No.: _____

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IN THE
UNITED STATES SUPREME COURT

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Matthew Asa Bramley,
applicant,

versus

United States of America,
respondent.

****

APPLICATION FOR A CERTIFICATE OF APPEALABILITY FROM THE SIXTH CIRCUIT COURT OF APPEALS AND DISTRICT COURT
RELATED CASE NO.'s 16-6138, 5:15-cv-00360

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APPLICATION FOR A COA

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Matthew Asa Bramley #17572-032
Federal Correctional Complex
P.O. Box 1031 (Low custody)
Coleman, Florida 33521-1031
Unit B-3

APPLICATION FOR A CERTIFICATE OF APPEALABILITY

Matthew Bramley filed a timely **28 U.S.C. § 2255** motion seeking to vacate his criminal judgment. In May 2016, under Rule 4(b) of the § 2255 rules, the district court summarily denied the motion and dismissed the motion with prejudice. (The order seems unnecessarily redundant, but this decision seems to have been made hurriedly after the district court granted the government an extra 30 days to respond to the § 2255 motion (§ 2255, Doc. 87, 88)). Further, the court denied Mr. Bramley a certificate of appealability.

The district court's expansive reading of Rule 4(b) of the Rules Governing Section 2255 departs from the traditional and accepted purpose of Rule 4. Accordingly, jurists of reason would find the district court's resolution at least debatable, and more likely, wrong. Nonetheless, the Sixth Circuit affirmed that the difference paves the way for this court to grant a certificate of appealability on the question:

> Did the district court's summary dismissal of the § 2255 motion deny Mr. Bramley a full and fair opportunity to prove his Sixth Amendment ineffective-assistance-of-counsel claims?

In support of this application, Mr. Bramley provides the following: (1) statement of relevant facts; (2) standards of review; (3) and decisions of other courts that are in conflict with the district court and the Sixth Circuit Court of Appeals.

Statement of Facts

Mr. Bramley filed a motion to vacate his criminal conviction or modify his criminal sentence (§ 2255, Doc. 83). Mr. Bramley acted pro se. The district court ordered the government to respond (§ 2255, Doc. 86). On May 13, 2016, the government requested an extra 30 days to respond (§ 2255, Doc. 87). On May 17, 2016, the district court granted the government's motion (§ 2255, Doc. 88).

One day later (5/18/16), without affording Mr. Bramley the opportunity to be heard, the district court reversed its earlier finding that the § 2255 motion was adequate and dismissed the motion with prejudice. Moreover, the court denied the motion without requiring the government to respond and without providing Mr. Bramley an opportunity to correct any technical deficiencies in his pro se pleadings (§ 2255, Doc. 89). Mr. Bramley timely noticed this appeal.

The Sixth Circuit allowed Mr. Bramley to submit an application for COA, but then issued a two page order that failed——like the district court before it——too address all the claims Mr. Bramley presented and failed to provide a sufficient explanation of both why it did not address the claims and why it declined to grant a certificate of appealability.

Argument

The silence of the appeals court causes us to rely on the last reasoned opinion, which was that of the district court. Although that opinion failed to specify its reason or adjudicate all the claims, one can at least gleam something from the opinion.

The district court relied almost entirely on a repetition of the plea agreement to reach it summary dismissal (§ 2255, Doc. 89, pp. 2-5). Only one paragraph of the order had any and it involved a string citation to inapposite and unremarkable propositions. The district court failed to address all of Mr. Bramley's claims, failed to apply the proper liberal construction principles, and did not fully identify the factual predicates or legal premises necessary for its decisions. All choices that entitle Mr. Bramley to a certificate of appealability.

Standards of Decision

A federal court should grant a habeas petitioner a certificate of appealability when the petitioner makes a substantial showing of the denial of a constitutional right. **28 U.S.C. § 2553(c)(2); Miller-El v. Cockrell,** 537 U.S. 322 (2003); **Slack v. McDaniel,** 529 U.S. 473 (2000). A petitioner makes the substantial showing by demonstrating that reasonable jurists would find the district court's ruling on the merits debatable or wrong. **Tennard v. Dretke,** 542 U.S. 274, 282 (2004) (citing **Slack,** 529 U.S. at 484). A petitioner can also make the substantial showing by demonstrating that jurists of reason would find that the "issues presented deserve encouragement to proceed further." **Miller-El v. Cockrell,** 537 U.S. at 336 (quoting **Barefoot v. Estelle,** 463 U.S. 880, 893, n. 4 (1983)).

Significantly, the certificate of appealability stage involves only a threshold inquiry involving only a cursory examination of the factual or legal basis adduced in support of the questions to be certified. **Miller-El,** 537 U.S. at 336. In other words, a petitioner need not show that he would succeed on the merits, but only that the questions are worthy of debate. The Supreme Court has emphasized that a court "should not decline the application for certificate of appealability merely because the application will not demonstrate an entitlement to relief." **Id.** at 338. "Indeed, a claim can be debatable even though every jurist or reason might not agree ... that [the] petitioner will not prevail." **Slack,** 529 U.S. at 484; **Engle v. Linahan,** 279 F.3d 936, 936 (11th Cir. 2001). Further, if there is any doubt regarding whether to grant a certificate of appealability the matter should be resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination. **Shisinday v. Quarterman,** 511 F.3d 514, 520 (5th Cir. 2007).

Finally, when a district court denies a § 2255 claim on procedural grounds, a petitioner must demonstrate not only that the substantial claim is valid, but also that reasonable jurists would find the procedural ruling debatable or wrong. **Slack,** 529 U.S. 484.

Reasonable Jurists would Disagree with the District Court's Resolution of the § 2255 Motion

"Ordinarily when a defendnat seeks to withdraw a guilty plea on the basis of ineffective assistance of trial counsel the district court should hold an evidentiary hearing to determine the merits of the defendant's claim." **United States v. Taylor,** 139 F.3d 924, 932 (D.C. Circuit 1989). The district court recognized that "[t]he gist of Bramley's motion to vacate is that his counsel was ineffective for various reasons." (Doc. 89, p.2). Yet, the district court did not conduct an evidentiary hearing. Nearly, all federal circuits have adopted a different rule; the dominant (if not universal rule) is that absent an evidentiary hearing there is no way to ascertain the what or why of counsel's advice. See **Downs-Morgan v. United States,** 765 F.2d 1534, 1541 (11th Cir. 1985); see also **Murray v. Carrier,** 422 U.S. 478 (1986) ("The question of counsel's motivation is one of fact for the district court to resolve upon taking further evidence."). Jurists of reason would find the district court summary dismissal of the ineffective claims debatable or wrong.

CONCLUSION

Without providing Mr. Bramley the procedures normally afforded a pro se litigant, and without allowing Mr. Bramley the resources to prove his claims, the district court's summary dismissal of the § 2255 motion established precedent. The Supreme Court rejects this practice and has for a long time. Where specific allegations (like here) provide reason to believe that the facts are fully developed, the petitioner may be entitled to relief, then the court

has a duty to provide the necessary facilities and proceedings for an adequate inquiry. **Bracey v. Gramely,** 520 U.S. 899, 908-09 (1997); **Harris v. Nelson,** 394 U.S. 286, 300 (1969).

Reasonable jurists would find the district court's summary denial debatable or wrong. This court should grant Mr. Bramley a certificate of appealability.

Prepared with the assistance of Frank L. Amodeo and respectfully submitted by Matthew Bramley on this 6th day of July 2018:

Matthew Bramley
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CERTIFICATE OF SERVICE

This motion was delivered in a pre-addressed, postage-paid envelope to the prison mailing authorities on the same day as signed.

The following motion was sent via First Class U.S. Mail to the United States Supreme Court, Clerk of the Court, at 1 First Street, N.E., Washington, DC 20543.

A copy of this motion was sent via First Class U.S. Mail to the Solicitor General of the United States at Department of Justice, 950 Pennsylvania Avenue, N.W., Room 5616, Washington, DC 20530-0001.

Matthew Bramley

VERIFICATION

Under penalty of perjury as authorized in 28 U.S.C. § 1746, I declare that the factual allegations and factual statements contained in this document are true and correct to the best of my knowledge.

Matthew Bramley

No. 16-6138

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MATTHEW ASA BRAMLEY,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

ORDER

Matthew Asa Bramley, a federal prisoner proceeding pro se, appeals a district court order denying his 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence. Bramley has filed an application for a certificate of appealability.

Bramley was sentenced to 90 months of imprisonment after pleading guilty to conspiracy to distribute oxycodone, possession with intent to distribute oxycodone, and carrying a firearm during and in relation to a drug trafficking offense. Bramley then filed a § 2255 motion, claiming that he received ineffective assistance of counsel. The district court denied the § 2255 motion and declined to issue a certificate of appealability.

A certificate of appealability may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To satisfy this standard, the petitioner must demonstrate "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). When the district court's denial is on the merits, "[t]he petitioner must demonstrate that

reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Reasonable jurists would not debate the district court's denial of Bramley's ineffective-assistance claim. Bramley argues that he received ineffective assistance of counsel when counsel failed to adequately advise him of the elements to sustain his firearm conviction and failed to properly advise him of his sentence exposure. To prove ineffective assistance of counsel, a petitioner must show that his attorney's performance was objectively unreasonable and that he was prejudiced as a result. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Despite Bramley's assertions to the contrary, the plea agreement sets forth the elements of his offenses and the possible penalties that he faced. Because Bramley's ineffective-assistance claim is rebutted by the record, reasonable jurists would not find it debatable whether the district court erred in its resolution of this claim.

Bramley also argues that the district court failed to address all of his arguments. However, the record shows that the district court addressed both of Bramley's ineffective-assistance claims and explained how the contents of the plea agreement refuted his claims. Finally, the district court properly denied the § 2255 motion without conducting an evidentiary hearing, because "the motion and the files and records of the case conclusively show that [Bramley] is entitled to no relief." 28 U.S.C. § 2255(b); *see also Valentine v. United States*, 488 F.3d 325, 333 (6th Cir. 2007).

Accordingly, we **DENY** the application for a certificate of appealability.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

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Filed: July 06, 2017

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Re: Case No. 16-6138, *Matthew Bramley v. USA*
Originating Case No. : 5:14-cr-00038-2 : 5:15-cv-00360

Dear Mr. Bramley and Counsel:

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Karen S. Fultz
Case Manager
Direct Dial No. 513-564-7036

cc: Mr. Robert R. Carr

Enclosure

No mandate to issue