

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 23-7054

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DEMETRIS SEAN ROBINSON, a/k/a Bo Bo,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Wilmington. Terrence W. Boyle, District Judge. (7:18-cr-00032-BO-1; 7:22-cv-00151-BO)

Submitted: June 25, 2024

Decided: June 27, 2024

Before RICHARDSON and QUATTLEBAUM, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Demetris Sean Robinson, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Demetris Sean Robinson seeks to appeal the district court's orders denying relief on Robinson's 28 U.S.C. § 2255 motion and denying his Fed. R. Civ. P. 59(e) motion to alter or amend judgment. The orders are not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(B). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong. *See Buck v. Davis*, 580 U.S. 100, 115-17 (2017). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the motion states a debatable claim of the denial of a constitutional right. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Robinson has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:18-CR-32-BO-1
No. 7:22-CV-151-BO

DEMETRIS ROBINSON,)
)
Petitioner,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
Respondent.)

ORDER

This is before the Court on Demetris Robinson's motion [DE 370] to vacate his sentence pursuant to 28 U.S.C. § 2255 and the government's motion [DE 374] to dismiss Robinson's motion. It is also before the Court on Robinson's motions for an extension of time to file a response [DE 380], to amend or correct [DE 387], and for leave to file [DE 388].

BACKGROUND

In late 2017, Robinson and Jeramie Ross Vaughn agreed to commit a robbery. [DE 206 at 5]. At Robinson's request, Daquan Madrid Pridgen and Rashad Donovan Young agreed to assist in the robbery. Robinson was in charge of getting the weapons so he obtained a DP-12 shotgun, a .45 caliber Sig Sauer handgun, and a Glock .9 mm handgun. He also stole a .308 rifle from his cousin. Robinson's sister bought masks to conceal their identity.

On January 23, 2018, the four men – Robinson, Vaughn, Pridgen, and Young – decided to rob the PNC Bank in Lumberton, North Carolina. Armed with a .45 caliber Sig Sauer pistol, Robinson and the three other men entered the bank wearing masks. Pridgen and Vaughn were also armed. At gunpoint, they ordered the customers to the ground and the staff to open the vault. The men fled the bank with just over \$40,000.

Vaughn drove the getaway vehicle. Police attempted to conduct a traffic stop, but Vaughn led the police on a high-speed chase. As they sped through residential areas, Robinson – sitting in the backseat behind Vaughn – fired his .45 Sig Sauer handgun at the police. At one point, Robinson fired his handgun while passing a school bus.

Robinson wanted to retrieve another firearm from the trunk, so he ordered Vaughn to pull over. Vaughn stopped in a busy parking lot, and Young fled from the vehicle carrying a Tec-9-style firearm. Robinson got the DP-12 shotgun from the trunk and fired at law enforcement. He returned to the car, Vaughn kept driving, and Robinson fired his shotgun at the pursuing officers.

The chase continued. Again, Robinson ordered Vaughn to stop the vehicle so he could get the .308 rifle from the trunk. Vaughn stopped, Robinson got the rifle, and they continued driving while Robinson fired at the pursuing officers. Seven police vehicles were struck by bullets, but luckily no one was injured.

The high-speed chase finally ended when Vaughn stopped the vehicle in a ditch, and the three men fled into the woods. They got away. But in the days that followed, officers arrested Young, Vaughn, and Pridgen. All three men made unprotected admissions to their involvement in the robbery. Vaughn and Pridgen both confirmed Robinson's involvement in the robbery.

Investigators learned that Robinson had left the area after the robbery and had stayed with friends and relatives in South Carolina and Charlotte, North Carolina. On February 2, 2018, Robinson was arrested on state charges for his alleged involvement in the PNC Bank robbery. Robinson invoked his right to counsel and made no statements.

Robinson was facing state charges. On February 6, 2018, Robinson was brought to the Robeson County courthouse for his initial appearance. Given the strength of the government's case, his court-appointed counsel, Danny Britt, recommended Robinson cooperate with the

government. Robinson took Britt's advice and met with FBI agents, a Lumberton police detective, and a Robeson County investigator. In that interview, Robinson admitted to planning and participating in the robbery of the PNC Bank. He admitted possessing the .308 rifle, the DP-12 shotgun, the Glock .9 mm, and the .45 caliber Sig Sauer. He also admitted to shooting those firearms at pursuing police officers. The February 6 confession was audio recorded.

On February 22, 2018, Robinson was federally indicted for his role in the PNC robbery. [DE 27]. On April 19, 2018, Elisa Cyre Salmon replaced Robinson's court-appointed attorney, Richard Croutharmel. Salmon filed a motion to suppress Robinson's February 6 confession, but it was denied. [DE 87, 113]. Then Salmon was replaced by Joshua Brian Howard. [DE 128].

A few months later, the case went to trial on three counts: armed bank robbery and aiding and abetting in violation of 18 U.S.C. §§ 2113 and 2 (Count One); discharging a firearm in furtherance of a crime of violence and aiding and abetting in violation of 18 U.S.C. §§ 924(c)(1)(A)(iii) and 2 (Count Two); and possession of a firearm by a convicted felon in violation of 18 U.S.C. §§ 922(g)(1) and 924 (Count Three).

Robinson pleaded not guilty on all counts, and on April 29, 2019, the undersigned presided over a jury trial in Raleigh, North Carolina. [DE 188–192]. Over Howard's objection, the Court admitted Robinson's February 6 confession into evidence. Vaughn and Young both testified to Robinson's role in preparing for the robbery, committing the robbery, and participating in the ensuing chase and shootouts with law enforcement. The jury found Robinson guilty on all three counts. [DE 193]. They also made a special finding that a firearm was discharged during the course of the crime charged in Count Two. [DE 193].

On December 11, 2019, the Court sentenced Robinson to concurrent life sentences on Counts One and Three and a 120-month consecutive sentence on Count Two. [DE 323]. Robinson appealed, challenging various procedural aspects of the trial, but the Fourth Circuit affirmed his sentence. [DE 324, 367].

Robinson filed this timely motion on August 22, 2022, pursuant to 28 U.S.C. § 2255. [DE 370]. He makes a number of arguments, none of which were raised on appeal.

DISCUSSION

As an initial matter, the Court will grant Robinson's motions for an extension of time to file a response [DE 380], to amend or correct [DE 387], and for leave to file [DE 388]. Consequently, this Court will also consider Robinson's reply. [DE 391].

In the motion before the Court, Robinson argues that: (I) Britt's assistance was ineffective, (II) Britt's assistance violated Due Process, (III) his confession was coerced, and (IV) Howard provided ineffective assistance of counsel. None of those arguments have merit.

I. Robinson cannot argue that Britt's assistance was ineffective.

On February 2, 2018, Robinson was arrested on state charges, and Danny Britt was appointed as Robinson's counsel. Britt was his attorney when Robinson confessed on February 6, 2018. In this federal proceeding, Robinson contends that Britt deprived him of his Sixth Amendment right to effective assistance of counsel. Robinson makes three main arguments: (1) Britt's "gross misadvice" caused him to confess, (2) the government exerted an improper influence on Britt, violating their attorney-client relationship, and (3) Britt had a conflict of interest that rendered him incapable of rendering effective assistance.

To prevail on an ineffective assistance of counsel claim, Robinson must show that counsel's performance was below the "prevailing professional norms" and that "but for counsel's

unprofessional errors, the result of the proceeding would have been different.” *Strickland v. Washington*, 466 U.S. 668, 694 (1984). *Strickland* is grounded in the Sixth Amendment. It is axiomatic that a defendant whose Sixth Amendment right to counsel had not attached has no *Strickland* claim.

The Sixth Amendment right to effective assistance of counsel attaches at the time “adversary judicial criminal proceedings” are initiated, “whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.” *Kirby v. Illinois*, 406 U.S. 682, 689 (1972). When Robinson confessed on February 6, no federal judicial proceedings had been initiated against him. There had been no formal federal charge, no preliminary hearing, no indictment, no criminal information, and no arraignment. Therefore, “Robinson’s Sixth Amendment right had not attached prior to the questioning on February 6, and counsel could not have been ineffective as a result.” [DE 113 at 11].

Robinson argues this Sixth Amendment right attached to these federal charges because it was “clear at this point that this case had been adopted by the United States Attorney and would be federally prosecuted.” On February 6, Robinson was facing state charges, so he had a Sixth Amendment right for those pending state charges. But that Sixth Amendment right is “offense specific.” *McNeil v. Wisconsin*, 501 U.S. 171, 175 (1991). He had no Sixth Amendment rights for these federal charges because he had not been federally indicted. This is true even when the state and federal charges are based on the same conduct. *United States v. Holness*, 706 F.3d 579, 590–91 (4th Cir. 2013). Therefore, Robinson’s Sixth Amendment claims against Danny Britt must be denied.

II. There were no Due Process violations.

A *pro se* filing must be held to less stringent standards than formal pleadings drafted by lawyers. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). Therefore, this Court also addresses Robinson's arguments through the lens of the Fifth Amendment's Due Process clause.

Robinson suggests that Britt improperly collaborated with the government by "play[ing] the role of the prosecutor masked as [Robinson's] attorney." [DE 370-1 at 16–19]. As evidence, Robinson states that Britt arranged a meeting for Robinson to talk to government investigators. Even a generous interpretation of Robinson's argument cannot support the conclusion that Britt was acting as a prosecutor. Britt's advice to cooperate with the government was a reasonable strategy given the government's strong evidence against Robinson.

Robinson accuses the government of exerting "improper influence" over Britt to encourage Robinson to confess. [DE 370-1 at 16–19]. Robinson does not allege any improper action by an actual government actor. Instead, Robinson states that Britt had a conflict of interest because Britt's uncle worked for the Robeson District Attorney, and Britt's private investigator was friends with a Robeson County investigator. Those connections are insufficient to establish a conflict of interest. And even assuming Britt did operate under a conflict of interest, Robinson does not demonstrate that the alleged conflict of interest adversely affected Britt's performance. Therefore, Robinson fails to show a violation of the Fifth Amendment's Due Process clause. *See United States v. Nicholson*, 611 F.3d 191, 195 (4th Cir. 2010).

III. Robinson's coercion claim has procedurally defaulted.

Robinson contends that his February 6 confession should not have been admitted into evidence because it was coerced. This evidentiary argument was not raised on appeal. Generally, "claims not raised on direct appeal may not be raised on collateral review" and are thus

procedurally defaulted. *Massarro v. United States*, 538 U.S. 500, 504 (2003). However, procedural default may be excused where the petitioner demonstrates either: (1) “cause and actual prejudice” or (2) “actual innocence.” *Bousley v. United States*, 523 U.S. 614, 622 (1998).

A. Cause and actual prejudice

The existence of cause turns upon a showing of (1) a denial of effective assistance of counsel, (2) a factor external to the defense which impeded compliance with a procedural rule, or (3) the novelty of the claim. *See Murray v. Carrier*, 477 U.S. 478, 490–92 (1986). Robinson does not address any of these showings of “cause,” but reading his motion liberally, this Court will consider whether Robinson failed to raise the coercion issue because of ineffective assistance of counsel.

To succeed, Robinson must not only show the confession was coerced but also that the coercion was so egregious that counsel’s failure to challenge its admissibility was unreasonable. Robinson fails to persuade this Court that his confession was coerced.

“To determine whether a statement or confession was obtained involuntarily, in violation of the Fifth Amendment, the proper inquiry is whether the defendant’s will has been overborne or his capacity for self-determination critically impaired. . . . To make this determination, [courts] consider the totality of the circumstances, including the characteristics of the defendant, the setting of the interview, and the details of the interrogation.” *United States v. Umana*, 750 F.3d 320, 344 (4th Cir. 2014) (internal quotations omitted). When Robinson confessed, he was experienced in the legal system and represented by counsel. Robinson argues that his confession was coerced because he was held in “segregation” prior to questioning and that investigators threatened to prosecute his sister (who bought the masks used in the robbery). [DE 307-1 at 19-20]. These facts are insufficient to demonstrate his confession was anything other than a voluntary statement given

to investigators in the presence of his court-appointed attorney. Therefore, raising the issue would have been frivolous, and failing to raise a frivolous does not amount to ineffective assistance of counsel.

B. Actual innocence

The “actual innocence” exception to a procedural default requires Robinson to show that “in light of all the evidence, it was more likely than not that no reasonable juror would have convicted him.” *Schlup v. Delo*, 513 U.S. 298, 327-328 (1995). As detailed above, the evidence of Robinson’s guilt—even without his confession—is substantial. Therefore, Robinson’s coercion claim has procedurally defaulted.

IV. Howard did not provide ineffective assistance of counsel.

Joshua Howard represented Robinson at trial and on appeal. Robinson argues that Howard’s assistance was ineffective at both stages. As this Court previously noted, Robinson must show that Howard’s performance was below the “prevailing professional norms” and that “but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland v. Washington*, 466 U.S. 668, 694 (1984). There is a “‘strong presumption’ that a trial counsel’s strategy and tactics fall ‘within the wide range of reasonable professional assistance.’” *United States v. Roane*, 378 F.3d 382, 404 (4th Cir. 2004) (quoting *Strickland*, 466 U.S. at 689). Courts accord broad deference to counsel’s choices, in recognition of the “wide latitude counsel must have in making tactical decisions.” *Grueninger v. Dir., Virginia Dep’t of Corr.*, 813 F.3d 517, 529 (4th Cir. 2016) (quoting *Strickland*, 466 U.S. at 689). The prejudice prong is satisfied when a defendant shows that he was prejudiced by counsel’s deficient performance, namely, that there is a reasonable probability that the outcome of the trial would have been different absent counsel’s error. *Grueninger*, 813 F.3d at 524.

A. Trial

Robinson argues that Howard failed to: (1) renew the motion to suppress, (2) investigate or introduce evidence of Robinson's claimed alibi, (3) adequately cross examine the government witnesses, and (4) deliver an adequate closing argument. The Court finds Howard's assistance fell "within the wide range of reasonable professional assistance." *Strickland*, 466 U.S. at 689.

The first claim has no merit because the trial transcript shows that Howard did renew an objection to the admission of the February 6 statement. That objection was overruled. [DE 350 at 175:21-25].

The second claim is that Howard failed to introduce evidence of Robinson's alibi. Robinson claims that, after the robbery, GPS evidence shows his car in South Carolina. It is unclear how exculpatory that evidence was because Robinson could have driven to South Carolina after escaping the police. Regardless, Howard's decision not to introduce the alibi evidence was tactical and entitled to deference.

Similarly, the third and fourth claims – attacking Howard's cross-examination and closing statement – are tactical decisions entitled to deference. Robinson claims Howard did not effectively cross-examine an officer regarding his description of the suspect he witnessed in the rear of the getaway vehicle (where Robinson was sitting). [DE 370-1 at 23]. The transcript shows that Howard did raise those issues on cross-examination. [DE 348 at 65–67]. Finally, Robinson claims that Howard's closing was inadequate because Robinson saw Howard composing his closing statement while the government presented its closing. Howard's assistance – not his method of preparation – is what is at issue here. The Court is satisfied that Howard's closing statement falls within the wide range of acceptable behavior.¹

¹Even assuming any aspect of Howard's performance was unreasonable, Robinson does not explain how – but for the alleged errors – the trial would have been different. Therefore, Robinson also fails to show the required prejudice.

B. Appeal

Howard also represented Robinson on appeal. “Effective assistance of appellate counsel does not require the presentation of all issues on appeal that may have merit. As a general matter, only when ignored issues are clearly stronger than those presented should we find ineffective assistance for failure to pursue claims on appeal.” *United States v. Mason*, 774 F.3d 824, 828–29 (4th Cir. 2014) (internal quotation marks and citations omitted). “To show prejudice in the context of appellate representation, a petitioner must establish a ‘reasonable probability . . . he would have prevailed on his appeal’ but for his counsel’s unreasonable failure to raise an issue.” *United States v. Rangel*, 781 F.3d 736, 745 (4th Cir. 2015) (quoting *Smith v. Robbins*, 528 U.S. 259, 285–86 (2000)).

Robinson claims that Howard should have raised the “suppression issue” on appeal. However, Robinson does not articulate what arguments Howard should have raised to support the suppression issue. Therefore, Robinson failed to show a reasonable probability that he would have succeeded on appeal but for Howard’s failure to raise the suppression issue.

CERTIFICATE OF APPEALABILITY

A certificate of appealability shall not issue absent “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). A petitioner satisfies this standard by demonstrating that reasonable jurists would find that an assessment of the constitutional claims is debatable and that any dispositive procedural ruling dismissing such claims is likewise debatable. *Miller-El v. Cockrell*, 537 U.S. 322, 336–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). As reasonable jurists would not find this Court’s dismissal of petitioner’s § 2255 motion debatable, a certificate of appealability is DENIED.

CONCLUSION

For the foregoing reasons, Robinson's motion [DE 370] to vacate his sentence pursuant to 28 U.S.C. § 2255 is DENIED, and the government's motion [DE 374] to dismiss Robinson's motion is GRANTED. As noted above, Robinson's motions [DE 380, 387, 388] are GRANTED. A certificate of appealability is DENIED.

SO ORDERED, this 25 day of May, 2023.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE

FILED: September 4, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-7054
(7:18-cr-00032-BO-1)
(7:22-cv-00151-BO)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DEMETRIS SEAN ROBINSON, a/k/a Bo Bo

Defendant - Appellant

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Richardson, Judge Quattlebaum, and Senior Judge Traxler.

For the Court

/s/ Nwamaka Anowi, Clerk

INDEX TO APPENDICES

APPENDIX A SEE ATTCH 1
petitioner of when to raise

Letter from Attorney Howard misadvising
certain issues post-trial.

APPENDIX B SEE ATTCH 2
Officer Boddie in report.

Description of suspect giving to Agent Healey by

APPENDIX C SEE ATTCH 3
crime during timeline

GPS location showing petitioner is not in area of
giving by Agent Healey

ATTACH

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13 September 2021

Via U.S. Mail

Demetris Sean Robinson #64572-056

USP CANAAN

P.O. BOX 300

3057 ERIC J. WILLIAMS MEMORIAL DRIVE

WAYMART, PA 18472

LEGAL MAIL - OPEN ONLY IN THE PRESENCE OF INMATE ROBINSON

RE: Appeal

Dear Mr. Demetris:

This is to follow up on our previous letters and emails about your appeal. As I've said, the chances of the Supreme Court taking your case are exceedingly slim. They do not have to take appeals like the 4th Circuit does; they get to pick and choose and generally only choose particular kinds of issues not present in your case. To the extent your primary concern is that your first lawyer walked you into that unprotected FBI interview, that is something we could not argue at this stage but rather you can raise it in an ineffective assistance of counsel motion under 18 USC Section 2255 before the Eastern District court where your case was tried. You can only file that once your appeal is done; filing the Supreme Court petition just delays the date you can move forward with a 2255.

To the extent you still want to file with the Supreme Court, we are enclosing two things that will help you. One is a court order explaining that, historically, the deadline to file a cert petition was 90 days from judgment. This would have expired on Monday, September 13, 2021. However, your case is subject to a COVID-based extension of this deadline to 150 days (they've gone back to 90 days for newer cases). If you're going to file this, you have time but need to move promptly. You have copies of our briefs and the joint appendix of relevant documents which may help you. I cannot file this for you because of Supreme Court rules.

The guidance for filing a cert petition also forms for doing a cert petition and where to send it for filing. This should be helpful. We remain available to answer other questions and wish you the best of luck moving forward.

Sincerely,

Josh Howard

Aftch

-1 of 2- 2

D-302 (Rev. 5-8-10)

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FEDERAL BUREAU OF INVESTIGATION

Date of entry 01/31/2018

DreQan Boddie, Lumberton Police Department (LPD) Special Operations, cellular telephone [REDACTED] was interviewed at approximately 12:45a.m. in the Antioch Christian Academy parking lot, 5071 Old Whiteville Road, Lumberton, North Carolina (NC) 28358. Boddie provided his observations as a responding LPD Officer in his marked vehicle, who responded to the January 23, 2018, armed robbery in progress at the PNC Bank in Lumberton, NC. After being advised of the identity of the interviewing Agent and the nature of the interview, Boddie provided the following information:

Responding code with lights and sirens activated, Boddie observed a silver Saturn matching the description of the fleeing vehicle from the PNC Bank. Boddie was driving West on 2nd Street and passed the Saturn travelling East on 2nd Street. He turned his vehicle around near the railroad tracks and gave pursuit. Boddie had a clear view of the four occupants inside the Saturn: driving appeared to be a black male wearing a black hoodie; the front passenger wore a grey hoodie; behind the driver, in the rear seat was a heavy-set bald man, dark possibly Indian with a distinctive widow's peak hairline and thin "chin-strap" beard wearing a red, long-sleeve thermal-like shirt armed with a handgun; beside him in the rear passenger side was a man in a dark hoodie wearing blue gloves armed with a handgun.

The fleeing Saturn refused to stop and sped onto Highway 211. While Boddie was still in pursuit, he took gunfire from the rear passenger side occupant, with bullets impacting his vehicle. Boddie continued to pursue the Saturn and made a right turn onto Old Allenton Road. The occupant in the front passenger side of the Saturn began to fire at him, possibly from a rifle.

Near the intersection of Old Allenton Road and Old Lumberton Road, the occupant from the rear driver's side stepped out of the stationary Saturn firing at Boddie's vehicle with a handgun and moved to the trunk. The occupant retrieved what appeared to be a shotgun from the vehicle's trunk and fired it at Boddie's vehicle, which was approximately 40 yards away. The occupant in the rear passenger's side also fired his weapon at Boddie.

UNCLASSIFIED//~~FOUO~~

Investigation on 01/24/2018 at Lumberton, North Carolina, United States (In Person)

File # [REDACTED]

Date drafted 01/30/2018by Timothy C. Healy

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Robinson et al Discovery Page 86

At.tch 3

7-183 - LAWRENCE, SC
CG

VAUGHN

Send Knewman

KIM GREEN [PROTECT IDENTITY]

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