

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 17-3691

Jerimiah Quinn

Petitioner - Appellant

v.

United States of America

Respondent - Appellee

Appeal from U.S. District Court for the Southern District of Iowa - Des Moines
(4:13-cv-00257-JAJ)

JUDGMENT

Before WOLLMAN, COLLOTON and SHEPHERD, Circuit Judges.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

The application for Certificate of Appealability is denied.

March 27, 2018

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

/s/ Michael E. Gans

Appendix A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

JERIMIAH QUINN, Petitioner, vs. UNITED STATES OF AMERICA, Respondent.	No. 4:13cv0257-JAJ ORDER
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On June 24, 2013, this court dismissed the petitioner's complaint filed pursuant to 28 U.S.C. § 2255. Over four years later, petitioner now files a motion for relief from that judgment pursuant to Federal Rule of Civil Procedure 60(d). He contends that the motion is timely despite the fact that he did not appeal from the June 25, 2013 judgment or explain a delay of more than four years in seeking to have it set aside.

The petitioner was determined to be a career offender at the time of sentencing by reason of two prior felony drug trafficking offenses. In addition to those, he was also convicted of an Iowa drug tax stamp violation but that conviction was not used as a predicate offense for career offender status. In his plea agreement, the petitioner admitted that he was a career offender. He sought a variance from the career offender sentencing guidelines and appealed his sentence to the Eighth Circuit Court of Appeals.

The claim in the Rule 60(d) motion is similar to that brought in his § 2255 petition. It differs to the extent that he now contends that the court used the drug tax stamp act violation to determine that he was a career offender. That simply did not happen.

The petitioner admits that none of the circumstances found in Federal Rule of Civil Procedure 60(b) apply here. He simply believes that the court's ruling was erroneous. He has not stated an arguable basis for relief.

Appendix B

CERTIFICATE OF APPEALABILITY

Before a petitioner can appeal to the court of appeals from a final order in a habeas corpus proceeding, the district court judge must issue a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A). Such certificate may be issued if “the applicant has made a substantial showing of the denial of a constitutional right,” *id.* § 2253(c)(2), and indicates “which specific issue or issues satisfy the [substantial] showing.” *Id.* § 2253(c)(3).

To meet the “substantial showing” standard, the petitioner must demonstrate that a reasonable jurist would find the district court ruling on the constitutional claim debatable or wrong. *Winfield v. Roper*, 460 F.3d 1026, 1040 (8th Cir. 2006) (citing *Tennard v. Dretke*, 542 U.S. 274, 276, 124 S.Ct. 2562, 159 L.Ed.2d 384 (2004)); *see also Randolph v. Kemna*, 276 F.3d 401, 403 (8th Cir. 2002) (“the petitioner must ‘demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further.’” (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.1, 103 S.Ct. 3383, 77 L.Ed.2d 1090 (1983)) (alteration in original)). A “substantial showing” must be made for each issue presented. *See Parkus v. Bowersox*, 157 F.3d 1136, 1140 (8th Cir. 1998). The certificate of appeal will then contain “an overview of the claims in the habeas petition and a general assessment of their merits.” *Miller-el v. Cockrell*, 537 U.S. 322, 336 (2003). “This threshold inquiry does not require full consideration of the factual or legal bases adduced in support of the claims. In fact, the statute forbids it.” *Id.* Thus, a district court may issue a certificate of appeal even if the court is not certain that “the appeal will succeed . . . [because a certificate of appealability] will issue in some instances where there is no certainty of ultimate relief.” *Id.* at 336–37 (citing *Slack v. McDaniel*, 539 U.S. 473, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000)).

Here, petitioner cannot show that reasonable jurists would disagree or debate whether the issues presented should have had a different outcome, and whether the issues

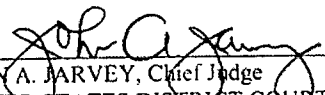
are adequate to deserve encouragement to proceed further. *See Barefoot*, 463 U.S. at 893

n.4. The court denies a Certificate of Appealability.

Upon the foregoing,

IT IS ORDERED that the petitioner's October 30, 2017 Motion for Relief From Judgment is denied.

DATED this 28th day of November, 2017.



JOHN A. JARVEY, Chief Judge
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

JERIMIAH QUINN,

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent.

No. 4:13cv257-JAJ

ORDER

This matter comes before the court pursuant to the Defendant's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence. [Docket 1]. Pursuant to Rule 4 of the Rules Governing Section 2255 Proceedings, the court conducts the following initial review to determine whether the claim in the petition has arguable merit. Finding that it does not, the court dismisses the petition and denies a certificate of appealability.

I. Procedural History

On November 18, 2010, the grand jury for the Southern District of Iowa returned a six count indictment charging the petitioner with conspiracy to distribute at least twenty-eight grams of cocaine base and five counts of distribution of cocaine base. *United States v. Jeremiah Quinn*, 3:10cr00100 (S.D. Iowa) at Dkt. No. 1. The petitioner pled not guilty to all six counts in his initial appearance before the court on December 7, 2010. [Dkt. No. 6]. A federal public defender was appointed to represent petitioner December 9, 2010. [Dkt. No. 19]. A change of plea hearing was held May 27, 2011, where petitioner pled guilty to count one. [Dkt. No. 46]. Pursuant to a plea agreement, counts two through six were dismissed. [Dkt. No. 48].

A draft presentence investigation report was filed July 11, 2011. [Dkt. No. 54]. The petitioner filed three pages of objections to the presentence investigation report. [Dkt. No. 61]. The final presentence investigation report was filed September 21, 2011. [Dkt. No.

Appendix C

66].

The petitioner was sentenced on September 30, 2011. [Dkt. No. 72]. He was sentenced to 188 months incarceration on count one. He was given a four year term of supervised release and ordered to pay a \$100 special assessment. [Dkt. No. 72]. The petitioner appealed October 12, 2011. [Dkt. No. 75]. On March 14, 2012, the Eighth Circuit affirmed this court's September 30, 2011 judgment. [Dkt. No. 87].

II. § 2255 Petition

A. The § 2255 Petition

Petitioner makes the following claim in his § 2255 motion. He claims he received ineffective assistance of counsel based on lack of investigation of prior convictions, which resulted in petitioner being sentenced as a career offender. Petitioner argues that during the course of his conviction in *State v. Jerimiah Quinn*, ^{H.M.} ~~FECR187291~~ (Iowa Dist. 1997), his appellate attorney abandoned him; therefore, he claims, this conviction may not be factored in to his categorization as a career offender.

B. Standards for Relief Pursuant to Section 2255

Title 28, of the United States Code, section 2255, provides as follows:

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground (1) that the sentence was imposed in violation of the Constitution or laws of the United States, or (2) that the court was without jurisdiction to impose such sentence, or (3) that the sentence was in excess of the maximum authorized by law, or (4) is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

28 U.S.C. § 2255. Section 2255 does not provide a remedy for “all claims errors in conviction and sentencing.” *United State v. Addonizio*, 442 U.S. 178, 185 (1979).

Rather, § 2255 is intended to redress only “fundamental defect[s] which inherently [result] in a complete miscarriage of justice” and “omission[s] inconsistent with the rudimentary demands of fair procedure.” *Hill v. United States*, 368 U.S. 424, 428 (1962); *see also United States v. Apfel*, 97 F.3d 1074, 1076 (8th Cir. 1996) (“Relief under 28 U.S.C. § 2255 is reserved for transgressions of constitutional rights and for a narrow range of injuries that could not have been raised for the first time on direct appeal and, if uncorrected, would result in a complete miscarriage of justice.”) (citing *Poor Thunder v. United States*, 810 F.2d 817, 821 (8th Cir. 1987)). A § 2255 claim is a collateral challenge and not interchangeable for a direct appeal, *see United States v. Frady*, 456 U.S. 152, 165 (1982), and an error that could be reversed on direct appeal “will not necessarily support a collateral attack on a final judgment.” *Id.*

C. Ineffective Assistance of Counsel Standard

The Sixth Amendment right to counsel exists “in order to protect the fundamental right to a fair trial.” *Strickland v. Washington*, 466 U.S. 668, 684 (1984). The United States Supreme Court reformulated the *Strickland* test for constitutionally ineffective assistance of counsel in *Lockhart v. Fretwell*:

[T]he right to effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial. Absent some effect of challenged conduct on the reliability of the trial process, the Sixth Amendment guarantee is generally not implicated.

506 U.S. 364, 369 (1993) (quoting *United States v. Cronin*, 466 U.S. 648, 658 (1984)).

The Eighth Circuit Court of Appeals applies the *Lockhart* test:

Counsel is constitutionally ineffective . . . when: (1) counsel’s representation falls below an objective standard of reasonableness; and (2) the errors are so prejudicial that the adversarial balance between defense and prosecution is upset, and the verdict is rendered suspect.

English v. United States, 998 F.2d 609, 613 (8th Cir. 1993) (citing *Lockhart*, 506 U.S. at 364). Where conduct has not prejudiced the movant, the court need not address the reasonableness of that conduct. *United States v. Williams*, 994 F.2d 1287, 1291 (8th Cir. 1993); *Siers v. Weber*, 259 F.3d 969, 984 (8th Cir. 2001) (citing *Strickland*, 466 U.S. at 697) (courts need not reach the effectiveness of counsel if it is determined “that no prejudice resulted from counsel’s alleged deficiencies.”). To determine whether there is prejudice, the court examines whether the result has been rendered “fundamentally unfair or unreliable” as the result of counsel’s performance. *Lockhart*, 506 U.S. at 369. Unreliability or unfairness does not result if the ineffectiveness of counsel does not deprive the defendant of any substantive or procedural rights to which the law entitles him. *Id.* at 372. Prejudice does not exist unless “there is a reasonable probability that, but for counsel’s . . . errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694; *Williams*, 994 F.2d at 1291.

D. Analysis

Petitioner’s claim of ineffective assistance of counsel due to lack of investigation of prior convictions fails to state an arguable claim for relief. The requirements for a career offender designation as follows: (1) the defendant was at least eighteen years old at the time of the instant offense; (2) this instant offense is a felony that is either a crime of violence or a controlled substances offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense. U.S.S.G. §4B1.1(a) The petitioner meets all the criteria necessary to be categorized as a career offender. He was thirty-five years old at the time of the instant offense and the instant offense, conspiracy to distribute cocaine base¹, is a felony. Petitioner’s argument

¹Pursuant to 21 U.S.C. §§ 846, 841(a)(1), (b)(1)(B).

that his prior conviction² is invalid based on abandonment of counsel has no bearing on his status as a career offender. Regardless of the validity of this conviction on the grounds raised by petitioner (an issue discussed below), he has two additional prior felony controlled substance convictions.³

The United States Supreme Court has held that “once a state conviction is no longer open to direct or collateral attack in its own right . . . the conviction may be regarded as conclusively valid.” *Lackawanna County Dist. Attorney v. Coss*, 532 U.S. 394, 403 (2001). The Court clarified that a conviction is not subject to attack when the sentence has already been served in its entirety. *Id.* at 402. The petitioner was discharged, following the completion of his imprisonment and parole, in April 2001 on the 1996 conviction he uses as the basis for his claim. [Dkt. No. 66, ¶ 45].

There is a general exception to this rule when the prior conviction is obtained where a failure to appoint counsel violates the Sixth Amendment. *Id.* at 404 (citing *Gideon v. Wainwright*, 372 U.S. 335 (1963)). [Despite this exception, these collateral attacks are limited to instances where there is a failure to appoint counsel “at all.” *Custis v. United States*, 511 U.S. 485, 496 (1994). Alleged constitutional violations such as ineffective assistance of counsel fail to rise to “the level of a jurisdictional defect resulting from the failure to appoint counsel at all.” *Id.* (citing *Johnson v. Zerbst*, 304 U.S. 458 (1938)).] The petitioner was represented by counsel at all times in the trial court. Petitioner’s original attorney, Mr. Phelps, filed a notice of appeal, accompanied by a motion to withdraw, on June 14, 1996. New counsel, Mr. Schwartz, was appointed to represent petitioner on appeal June 28, 1996; Mr. Schwartz was allowed to withdraw, based on the appointment of new counsel, Mr. Humpal, on November 13, 1996. On August 15, 1997, the Iowa Supreme

² Criminal Case No. FECR187291.

³Possession of Crack Cocaine, Third Offense, a class D felony under Iowa law (Criminal No. AGCR309610, ¶ 55 of Dkt. No. 66); and Possession with Intent to Deliver a Schedule II Controlled Substance, in violation of Iowa Code § 124.401(1)(c)(3), a class C felony under Iowa law (Criminal No. FECR236008, ¶ 66 of Dkt. No. 66).

Court ruled on Mr. Phelps' June 14, 1996 motion to withdraw; finding no response from the petitioner, they granted leave and dismissed the appeal pursuant to Iowa R. App. P. 104.⁴ Therefore, petitioner's claim of abandonment by counsel is insufficient to bring his case within the *Custis* exception.

III. Certificate of Appealability

Before a petitioner can appeal to the court of appeals from a final order in a habeas corpus proceeding, the district court judge must issue a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A). Such certificate may be issued if "the applicant has made a substantial showing of the denial of a constitutional right," *id.* § 2253(c)(2), and indicates "which specific issue or issues satisfy the [substantial] showing." *Id.* § 2253(c)(3).

To meet the "substantial showing" standard, the petitioner must demonstrate that a reasonable jurist would find the district court ruling on the constitutional claim debatable or wrong. *Winfield v. Roper*, 460 F.3d 1026, 1040 (8th Cir. 2006) (citing *Tennard v. Dretke*, 542 U.S. 274, 276, 124 S.Ct. 2562, 159 L.Ed.2d 384 (2004)); *see also Randolph v. Kemna*, 276 F.3d 401, 403 (8th Cir. 2002) ("the petitioner must 'demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further.'" (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.1, 103 S.Ct. 3383, 77 L.Ed.2d 1090 (1983)) (alteration in original)). A "substantial showing" must be made for each issue presented. *See Parkus v. Bowersox*, 157 F.3d 1136, 1140 (8th Cir. 1998). The certificate of appeal will then contain "an overview of the claims in the habeas petition and a general assessment of their merits." *Miller-el v. Cockrellu*, 537 U.S. 322, 336 (2003). "This threshold inquiry does not require full consideration of the factual or legal bases adduced in support of the claims. In fact, the statute forbids it." *Id.* Thus, a district court may issue

⁴Trial Docket information obtained via iowacourtsonline.org, Case ID 07821 FECR187291.

a certificate of appeal even if the court is not certain that “the appeal will succeed . . . [because a certificate of appealability] will issue in some instances where there is no certainty of ultimate relief.” *Id.* at 336-37 (citing *Slack v. McDaniel*, 539 U.S. 473, 120 S.Ct. 1595, 146 L.Ed.2d. 542 (2000)).

Here, petitioner cannot show that reasonable jurists would disagree or debate whether the issues presented should have had a different outcome, and whether the issues are adequate to deserve encouragement to proceed further. *See Barefoot*, 463 U.S. at 893 n.4. The court denies a Certificate of Appealability.

IV. Conclusion

The court finds that petitioner is not entitled to relief pursuant to 28 U.S.C. § 2255.

Upon the foregoing,

IT IS ORDERED that the petitioner’s June 10, 2013 Petition for Writ of Habeas Corpus [Docket 1] is dismissed in its entirety. The Clerk of Court shall enter judgment in favor of the respondent.

IT IS FURTHER ORDERED that a Certificate of Appealability will not issue.

DATED this 24th day of June, 2013.



JOHN A. JARVEY
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF IOWA