APPENDIX A-D

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-2690

Rodney Boyles

Movant - Appellant

v.

United States of America

Respondent - Appellee

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:23-cv-00607-BCW)

JUDGMENT

Before LOKEN, ERICKSON, and STRAS, 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. The appeal is dismissed.

September 17, 2024

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

/s/ Maureen W. Gornik

Appendix B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

JUDGMENT IN A CIVIL CASE

RODNEY BOYLES,

Movant.

Case No. 23-cv-00607-BCW-P

UNITED STATES OF AMERICA,

Respondent.

O **JURY VERDICT**. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

x **DECISION OF THE COURT**. This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED: Movant's § 2255 motion is denied, the Court declines to hold an evidentiary hearing, Movant is denied a certificate of appealability, and the case is dismissed.

Entered on: July 31, 2024.

PAIGE WYMORE-WYNN
CLERK OF COURT

/s/ K. Willis
(By) Deputy Clerk

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

RODNEY BOYLES,	)	
	)	
Movant,	)	
	)	Case No. 23-00607-CV-W-BCW-P
vs.	)	Crim. No. 21-00153-01-CR-W-BCW
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

ORDER DENYING MOVANT'S § 2255 MOTION

Movant Rodney Boyles pled guilty to arson, and the Court sentenced him to ninety-six months' imprisonment. Movant is incarcerated at USP Florence (High) in Florence, Colorado, and he has filed a pro se motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. Doc. 1. Respondent has filed suggestions in opposition to that motion, Doc. 9, and Movant has filed a reply thereto, Doc. 14. Because the Court finds that the motion, files, and record show that Movant is not entitled to relief, Movant's § 2255 motion is denied, the Court declines to hold an evidentiary hearing, Movant is denied a certificate of appealability, and the case is dismissed.

I. Background

On January 13, 2021, a fire was reported at a four-story apartment building located at 1102-1104 Benton Boulevard in Kansas City, Missouri. Crim. Doc. 38 at 2.[1] At the time of the fire, portions of the building were being rented by Restart, Inc. ("Restart"), an organization that then subleased apartments to tenants. *Id.* Many of those tenants were present at the time of the fire, and several sustained serious injuries. *Id.* at 2–3. One woman was intubated for approximately nine days due to smoke inhalation; one man was placed in a medically-induced coma due to burns, poisoning, and respiratory problems; and another man broke his wrist and ankle from having to jump out a second-floor window to escape the fire. *Id.* The next day, fire investigators determined that the blaze was intentionally started near the rear storage room in Apartment 1N. *Id.* at 2.

A few months later, the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF")

[1] "Crim. Doc." refers to the docket number entries in Movant's criminal case, Case No. 21-00153-01-CR-W-BCW. "Doc." refers to the docket number entries in Movant's associated civil case, Case No. 23-00607-CV-W-BCW-P. Page number citations refer to the page numbers assigned by the CM/ECF electronic docketing system.

commenced an investigation. *Id.* During the investigation, one of the tenants injured in the fire confirmed that she was paying $231.20 in monthly rent to Restart, which was in turn paying the apartment building owners. *Id.* Two other individuals indicated that at the time of the fire, Movant, his girlfriend, and her son were staying in Apartment 1N. *Id.* at 3.

On May 27, 2021, ATF conducted a custodial interview of Movant after he was advised of—and waived—his *Miranda* rights. *Id.* Movant admitted to intentionally setting the fire near the rear storage room in Apartment 1N. *Id.* Movant stated that after he set the fire, his girlfriend, their son, and another female exited the apartment. *Id.* The apartment's tenant had given Movant permission to stay in the apartment in exchange for Movant agreeing to clean the apartment. *Id.* Movant stated he was under the influence of methamphetamine at the time of the fire. *Id.*

On June 23, 2021, Movant was charged with violating 18 U.S.C. § 844(i), that is, maliciously damaging or destroying by means of fire any building used in interstate commerce. Crim. Doc. 13. More specifically, Movant was charged with setting fire inside the rented and occupied apartment building at 1102-1104 Benton Boulevard, in Kansas City, Missouri. *Id.* The indictment listed the statutory mandatory minimum as seven years and the statutory mandatory maximum as forty years. *Id.* The indictment did not allege that anyone was injured or killed in the fire. *Id.*

Movant's counsel filed a motion to suppress his statements, arguing that Movant had not knowingly and voluntarily waived his *Miranda* rights. Crim. Doc. 29. More specifically, Movant's counsel argued that on the same day he confessed, Movant was at an emergency room for "acute psychiatric symptoms" and tested positive for methamphetamine. *Id.* at 2. Movant's counsel also made clear that the interview occurred right after he was released from the emergency room. *Id.* at 2–3. Based on a variety of Supreme Court and Eighth Circuit precedent, Movant's counsel argued that Movant's *Miranda* waiver was not valid because of his mental health problems and drug use. *Id.* at 4–5.

Before the hearing on this motion, Movant entered a plea agreement with the Government. Crim. Doc. 38. This agreement contained a lengthy factual basis that recounted all of the details of the crime mentioned above, including the injuries to the tenants, the investigation showing that the fire was intentionally set in the apartment where Movant was staying, the witnesses identifying Movant as living in the apartment where the fire was started, the rental of the apartment units at the time of the fire, and Movant's confession. *Id.* at 2–4. In the plea agreement, Movant also

acknowledged the sentencing procedures to be used by the Court, including the use of relevant conduct, the fact that the guidelines were merely advisory and non-binding, the statutory range of punishment of five to twenty years' imprisonment, and the Court's discretion to impose a sentence within that statutory range. *Id.* at 4–5. In the plea, the parties also agreed to a base offense level of 24 under U.S.S.G. § 2K1.4(a)(1), that Movant was entitled to three-level reduction for acceptance of responsibility, and that the advisory guideline range should be "77-to-96 months." *Id.* at 7-8. Movant further represented that he entered the plea agreement voluntarily, he was satisfied with his counsel's performance, and he received no promises outside the plea agreement to induce him to plead guilty. *Id.* at 12.

On October 3, 2021, the Court held a change of plea hearing. Crim. Doc. 67. At the hearing, the Court asked Movant's counsel about how the plea impacted the pending motion to suppress. Movant's counsel stated, "we will withdraw the motion to suppress. I think it is worth pointing out that it was not a case dispositive motion. It was a motion to suppress statements that was really more targeted toward trimming the trial, the evidence that would have been presented at a trial." *Id.* at 2–3.

During the plea colloquy, Movant testified that he understood the charges and punishment range—five to twenty years' imprisonment—that he faced, he reviewed the plea agreement with his counsel, and he understood the terms of the plea agreement. *Id.* at 4–5. Movant also testified that he was physically and mentally competent to plead guilty, he was doing so because he was in fact guilty of the charges, and the factual basis in the plea agreement was accurate. *Id.* at 6–7, 13–14. He further confirmed that his plea was voluntary and not the result of force, coercion, or threats. *Id.* at 11. He also stated that he received no promises outside the plea agreement to induce him to plead guilty. *Id.* Movant then confirmed that he was satisfied with his counsel's representation, that his counsel did everything Movant asked him to do, and his counsel did not do anything Movant asked him not to do. *Id.* at 11–12. The Court then accepted his guilty plea and ordered the PSR. *Id.* at 14–15.

The revised PSR recommended a guideline advisory range of seventy-seven to ninety-six months' imprisonment. Crim. Doc. 40 at 20. This was reached by finding a base offense level of 24 under U.S.S.G. § 2K1.4(a)(1) because Movant "knowingly created" a "substantial risk of death or serious bodily injury to any person" by setting fire to the apartment building. *Id.* at 6. Once the three-level reduction was applied, this resulted in an offense level of 21 and a recommended

guideline range of seventy-seven to ninety-six months' imprisonment. *Id.* at 6–7, 20.

The Court sentenced Movant on August 18, 2022. Crim. Doc. 52. The Court noted the lack of objection to the guideline range, and it adopted its recommendation of seventy-seven to ninety-six months' imprisonment. *Id.* at 2–3. The Government then argued for a sentence of ninety-six months' imprisonment, while Movant's counsel asked for a sentence of seventy-seven months. *Id.* at 4, 10. In support, Movant's counsel provided a lengthy and persuasive examination of the § 3553(a) factors that supported the requested sentence, including Movant's personal family history problems, his addiction, and his mental health problems. *Id.* at 5–10. Movant then provided an allocution in which he apologized to the victims for harming them, discussed his mental health struggles, explained that he was not on his mental health medications the day of the fire, and that he thought people were trying to kill him when he set it. *Id.* 10–11. The Court then balanced the § 3553(a) factors, including Movant's mental health struggles, his decision not to take his medications, the injuries and substantial risk of death caused by his actions, and his history of assaultive behavior. *Id.* at 12–14. The Court imposed a sentence of ninety-six months' imprisonment. *Id.* at 14.

Movant filed the instant motion on August 28, 2023. Movant has attached an affidavit where he avers that he asked his attorney to look at his mental health records, he asked him to do a competency hearing, he asked him to investigate why the charges were federal, he told him to get in-patient [illegible] records, he told him his sentence was wrong because he was not charged with bodily injury, and his attorney never told him why the suppression motion was withdrawn. Doc. 2. In his briefing, Movant has also attached a letter from his counsel explaining that the indictment did not allege the injury element that was necessary for the Government to seek the *statutory* sentencing enhancement of seven to forty years' imprisonment. Doc. 14-1 at 6–8. Because of this failure, Movant's counsel informed him that his *statutory* sentencing range was always between five and twenty years, and Movant's counsel did not raise the issue because doing so would have alerted the Government to their mistake and allowed them to seek an amended indictment including the element. *Id.* Movant also included what appear to be litigation pleadings and documents suggesting that Restart was in the process of having their lease terminated effective January 31, 2021. *Id.* at 1.

II. Standard

Title 28 U.S.C. § 2255 provides that an individual in federal custody may file a motion to vacate, set aside, or correct his sentence. A motion under this statute "is not a substitute for a direct appeal and is not the proper way to complain about simple trial errors." *Anderson v. United States*, 25 F.3d 704, 706 (8th Cir. 1994) (internal citations omitted). Instead, § 2255 provides a statutory avenue through which to address constitutional or jurisdictional errors and errors of law that "constitute[ ] a fundamental defect which inherently results in a complete miscarriage of justice." *Sun Bear v. United States*, 644 F.3d 700, 704 (8th Cir. 2011) (internal quotation marks omitted).

III. Discussion

Movant raises three grounds for relief that attack his counsel's work at the motion to suppress, plea bargaining, and sentencing phases of his case.[2] The Court addresses each of the three grounds in turn, but, before doing so, it outlines the substantive law that governs his challenges.

To succeed on an ineffective-assistance-of-counsel claim, Movant "must show [1] that counsel's performance was deficient, and [2] that the deficient performance prejudiced the defense." *Haney v. United States*, 962 F.3d 370, 373 (8th Cir. 2020) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). To satisfy the deficiency prong, Movant must establish that his counsel's performance fell "below an objective standard of the customary skill and diligence displayed by a reasonably competent attorney." *United States v. Ngombwa*, 893 F.3d 546, 552 (8th Cir. 2018) (internal quotation marks omitted). For his claim that his counsel's sentencing advice impacted the voluntariness of the plea, Movant must show that his counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." *Hill v. Lockhart*, 474 U.S. 52, 56 (1985) (internal quotation marks omitted). As for motions to suppress, it is not deficient for a counsel to fail "to pursue a motion to suppress he reasonably believes would be futile." *Anderson v. United States*, 762 F.3d 787, 794 (8th Cir. 2014).

Prejudice is established by showing "a reasonable probability that, but for counsel's

[2] In his reply, Movant also makes an overarching argument that the Court must grant his motion because the Government did not file an "answer" as required by Federal Rule of Civil Procedure 8(b)(1)–(2). This argument is meritless because the Government is not required to file an answer in accordance with Rule 8(b)(1) in response to a § 2255 motion. *See Brown v. United States*, No. 2:16-CR-0122-DCN-6, 2020 WL 6292631, at *2 (D.S.C. Oct. 27, 2020).

unprofessional errors, the result of the proceeding would have been different." *O'Neil v. United States*, 966 F.3d 764, 771 (8th Cir. 2020). Reasonable probability "requires a substantial, not just conceivable, likelihood of a different result." *Cullen v. Pinholster*, 563 U.S. 170, 189 (2011). To prove prejudice in the plea context, Movant 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." *Covington v. United States*, 739 F.3d 1087, 1090 (8th Cir. 2014) (internal quotation marks omitted). A similar standard applies for failure to fully litigate a suppression motion. *See Gingras v. Weber*, 543 F.3d 1001, 1004 (8th Cir. 2008). To prove prejudice for his sentencing-phase claims, he must show that "there is a reasonable probability [he] would have received a shorter sentence if counsel had not been ineffective in presenting [his] case for a reduced sentence." *United States v. Parrott*, 906 F.3d 717, 720 (8th Cir. 2018) (internal quotation marks omitted).

A. Movant's First Ground Is Without Merit.

In his first ground, Movant argues that his counsel was ineffective for arguing his motion to suppress evidence under the wrong caselaw and then withdrawing it at the plea hearing. The Government argues that Movant cannot prove his counsel was deficient or that Movant suffered prejudice from any alleged deficiency.

Movant has not proven either prong of *Strickland*. On the deficiency prong, Movant's counsel was not deficient for the way he argued the motion or withdrawing it at the plea hearing. The motion to suppress would not have been granted even if Movant's counsel had cited Movant's desired caselaw because the cases Movant cites are materially distinguishable from his situation. *See, e.g., Blackburn v. State of Ala.*, 361 U.S. 199, 207 (1960) (finding confession involuntary where the defendant was "insane and incompetent" when he confessed and where he was subjected to a coercive eight-to-nine-hour interrogation in isolation). Likewise, it was not deficient for Movant's counsel to withdraw the motion at the plea hearing because it would not have succeeded, and, even if it had succeeded, it would not have changed the outcome because there was significant, other evidence of guilt to be presented at trial. Movant's counsel emphasized this latter point at the plea hearing, noting that the motion would have simply trimmed the trial evidence. This is true: the PSR and plea make clear that the fire investigation and the victims' testimony would have implicated Movant as the culprit. Thus, continuing with the motion was futile. *See Anderson*, 762 F.3d at 794. Moreover, at the plea hearing Movant did not object to the motion being withdrawn and confirmed that he was satisfied with his counsel's actions. This shows that Movant's counsel

was not deficient in how he argued the motion to suppress and his decision to withdraw it.[3]

Even if Movant could show a deficiency, he has not shown prejudice. As noted above, there is no reasonable probability that the motion would have been granted regardless of how his counsel argued it. *Gingras*, 543 F.3d at 1004. But even assuming the motion would have succeeded, Movant has not shown that "he would have proceeded to trial." *Id.*

Since Movant has not established either prong under *Strickland*, Movant's first ground for relief is without merit.

B. Movant's Second Ground Is Without Merit.

In his second ground, Movant argues that the Government never satisfied the interstate commerce element of his charge because the apartment building was not being rented at the time. He continues that given this essential element was lacking, his counsel was ineffective for advising him to plead guilty.

The record contradicts Movant's argument. Both the factual basis in the plea agreement and the offense conduct in the PSR established that one of the tenants in the building was subleasing the apartment from Restart, which in turn was renting it from the building owner. And contrary to Movant's arguments, these facts are not changed by the lease and pleadings he attaches to his briefs because they show that Restart still had a lease on the apartments when Movant set fire to the building. The evidence that the apartment was being rented at the time of the fire is sufficient to satisfy the interstate commerce element under 18 U.S.C. § 844(i). *See United States v. Rea*, 300 F.3d 952, 961 (8th Cir. 2002) ("Examples of property with uses that directly implicate interstate commerce include residential rental property and hotels."); *see also United States v. Davis*, 534 F.3d 903, 906 (8th Cir. 2008) (affirming § 844(i) conviction where the defendant had set fire to a twelve-unit apartment complex resulting in serious injuries and deaths).

Since there was sufficient evidence that the interstate commerce element was met and would have easily been proven at trial, Movant's counsel was not deficient for advising Movant to plead guilty to the federal arson charge. Thus, the second ground is also without merit.

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[3] Movant briefly argues that he was not competent to stand trial and his counsel was ineffective for not seeking a competency hearing. But Movant has not shown that he was incompetent in these proceedings. *See United States v. Robinson*, 253 F.3d 1065, 1067 (8th Cir. 2001). And at the plea hearing, the Court found that notwithstanding Movant's historical mental health struggles, Movant understood the proceedings against him and was competent to plead guilty. Movant also confirmed that he was satisfied with his counsel's representation and his counsel had done everything he asked him to do. Thus, Movant's counsel was not ineffective for not seeking a competency hearing.

C. Movant's Third Ground Is Without Merit.

In his third ground, Movant argues that his counsel was ineffective for failing to object to the base offense level of 24 under U.S.S.G. § 2K1.4(a)(1) because there was no evidence that he knowingly created a substantial risk of death or serious bodily injury and because it was not included in the indictment. The Government argues that Movant cannot satisfy either prong of *Strickland.*

The Government is correct. Any objection to this base offense level would have been frivolous because Movant had agreed to it in the plea agreement and there was more than sufficient evidence to support it. The record is clear that the apartment building was occupied at the time, that Movant knowingly set the fire in an apartment in which his girlfriend, son, and friend were located, and numerous people sustained nearly fatal injuries. Moreover, the facts supporting the guideline sentencing enhancement used to reach his base offense level did not need to be included in the indictment. *See United States v. Okai*, 454 F.3d 848, 851 (8th Cir. 2006). Thus, his counsel was not deficient for failing to object to this base offense level. *See Rodriquez v. United States*, 17 F.3d 225, 226 (8th Cir. 1994) ("Counsel's failure to advance a meritless argument cannot constitute ineffective assistance."). Not only would have an objection been meritless, but it also could have harmed Movant. By doing so, counsel would have risked the Court finding that his baseless objection negated his acceptance-of-responsibility reduction. *See Haney v. United States*, 962 F.3d 370, 377 (8th Cir. 2020) (holding that counsel was not deficient for making objections that would have likely backfired and resulted in a stiffer sentence). Far from being deficient, Movant's counsel made a sound strategic decision to not object to this enhancement.

Even assuming there was a deficiency, Movant cannot show prejudice. Movant knowingly agreed to this base offense level via his plea agreement, and objecting to this enhancement at sentencing could have constituted a breach of the plea agreement that resulted in a more severe sentence. *See Covington*, 739 F.3d at 1091.

Since Movant has not established either prong of *Strickland*, Movant's third ground for relief is without merit.

IV. No Evidentiary Hearing Required

A § 2255 motion "can be dismissed 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." *Sanders v. United States*, 341 F.3d 720, 722 (8th Cir. 2003); *see Roundtree v. United States*, 751 F.3d 923, 925 (8th Cir. 2014) ("A Section 2255 petitioner is entitled to an evidentiary hearing...unless the motion, files, and record conclusively show he is not entitled to relief.").

Here, Movant's conclusory allegations about ineffective assistance of counsel are contradicted by the record, so he is not entitled to relief. Thus, a hearing is not required.

V. Certificate of Appealability

Pursuant to Rule 11 of the Rules Governing Section 2255 Proceedings, the Court must issue or deny a certificate of appealability when it enters a final order adverse to Movant. A certificate of appealability may be issued "only if [Movant] has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Because Movant has made no such showing, the Court declines to issue a certificate of appealability.

VI. Conclusion

For the foregoing reasons, Movant's § 2255 motion is denied, the Court declines to hold an evidentiary hearing, Movant is denied a certificate of appealability, and the case is dismissed.

IT IS SO ORDERED.

Dated: July 31, 2024

/s/ Brian C. Wimes
BRIAN C. WIMES, JUDGE
UNITED STATES DISTRICT COURT

Appendix C

Exhibit A

Date: December 1, 2020

NOTICE OF TERMINATION OF TENANCY

To: Restart Inc.

Tenant(s) in Possession

Address: 1102 Benton Blvd, Kansas City, MO 64127

Re: Address/Lease/Landlord data, etc.

Dear Tenant:

PLEASE TAKE NOTICE that you are hereby required to quit and deliver to Landlord, or to any authorized agent, possession of the premises now held and occupied by you. Said premises are commonly known and described as follows:

Said premises must be quit and delivered within on January 31, 2021, which is one month from your next rent paying date. This notice is given pursuant to Section 441.060 of the Missouri Revised Statutes for the purpose of terminating your tenancy to the above premises. [Should you fail to comply, suit will be instituted against you for possession and for attorney fees and costs allowed by law.]

Dated:December 1, 2020

Signed:

Katina Long

Owner [or Agent]

Address: 2201 E. Truman Rd
Unit 270781
Kansas City, Mo 64127

Certificate of Service

The undersigned certifies that a true copy of the foregoing notice was served on the 1st day of December, 20 20 as follows (only the checked item applies): ___by personal delivery to TENANT, or ___by personal delivery to a person at least 15 years old residing in the PREMISES, or ___by posting on the door of the PREMISES if no one was present at the PREMISES at the time of service.

Katina Long

Signature of landlord or authorized representative

DEF0183

Appendix D

Exhibit B

FEDERAL PUBLIC DEFENDER
WESTERN DISTRCT OF MISSOURI
1000 WALNUT, SUITE 600
KANSAS CITY, MISSOURI 64106

LAINE CARDARELLA
FEDERAL PUBLIC DEFENDER

(816) 471-8282
(FAX): (816) 471-8008
http://mow.fd.org

August 9, 2023

Rodney Boyles, Reg. # 47708-509
USP Florence - High
U.S. Penitentiary
P.O. Box 7000
Florence, CO 81226

Dear Mr. Boyles:

I got your voicemail asking about the indictment, so I'm writing to clarify. The indictment that I sent you is the only one in your case. But the sentencing information on the indictment is wrong.

The sentencing range in your case was always 5 to 20 years. The indictment mistakenly says 7 to 40 years. That could have been the sentencing range in your case, if the government had included within the actual charge description the extra element of causing injury to someone. But they didn't include that element. So, the range was always 5 to 20 years.

They didn't issue a new indictment correcting that mistake because the law doesn't require them to include the sentencing range in the first place. Also, it was part of our strategy to mention their mistake as late in the case as possible to make sure they didn't get a new indictment that could've had the increased sentencing range.

To say this as simply as possible: at the sentencing hearing, you were not subject to the 7 to 40 years range because, to get to that range, the government must allege the injury element in the indictment. Since they didn't do that, your range was 5 to 20 years. The government didn't reduce the charge in exchange for anything you did or otherwise give you a break: we just pled to the charge as it was

made in the indictment since the government didn't notice their mistake until right before the guilty plea.

I hope this helps clarify the situation. Please let me know if you have any more questions about this or anything else.

Sincerely,

/s/ *Marc Ermine*
Marc Ermine
Assistant Federal Public Defender

ME/llh