by advocating for a three-year term of supervised release, withheld video and photographic evidence, suborned perjury, and engaged in misconduct before the grand jury. Doc. 16, pp. 9, 25-31, 71-75 (amended motion). To prevail on these claims, Movant must show both "flagrant misconduct and substantial prejudice." *See United States v. Wadlington*, 233 F.3d 1067, 1073 (8th Cir. 2000). Having carefully reviewed Movant's claims, the Court finds that he has shown neither flagrant prosecutorial misconduct nor substantial prejudice. Relief is denied on grounds 5, 17-19, 35, 38, and 41.

The Remaining Grounds for Relief

In the remaining grounds for relief, Movant asserts claims involving his access to the

The Grounds for Relief That May Be Reviewed in This Case

When Movant pled guilty, in exchange for the Government's agreement "not to bring any additional charges . . . related to [Movant's] possession of a firearm by a convicted felon," Crim. Doc. 76, p. 4, he agreed to waive appellate and post-conviction (§ 2255) rights as to all but three types of claims – those alleging ineffective assistance of counsel, prosecutorial misconduct, and an illegal sentence, *id.* at 10, ¶ 15. As indicated above, the Court of Appeals affirmed Movant's sentence, thereby foreclosing all sentence-related claims Movant makes in this case.

In grounds 7, 11-13, 15, 16, 20-25, 27, 30, 39, and 40, Movant claims he was denied effective assistance of counsel. Doc. 16, pp. 10, 12, 17, 18, 23, 24, 31-40, 46, 50, 73, and 75 (amended motion). To prevail on these claims, Movant must demonstrate that his attorney's performance was both constitutionally deficient and prejudicial. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Hill v. Lockhart*, 474 U.S. 52, 58 (1985) (*Strickland* standard applies to the performance of plea counsel). Specifically:

In grounds 7, 11-13, and 25, Movant claims his attorney conspired with the prosecutor regarding the application of a sentencing enhancement and was otherwise ineffective regarding the application of sentencing enhancements. Doc. 16, pp. 10-21, 40-41 (amended motion). However, the Court of Appeals found no error in the enhancement of Movant's sentence. Doc. 111-1, pp. 2-3 (unpublished opinion). Given this finding, Movant cannot demonstrate a constitutional violation under the *Strickland/Hill* standard. Relief is denied on grounds 7, 11-13, and 25.

In grounds 15 and 16, Movant claims that his attorney misled him and otherwise provided ineffective assistance regarding the stipulated facts. Doc. 16, pp. 23-25 (amended motion).

courts,² the indictment, his innocence, jurisdiction, the presentence investigation report, the validity of his guilty plea, and other error that he attributes to this Court. Doc. 16, pp. 4-9, 16, 12-14, 21, 27, 41, 47, 49, 52-65, 72. Because Movant waived his right to present these claims, relief is denied on grounds 1-4, 6, 8-10, 14, 18, 26, 28, 29, 31, 32, and 34.

As Movant's "one last issue," which he misnumbers as ground 49, Movant claims that the Court of Appeals "violated the plea agreement." Doc. 18, p. 1. This Court is unable to consider such a claim.

Conclusion

For the reasons set out above, Movant's motion to vacate sentence pursuant to 28 U.S.C. § 2255 is denied. Movant's motions to stay proceedings and for "production of material evidence" (Docs. 48 and 49) also are denied,³ and the Court 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/ Stephen R. Bough
STEPHEN R. BOUGH
UNITED STATES DISTRICT JUDGE

Dated: May 18, 2021.

²In *United States v. Cline*, No. Civ. 04-3400-SAC, 2005 WL 1124403, at *2 (D. Kan. May 10, 2005), Judge Crow found that a "claim of lack of access [to the court] must be brought as a separate civil rights action, and is not properly included in [a] § 2255 motion." (citation omitted). The same is true here. To the extent that Movant claims he has been denied access to this Court, *see, e.g.*, Doc. 16, p. 59 (amended motion), the record clearly disproves his claim.

³Plaintiff's reply suggestions to these motions are due on May 27, 2021, but the Court finds that further briefing is unnecessary.