

APPENDIX A

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-10705

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KARTEU OMAR JENKINS,

a.k.a. Yay,

EUGENE ALLEN,

a.k.a Poncho,

a.k.a Jig,

Defendants-Appellants.

Appeals from the United States District Court
for the Southern District of Georgia
D.C. Docket No. 4:17-cr-00208-RSB-CLR-3

Before WILSON, BRANCH, and LAGOA, Circuit Judges.

PER CURIAM:

We have considered all the arguments raised on appeal by Defendants-Appellants Karteu Omar Jenkins and Eugene Allen, including that:

I. The Defendants had standing to challenge wiretap evidence used against them at trial, and the district court erred in denying the Defendants' motions to suppress that evidence.

II. The district court abused its discretion in denying Jenkins's motions for new counsel.

III. The district court erred in admitting evidence seized during Jenkins's arrest.

IV. The district court erred in denying Jenkins's motion for judgment of acquittal.

V. The district court violated Jenkins's constitutional rights by constructively amending his indictment.

VI. The district court incorrectly calculated Jenkins's sentencing guidelines range, applied erroneous sentencing

admitting evidence of cocaine seized from Jenkins during his arrest, that error would be harmless. There was more than sufficient independent, admissible evidence on which to convict Jenkins of the charged offenses. *See United States v. Chavez*, 204 F.3d 1305, 1317 (11th Cir. 2000). The district court also correctly denied Jenkins's motion for judgment of acquittal. Further, the district court did not violate Jenkins's constitutional rights by constructively amending Jenkins's indictment. To be sure, the drug quantity specified in the jury instructions was different than the quantity specified in the indictment, but the change did not constructively amend the indictment because drug quantity was not an essential element of the charged offense. *See United States v. Cabrera-Beltran*, 660 F.3d 742, 753 (4th Cir. 2011).

Likewise, as to the Defendants' sentencing arguments, we find no reversible error.

We thus affirm the Defendants' convictions and sentences.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

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UNITED STATES OF AMERICA)
)
v.)
)
KARTEU OMAR JENKINS,)
)
Defendant.)
_____)

CASE NO. CR417-208

O R D E R

Before the Court is the Magistrate Judge's Report and Recommendation (Doc. 588), to which objections have been filed (Doc. 590). In the report and recommendation, the Magistrate Judge recommends denying Defendant Jenkins's request to suppress certain intercepted communications. (Doc. 588.) After a careful review of the record, the Court finds that Defendant Jenkins's objections are meritless and concurs with the conclusions of the report and recommendation. Defendant Jenkins raises the same arguments in his objections that were fully considered by the Magistrate Judge in the report and recommendation. Accordingly, the report and recommendation is **ADOPTED** as the Court's opinion in this case and Defendant Jenkins's Motion to Suppress (Doc. 339) is **DENIED**.

SO ORDERED this 28th day of May 2019.



WILLIAM T. MOORE, JR.
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

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UNITED STATES OF AMERICA,)
)
v.) CR417-208
)
KARTEU OMAR JENKINS,)
)
Defendants.)

ORDER

Defendant Karteu Jenkins has raised concerns about the appropriateness of the representation he is receiving from appointed counsel, William Turner. See doc. 533. The Court held a hearing on Jenkins' motion for the appointment of new counsel on January 10, 2019. At the hearing, the Court heard from Special Assistant United States Attorney Abrams. After Abrams discussed his observations of Turner's performance in this case, the Government was excused, and the Court discussed Jenkins' reservations.


Although the United States Constitution guarantees Defendant the right to counsel, it does not afford him an unqualified right to counsel of his choice. See *United States v. Garey*, 540 F.3d 1253, 1263 (11th Cir. 2008); see also *Thomas v. Wainwright*, 767 F.2d 738, 742 (11th Cir. 1985)

(an indigent criminal defendant “does not have the right to have a particular lawyer appointed to represent him, nor to demand a different appointed lawyer except for good cause.”). “Good cause” to appoint substitute counsel “in this context means a fundamental problem, such as a conflict of interest, a complete breakdown in communication or an irreconcilable conflict which leads to an apparently unjust verdict.” *Garey*, 540 F.3d at 1263.

The Court is satisfied that there is no adequate cause to appoint substitute counsel in this case. First, SAUSA Abrams expressed his opinion, based on his considerable experience as a criminal prosecutor, that Turner’s performance was not deficient; he was able to easily contact Turner, and during their interactions Turner always seemed to him to have an appropriate mastery of the facts. The Court was also satisfied, after its *ex parte* discussion with Jenkins and Turner, that Turner will be able to address Jenkins’ concerns. During this interaction, there was no indication of the sort of “fundamental” breakdown of the attorney-client relationship that would require appointment of new counsel.

Accordingly, Jenkins' motion for the appointment of new counsel is
DENIED. Doc. 533.

SO ORDERED, this 10th day of January, 2019.



Christopher L. Ray
United States Magistrate Judge
Southern District of Georgia

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

UNITED STATES OF AMERICA,)	
)	
v.)	CR417-208
)	
KARTEU OMAR JENKINS,)	
)	
Defendant.)	

ORDER

Defendant Karteu Jenkins seeks to replace his court-appointed attorney, Joseph Turner. Doc. 592. On June 6, 2019, the Court held a hearing on Jenkins' motion. For the reasons explained below, the Court finds no good cause to replace Mr. Turner. *See, e.g., Thomas v. Wainright*, 767 F.2d 738, 742 (11th Cir. 1985) ("An indigent criminal defendant has an absolute right to be represented by counsel, but he does not have a right to have a particular lawyer represent him, [cit], nor to demand a different lawyer except for good cause." (citations omitted)). Jenkins' motion raises several concerns about the quality of the representation he is receiving. Although the Court is confident, after appropriate inquiry, that the representation Jenkins' is receiving is adequate, some discussion of the principles involved is warranted.

Jenkins is concerned about counsel's accessibility. Mr. Turner and Jenkins agree that there has been some communication, albeit occasionally limited by the circumstances of Jenkins' incarceration. Turner has visited the jail several times. During one of those visits, Turner provided Jenkins with a complete copy of the case file. The Government also represented that it had been in contact with Mr. Turner concerning the ongoing litigation as well as negotiation of a possible plea. Jenkins was particularly concerned that Mr. Turner was not fully accessible to his family and friends. Turner responded that he has been as forthcoming and communicative with those individuals as possible, consistent with his obligation to maintain his client's confidentiality.

It is a cornerstone of the attorney-client relationship in the American system that "[a] lawyer shall maintain in confidence all information gained in the professional relationship with a client," with some limited exceptions. Ga. R. of Prof. Conduct 1.6(a). The confidentiality of such information is significantly risked by any involvement of a third party, *i.e.*, anyone other than the attorney and his client. *See, e.g., McKesson HBOC, Inc. v. Adler*, 254 Ga. App. 500, 504 (2002) (stating the general rule that the attorney-client privilege is

“readily waived by disclosure to a third party.”). Given that risk and the importance of the obligation at stake, Turner’s reticence to involve third parties in the conduct of his representation does not call his competence into question. On the contrary, it is an indication of his prudent consideration of Jenkins’ interest in these proceedings.

Jenkins is also concerned that Mr. Turner is not filing motions that Jenkins believes are warranted. At the hearing, the Court briefly explained to Jenkins that Turner, in addition to his obligations to provide effective representation, has an obligation to the Court not to pursue motions that he deems meritless. Jenkins expressed some discomfort with that explanation, but the legal principle is clear and well-established. As this Court has previously explained:


An attorney does not serve as a mere mouthpiece or alter ego for his client, obligated to urge any motion or argument that his client wishes him to file. *Thomas v. Tenneco Packaging Co.*, 293 F.3d 1306, 1337 (11th Cir. 2002) (“An attorney should not be an unreflecting conduit through which the opinions and desires of a client or witness are permitted to flow unchecked.”). Rather, an attorney has a duty to exercise his independent professional judgment and to file only those motions or raise only those claims that have potential merit. *Id.*; *Welch v. Artus*, 2007 WL 949652, at * 17 (W.D.N.Y. March 29, 2007). Further, an attorney must adhere to the ethical standards of the profession, which preclude an attorney from making “a false statement of material fact or law” to a Court or other tribunal, Rule 3.3, Georgia Rules of Professional

Conduct, or from advancing an unwarranted claim or defense. Georgia Rule 3.1. Thus, if a client insists that an attorney file a motion or take a position that the attorney does not personally believe to have any factual or legal merit, “the attorney must stand his . . . ground and refuse to act in a manner that flies in the face of the relevant ethical rules.” *Thomas*, 293 F.3d at 1327-28. “Given this duty, it follows that an attorney cannot ‘file first and think later,’ . . . thereby neglecting to employ his or her independent professional judgment to consider the plausibility and the appropriateness of what is asserted in the filed document.” *Thomas*, 293 F.3d 1327 (citation omitted).

United States v. Scott, 2007 WL 1101241 at * 1 (S.D. Ga. April 11, 2007). Again, far from casting doubt upon the quality of his representation, his exercise of independent professional judgment is positive evidence of it.

Mr. Turner is an experienced criminal litigator and his performance in this case, based upon the Government’s assessment, review of the motions he has filed, and his performance in hearings, provide not a scintilla of doubt of the adequacy of his representation. Jenkins’ concerns are understandable, given the gravity of his situation, but they do not rise to the level of “good cause” for replacing Turner as his appointed counsel. Accordingly, his motion is **DENIED**. Doc. 592.

SO ORDERED, this 7th day of June, 2019.

A handwritten signature in cursive script that reads "Christopher L. Ray". The signature is written in black ink and is positioned above a horizontal line.

CHRISTOPHER L. RAY
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

UNITED STATES OF AMERICA,)	
)	
v.)	CR417-208
)	
KARTEAU OMAR JENKINS,)	
)	
Defendant.)	

ORDER

Defendant Karteau Jenkins has moved to have substitute counsel¹ appointed to represent him in the sentencing phase of his case. *See* doc. 705. Jenkins has also filed an objection to the District Judge’s Order denying several motions he filed *pro se* after his trial. *See* doc. 708; doc. 698 (Order). Although that objection was docketed as a motion to proceed *pro se*, it is not properly considered here.² The Court held a hearing on Jenkins’ motion on February 19, 2020. For the reasons explained below, it is **DENIED**. Doc. 705.

¹ Jenkins’ motion is captioned as a motion to proceed *pro se*. *See* doc. 705. Despite the caption, the Court confirmed at the hearing that Jenkins did not want to proceed *pro se*, but instead wanted substitute counsel appointed. To the extent that the motion seeks leave to proceed *pro se* as alternative relief, it is **DISMISSED** as withdrawn.

² The Clerk is **DIRECTED** to correct the docket text to reflect the fact that the document is an objection, and not a motion.

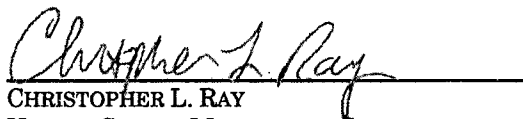
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Although the Constitution guarantees criminal defendants a right to effective representation, the Supreme Court has explained that it does not guarantee “a ‘meaningful relationship’ between an accused and his counsel.” *Morris v. Slappy*, 461 U.S. 1, 14 (1983). “A defendant’s general loss of confidence or trust is *not* sufficient.” *Thomas v. Wainwright*, 767 F.2d 738, 742 (11th Cir. 1985) (emphasis added) (citation omitted). “Although an indigent criminal defendant has a right to be represented by counsel, he does not have a right . . . to demand a different appointed lawyer except for good cause.” *United States v. Young*, 482 F.2d 993, 995 (5th Cir. 1973); *United States v. Quinones*, 372 F. App’x 34, 35 (11th Cir. 2010). Good cause for substitution requires a showing that a defendant’s appointed counsel cannot provide adequate assistance for one of several reasons, such as a conflict of interest, a complete breakdown in communication, or an irreconcilable conflict between counsel and his client. *Young*, 482 F.2d at 995. A defendant’s subjective dissatisfaction with counsel’s performance is simply not enough. *Cf. United States v. Cronin*, 466 U.S. 648, 657 n. 21 (1984) (noting that a defendant’s expressions of satisfaction or dissatisfaction with counsel’s performance are accorded “no weight” in evaluating effectiveness).

The Court is satisfied that there is no adequate cause to appoint substitute counsel. Assistant United States Attorney Frank Pennington expressed his opinion that Turner's performance, in the pretrial, trial, and sentencing phases of the case, was not deficient. He and co-counsel had been able to reliably contact Turner and, during their interactions, Turner always appeared to have an appropriate mastery of the facts and law. The *ex parte* discussion revealed that Jenkins' complaints arose almost exclusively from his subjective dissatisfaction with Turner. He was not able to point to any specific defect in Turner's performance. There is simply no indication of a "fundamental" breakdown of the sort that would warrant appointment of substitute counsel.

Accordingly, Jenkins' motion for the appointment of substitute counsel is **DENIED**. Doc. 705.

SO ORDERED, this 24th day of February, 2020.


CHRISTOPHER L. RAY
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-10705-CC

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

KARTEU OMAR JENKINS,
a.k.a. Yay,
EUGENE ALLEN,
a.k.a Poncho,
a.k.a Jig,

Defendants - Appellants.

Appeal from the United States District Court
for the Southern District of Georgia

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: WILSON, BRANCH, and LAGOA, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. (FRAP 35, IOP2)

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