

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RICHARD S. TERRY - PETITIONER

vs.

UNITED STATES OF AMERICA - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

APPENDIX A

Richard S. Terry, Pro Se
FMC Fort Worth
P.O. Box 15330
Fort Worth, TX 76119

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- I. Order of the United States Court of Appeals for the Eleventh Circuit denying Mr. Terry's Motion for Reconsideration, dated October 02, 2024 (3 pages)
- II. Order of the United States District Court, Middle District of Florida, Tampa Division, denying Mr. Terry's request for a certificate of appealability, dated April 26, 2024 (1 page)
- III. Order of the United States District Court, Middle District of Florida, Tampa Division, denying Mr. Terry's 28 U.S.C. § 2255 petition, dated April 10, 2024 (14 pages)

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-11272

RICHARD STEPHENS TERRY,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:21-cv-00879-SDM-NHA

ORDER:

Richard Terry moves for a certificate of appealability in order to appeal the denial of his 28 U.S.C. § 2255 motion. To merit a certificate of appealability, Terry must show that reasonable jurists would find debatable both (1) the merits of an underlying claim, and (2) the procedural issues that he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000). Terry's motion for a certificate of appealability is DENIED because he failed to make the requisite showing, and his motion for leave to proceed *in forma pauperis* is DENIED AS MOOT.

/s/ Andrew L. Brasher

UNITED STATES CIRCUIT JUDGE

**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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October 02, 2024

Richard Stephens Terry
FMC Fort Worth - Inmate Legal Mail
PO BOX 15330
FORT WORTH, TX 76119

Appeal Number: 24-11272-F
Case Style: Richard Terry v. USA
District Court Docket No: 8:21-cv-00879-SDM-NHA
Secondary Case Number: 8:18-cr-00388-SDM-NHA-1

The enclosed order has been ENTERED.

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MOT-2 Notice of Court Action

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-11272

RICHARD STEPHENS TERRY,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:21-cv-00879-SDM-NHA

Before NEWSOM and BRASHER, Circuit Judges.

BY THE COURT:

Richard Terry has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's September 5, 2024 order denying a certificate of appealability and leave to proceed on appeal *in forma pauperis* in his underlying 28 U.S.C. § 2255 proceedings. Upon review, Terry's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 8:21-cv-879-SDM-NHA
8:18-cr-388-SDM-NHA

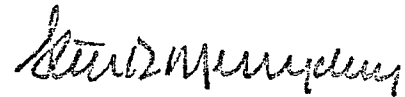
RICHARD STEPHENS TERRY
_____ /

ORDER

Terry moves for a certificate of appealability ("COA"). (Doc. 18) For the same reasons stated in the order (Doc. 15) that both denies relief and declines to issue a COA, Terry is not entitled to a COA.

The motion (Doc. 18) for a certificate of appealability is **DENIED**. Leave to appeal *in forma pauperis* is **DENIED**. Terry must obtain permission from the circuit court to appeal *in forma pauperis*.

ORDERED in Tampa, Florida, on April 26, 2024.



STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,

v.

CASE NO. 8:21-cv-879-SDM-NHA
8:18-cr-388-SDM-NHA

RICHARD STEPHENS TERRY

ORDER

Richard Stephens Terry moves under 28 U.S.C. § 2255 to vacate his sentence. (Doc. 1). The United States filed a response in opposition with a supporting affidavit, (doc. 5), and Terry filed a reply, (doc. 6). Terry is entitled to no relief because his claims are procedurally defaulted or lack merit.¹

BACKGROUND AND PROCEDURAL HISTORY

Terry pleaded guilty through a plea agreement to attempted enticement of a minor, in violation of 18 U.S.C. § 2422(b). (Cr-Docs. 1, 44).² During the plea hearing, the magistrate judge asked the United States to provide more information in the factual basis to “flesh out the substantial step that was taken in this case.” (Cr-Doc. 67 at 4). Terry’s counsel stated that, based on Eleventh Circuit case law, Terry would admit that a jury could find he took a substantial step in the offense. (*Id.* at

¹ The motion can be denied without need for an evidentiary hearing, as no hearing is required when the record establishes that a Section 2255 claim lacks merit. *See United States v. Lagrone*, 727 F.2d 1037, 1038 (11th Cir. 1984).

² References to filings in criminal case number 8:18-cr-388-SDM-SPF are cited throughout this Order as “Cr-Doc. [document number].” References to filings in this civil case are cited as “Civ. Doc. [document number].”

10). The magistrate judge continued the hearing to allow for amendment of the factual basis. (*Id.* at 11–12).

During the continued hearing, Terry informed the magistrate judge he still intended to plead guilty. (Cr-Doc. 68 at 3). He acknowledged he understood that he could consult counsel during the proceeding. (*Id.* at 4). Terry affirmed for the court that he reviewed the facts and evidence with counsel and was “fully satisfied” with counsel’s advice and representation. (*Id.* at 8–9). He acknowledged he was waiving his right to a trial and that he knew the difference between pleading guilty and pleading not guilty. (*Id.* at 10). The magistrate judge explained, and Terry acknowledged he understood, the elements of the offense and the statutory penalties he faced. (*Id.* at 12–14). The magistrate judge then discussed the sentencing process, and Terry confirmed his understanding that he could not withdraw his guilty plea if this Court imposed a sentence higher than his counsel estimated. (Cr-Doc. 68 at 14–16).

Also, Terry confirmed that he received the addendum to the factual basis, which he reviewed with counsel along with the rest of the plea agreement. (*Id.* at 16–17). The magistrate judge explained to Terry that, if this Court rejected any sentencing recommendations, he could not withdraw his guilty plea. (*Id.* at 21–22). Terry acknowledged his limited right to appeal and stated he did not need the magistrate judge to review any other provisions of the plea agreement. (*Id.* at 24–25). The United States’ factual basis detailed Terry’s conduct, which included Terry’s “substantial step towards committing the offense . . . when he attempted to gain the

assent of the detective” to sexually abuse her fictitious minor child. (Cr-Doc. 68 at 26–28). Terry agreed these facts were true. (*Id.* at 30).

Terry confirmed for the magistrate judge no one forced, threatened, or coerced him to plead guilty. (*Id.* at 31). Defense counsel stated he was satisfied that Terry was pleading guilty freely and voluntarily “with full knowledge of the consequences[.]” (*Id.* at 32). The magistrate judge determined that Terry was competent and that his guilty plea was knowing, voluntary, and supported by a factual basis. (*Id.*). Terry did not object to the magistrate judge’s report and recommendation, and this Court adjudicated him guilty. (Cr-Doc. 45).

Before Terry’s sentencing, the Probation Office prepared a Presentence Investigation Report (“PSR”) that determined Terry’s base offense level was 28. (Cr-Doc. 55 ¶ 27). Terry’s total offense level (35) and criminal history category (II) resulted in an advisory guidelines range of 188 to 235 months’ imprisonment. (*Id.* ¶¶ 35, 43, 71). Neither party objected to the PSR. (*See* PSR Addendum, Cr-Doc. 55 at 18).

Also, before sentencing, defense counsel filed a sentencing memorandum, asking this Court to grant a downward variance and impose a 120-month sentence. (Cr-Doc. 57). Defense counsel asserted that Terry did not actually sexually abuse a child and highlighted Terry’s difficult upbringing and his troubled mental health. (*Id.* at 2). Counsel acknowledged that Terry “took the necessary ‘substantial step’” to commit the crime, but he asserted that Terry never left his home or traveled to a predetermined location to meet with the fictitious child. (*Id.* at 3).

This Court sentenced Terry to 120 months of imprisonment, followed by a life term of supervised release. (Cr-Doc. 59). Terry was granted a downward variance based on his history and characteristics. (*See* Statement of Reasons, Cr-Doc. 60 § VI(C)). Terry did not appeal this Court's judgment.

Through his Section 2255 Motion, Terry seeks to vacate his conviction, claiming that the evidence was insufficient to prove the substantial step element (Ground One). (Doc. 1 at 4). He also claims that his guilty plea was not knowing and voluntary because his attorney did not explain the substantial step element to him and did not inform the magistrate judge he was arrested before any substantial step was taken (Ground Two). (*Id.* at 5). The United States admits that Terry's motion was timely filed under 28 U.S.C. § 2255(f), (*see* doc. 5 at 5), but argues that his claims are procedurally defaulted or meritless.

FACTS³

From November 2016 through April 2017, Terry communicated with an undercover detective via email and text message to engage in sexual activity with her minor child. (Cr-Doc. 44 at 20). Terry told the detective he wanted to engage in a sexual relationship with her and the fictitious child. (*Id.* at 20). Terry sent explicit messages detailing how he would engage in a sexual relationship with the fictitious child. (*Id.* at 20–21). Although Terry did not follow through with plans to meet the detective, he took a substantial step to commit the offense by attempting to gain the

³ This summary of the facts derives from Terry's plea agreement. (Doc. 44 in Case No. 18-cr-388).

assent of the detective to sexually abuse the fictitious child. (*Id.* at 22). Terry told the detective he changed his mind about meeting in person because he was concerned he was being set up. (*Id.*)

PROCEDURAL DEFAULT

In Ground One, Terry claims that the evidence was insufficient to prove the substantial step element. Because he pleaded guilty and did not file a direct appeal, Terry has procedurally defaulted his claim. *Massaro v. United States*, 538 U.S. 500, 504 (2003). *See also Greene v. United States*, 880 F.2d 1299, 1305 (11th Cir. 1989) (“In general, a defendant must assert an available challenge to a sentence on direct appeal or be barred from raising the challenge in a section 2255 proceeding.”) *See McCoy v. United States*, 266 F.3d 1245, 1258 (11th Cir. 2001). “[A] collateral challenge may not do service for an appeal.” *United States v. Frady*, 456 U.S. 152, 164–65 (1982). “Once the defendant’s chance to appeal has been waived or exhausted,” courts “are entitled to presume that [the defendant] stands fairly and finally convicted.” *Id.* Claims available but not raised are procedurally defaulted and barred from consideration on collateral review. *Bousley v. United States*, 523 U.S. 614, 622–24 (1998).

The procedural default of a claim can be overcome only: “(1) for cause and prejudice, or (2) for a miscarriage of justice, or actual innocence.” *McKay v. United States*, 657 F.3d 1190, 1196 (11th Cir. 2011). The cause-and-prejudice standard requires a showing that “some objective factor external to the defense” impeded Terry’s efforts to raise the issue earlier. *Frady*, 456 U.S. at 170. If both cause for the procedural default and prejudice are not shown, this Court cannot consider Terry’s

challenge to his conviction unless he shows “actual innocence.” *Bousley*, 523 U.S. at 620–24. Sometimes a petitioner can establish cause based on ineffective assistance of counsel, but to do so he must allege and prove deficient performance that worked to his actual and substantial disadvantage. *See Fortenberry v. Haley*, 297 F.3d 1213, 1222 (11th Cir. 2002); *see also Reece v. United States*, 119 F.3d 1462, 1465–68 (11th Cir. 1997).

Terry alleges his counsel was ineffective in failing to explain the substantial step element to him before the entry of his guilty plea. Terry, however, must show that his counsel “made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed . . . by the Sixth Amendment.” *Strickland v. Washington*, 466 U.S. 668, 687 (1984). “Judicial scrutiny of counsel’s performance must be highly deferential,” and “a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that . . . the challenged action might be considered sound trial strategy.” *Id.* at 689 (citations omitted). “A petitioner must identify specific acts or omissions that were not the result of reasonable professional judgment, and a court should deem these acts or omissions deficient only if they ‘were outside the wide range of professionally competent assistance.’” *Brownlee v. Haley*, 306 F.3d 1043, 1059 (11th Cir. 2002) (quoting *Strickland*, 466 U.S. at 690). Because of the “strong presumption in favor of competence,” a petitioner seeking to prove a Sixth Amendment violation “must establish that no competent counsel would have taken the action that his counsel did take.” *Chandler v. United States*, 218

F.3d 1305, 1314–15 (11th Cir. 2000) (en banc). Terry cannot satisfy this standard.

Terry's knowing and voluntary guilty plea waived his challenge to the sufficiency of the evidence needed to prove the substantial step element. *Tollett v. Henderson*, 411 U.S. 258, 267 (1973), holds that a guilty plea waives a non-jurisdictional defect:

[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.

This waiver of rights precludes most challenges to the conviction. “[W]hen the judgment of conviction upon a guilty plea has become final and the offender seeks to reopen the proceeding, the inquiry is ordinarily confined to whether the underlying plea was both counseled and voluntary.” *United States v. Broce*, 488 U.S. 563, 569 (1989). *See also Class v. United States*, 138 S. Ct. 798, 805–06 (2018) (“[A] valid guilty plea relinquishes any claim that would contradict the ‘admissions necessarily made upon entry of a voluntary plea of guilty.’”) (quoting *Broce*); *United States v. Patti*, 337 F.3d 1217, 1320 (11th Cir. 2003) (“Generally, a voluntary, unconditional guilty plea waives all non-jurisdictional defects in the proceedings.”); *Wilson v. United States*, 962 F.2d 996, 997 (11th Cir. 1992) (“A defendant who enters a plea of guilty waives all non-jurisdictional challenges to the constitutionality of the conviction, and only an attack on the voluntary and knowing nature of the plea can be sustained.”). A guilty plea waives a claim based on a pre-plea event, including a claim of ineffective

assistance of counsel. *Wilson*, 962 F.2d at 997. The entry of a guilty plea waives a claim based on an event that occurred before acceptance of the plea, including both a substantive claim and a purported failing of counsel (but not a jurisdictional challenge or a voluntariness challenge to the plea). Terry asserts neither a jurisdictional challenge nor a voluntariness challenge. Because he cannot establish cause for his failure to challenge the evidence earlier or resulting prejudice, he is procedurally barred from challenging it in this Section 2255 proceeding.

Terry may avoid the procedural default of his claim only if he can show, by clear and convincing evidence, that the alleged error “has probably resulted in the conviction of one who is actually innocent.” *Bousley*, 523 U.S. at 624 (quoting *Murray v. Carrier*, 477 U.S. 478, 496 (1986)); *Jones v. U.S.*, 153 F.3d 1305, 1308 (11th Cir. 1998). “[A]ctual innocence means factual innocence, not mere legal insufficiency.” *Bousley*, 523 U.S. at 624 (internal quotations and citation omitted). Terry has not met his burden and so, he is not excused from the procedural default of his claim and Ground One is denied.

INEFFECTIVE ASSISTANCE OF COUNSEL

In Ground Two, Terry suggests that his guilty plea was not knowing and voluntary because his attorney did not explain the substantial step element to him. He also claims that his attorney did not inform the court that he was arrested before any substantial step was taken. *Id.* “[T]he cases in which habeas petitioners can properly prevail on the ground of ineffective assistance of counsel are few and far between.” *Waters v. Thomas*, 46 F.3d 1506, 1511 (11th Cir. 1995) (en banc) (quoting

Rogers v. Zant, 13 F.3d 384, 386 (11th Cir. 1994)). *Strickland* governs an ineffective assistance of counsel claim. The *Strickland* two-part test for analyzing ineffective assistance of counsel claims requires proof of both deficient performance and consequent prejudice. *Strickland*, 466 U.S. at 697 (“There is no reason for a court deciding an ineffective assistance claim . . . to address both components of the inquiry if the defendant makes an insufficient showing on one.”); *Sims*, 155 F.3d at 1305 (“When applying *Strickland*, we are free to dispose of ineffectiveness claims on either of its two grounds.”). “[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Strickland*, 466 U.S. at 690. “[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s conduct.” 466 U.S. at 690. *Strickland* requires that “in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” 466 U.S. at 690.

Terry must show that counsel’s alleged error prejudiced the defense because “[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” 466 U.S. at 691–92. “[C]ounsel owes a lesser duty to a client who pleads guilty than to one who decided to go to trial, and in the former case counsel need only provide his client with an understanding of the law in relation to the facts, so that the accused may make an informed and conscious choice between accepting the

prosecution's offer and going to trial." *Wofford v. Wainwright*, 748 F.2d 1505, 1508 (11th Cir. 1984). To prove prejudice, "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. at 59. Terry's ineffective assistance of counsel claim is refuted by the record.

A thorough plea colloquy can render an involuntary plea claim meritless under the stringent requirements outlined in *Strickland* and *Hill*. Under Rule 11, the court must inform the defendant of any possible maximum penalty and any mandatory-minimum penalty he will face by pleading guilty and make sure the defendant understands the sentencing range. Fed. R. Crim. P. 11(b)(1)(H)-(I). Rule 11 also "imposes upon a district court the obligation and responsibility to conduct an inquiry into whether the defendant makes a knowing and voluntary guilty plea." *United States v. Gandy*, 710 F.3d 1234, 1240 (11th Cir. 2013) (other citation omitted).

The court must address three core concerns: (1) the guilty plea must be free of coercion; (2) the defendant must understand the nature of the charges; and (3) the defendant must know and understand the consequences of his guilty plea. *Id.* at 1240 (other citation omitted). Failure to address those core concerns amounts to plain error. *Id.* A variance from the requirements of Rule 11, however, is harmless error if it does not affect a defendant's substantial rights. *Id.* A defendant who seeks reversal of his conviction after a guilty plea because of Rule 11 error, "must show a reasonable probability that, but for the error, he would not have entered the plea." *Id.* "There is a strong presumption that statements made during the plea colloquy

are true,” and a petitioner “bears a heavy burden to show that his statements under oath were false.” *Patel v. United States*, 252 F. App’x 970, 975 (11th Cir. 2007) (per curiam) (citation omitted).

Terry argues that he never took a substantial step to commit the offense. To sustain a conviction under 18 U.S.C. § 2422(b), a defendant must take a substantial step to commit the offense. *See United States v. Yost*, 479 F.3d 815, 819 (11th Cir. 2007). Contrary to Terry’s assertion, travel is not required to commit the offense. *Id.* at 820. The offense can be accomplished through an online chat if the chat constitutes a substantial step towards inducement as opposed to “mere talk.” *Id.* at 820 (quotations omitted).⁴ The factual basis in Terry’s plea agreement states that Terry sent detailed messages to the detective about the sexual activity he would engage in with the fictitious child. (Cr-Doc. 44 at 19–20). Terry admitted as part of his plea that while he did not follow through with plans to meet with the detective, “he took a substantial step towards committing the offense . . . when he attempted to gain the assent” of the detective to sexually abuse her fictitious child. (*Id.* at 22). Terry could have pleaded not guilty had he believed the evidence was insufficient to support the substantial step element. During the first change-of-plea hearing, defense counsel told the court he specifically discussed this issue and the relevant law with

⁴ While Terry relies on cases from the Seventh Circuit for his argument, (*see docs. 1 at 13; doc. 6*), “[a]uthority from one circuit of the United States Court of Appeals is not binding upon another circuit.” *Generali v. D’Amico*, 766 F.2d 485, 489 (11th Cir. 1985) (citing *United States v. Diamond*, 430 F.2d 688 (5th Cir. 1970)). This Court is bound by the case law of the Eleventh Circuit as well as that of the former Fifth Circuit. *See Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981).

Terry. (*Id.* at 8–10). He also said Terry would admit that a jury could find he took a substantial step to commit the offense based on the communications. (*Id.* at 8–10).

During the continued plea hearing, Terry acknowledged for the magistrate judge he understood that he could consult counsel during the proceeding. (Cr-Doc. 68 at 4). While under oath, he confirmed that he reviewed all the facts and evidence and counsel did everything he asked him to do. (*Id.* at 8–9). Terry acknowledged he understood that by pleading guilty there would be no trial. (*Id.* at 10). The magistrate judge explained the elements the United States was required to prove and Terry stated he understood those elements. (*Id.* at 12–13). The magistrate judge also detailed the minimum and maximum penalties that Terry faced. (*Id.* at 13–14).

Terry confirmed for the magistrate judge he reviewed the amended factual basis with his counsel, he understood it, and his counsel answered all questions he had regarding the plea agreement. (Cr-Doc. 68 at 17). He stated that the amended facts were true and that he attempted to gain the assent of the fictitious minor through the detective for the purpose of engaging in sexual activity. (*Id.* at 30). Terry confirmed for the court that he was pleading guilty freely and voluntarily because it was in his best interest to do so. (*Id.* at 31). Finally, he confirmed no one threatened, forced, or coerced him to plead guilty. (*Id.*).

In an affidavit provided by the United States, Terry's former counsel states he met with Terry many times before the guilty plea. (*See* Doc. 5, Exhibit A (Affidavit of Adam Nate, Esq.) at 2). Mr. Nate explained to Terry during these meetings the relevant statutes and elements of the offense—including the substantial step and

relevant case law. (*Id.*). Mr. Nate “was careful to answer [Terry’s] questions” and made certain that Terry understood the elements. (*Id.* at 3).

A defendant bears a heavy burden to show that his statements made under oath were false. *United States v. Rogers*, 848 F.2d 166, 168 (11th Cir. 1988). Terry does not meet this burden. A Section 2255 motion is not designed to account for buyer’s remorse as to a petitioner’s knowing and voluntary decision to plead guilty. *Monsegue v. United States*, No. CR414-019, 2017 WL 1128455, at *4 (S.D. Ga. Mar. 24, 2017) (citations and quotations omitted); *see also Nelson v. United States*, No. CV615-021, 2015 WL 4756975, at *1 (S.D. Ga. Aug. 11, 2015) (“Nelson has wasted this Court’s time with a ‘buyer’s remorse’ filing. He pleaded guilty with full knowledge of the consequences. Now he must live with those consequences.”). Ground Two is denied.

CONCLUSION

Terry’s motion under Section 2255 to vacate the sentence (Doc. 1) is **DENIED**. The clerk must (1) enter a judgment against Terry in the civil case and **CLOSE** the civil case and (2) enter a copy of this order in the criminal case and deny the motion to vacate (Doc. 66) that pends in the criminal case.

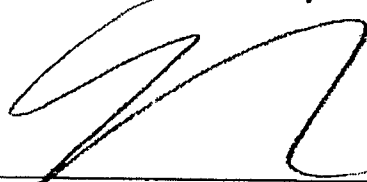
DENIAL OF BOTH CERTIFICATE OF APPEALABILITY AND LEAVE TO APPEAL IN FORMA PAUPERIS

Terry is not entitled to a certificate of appealability (“COA”). A prisoner moving under Section 2255 has no entitlement to appeal a district court’s denial of his motion to vacate. 28 U.S.C. § 2253(c)(1). Rather, a district court must first issue a COA. Section 2253(c)(2) permits issuing a COA “only if the applicant has made a

substantial showing of the denial of a constitutional right.” To merit a certificate of appealability, Terry must show that reasonable jurists would find debatable both (1) the merits of the underlying claims and (2) the procedural issues he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000); *Eagle v. Linahan*, 279 F.3d 926, 935 (11th Cir. 2001). Because he fails to show that reasonable jurists would debate either the merits of the claims or the procedural issues, Terry is entitled to neither a certificate of appealability nor an appeal *in forma pauperis*.

A certificate of appealability is **DENIED**. Leave to appeal *in forma pauperis* is **DENIED**. Terry must obtain permission from the circuit court to appeal *in forma pauperis*.

ORDERED in Tampa, Florida, on April 10, 2024.



STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE