

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

No: 24-3471

Muzammil Ali

Petitioner - Appellant

v.

United States of America

Respondent - Appellee

Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:23-cv-00421-RGE)

JUDGMENT

Before LOKEN, SHEPHERD, and KOBES, 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.

January 22, 2025

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

/s/ Maureen W. Gornik

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ORDER

The petition for rehearing by the panel is denied.

March 14, 2025

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

/s/ Susan E. Bindler

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

MUZAMMIL ALI,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

No. 4:23-cv-00421-RGE

**ORDER DENYING PETITIONER'S
MOTION TO VACATE, SET ASIDE,
OR CORRECT SENTENCE
PURSUANT TO 28 U.S.C § 2255**

Petitioner Muzammil Ali seeks relief under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. Pet'r's Am. Mot. Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255, ECF No. 1; *see also* Pet'r's Suppl. Mots. Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255, ECF Nos. 3, 7. Ali challenges the conviction and sentence imposed in his criminal case—*United States v. Ali*, No. 4:19-cr-00213-RGE-HCA-5 (S.D. Iowa). ECF Nos. 1, 3, 7. The Court conducts the following initial review. Finding Ali's claims do not have any arguable merit, the Court summarily dismisses the petition, and denies a certificate of appealability.

I. PROCEDURAL HISTORY

In 2020, a grand jury in the Southern District of Iowa returned a second superseding indictment charging Ali with conspiring to distribute tetrahydrocannabinol in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C) and 846. Redacted Second Superseding Indictment 1–2, No. 4:19-cr-00213 (Sept. 17, 2020), ECF No. 296. In 2021, a jury found Ali guilty of the charge. Redacted Jury Verdict, No. 4:19-cr-00213, ECF No. 491.

The Court sentenced Ali to 235 months of imprisonment. J. Crim. Case 2, No. 4:19-cr-00213, ECF No. 593.

Ali filed an appeal. Def.'s Notice of Appeal, No. 4:19-cr-00213, ECF No. 596. The Eighth Circuit affirmed Ali's conviction and sentence. Op., No. 4:19-cr-00213, ECF No. 624-1.

Ali now moves to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. ECF Nos. 1, 3, 7. Ali also seeks appointment of counsel. Pet'r's Mot. Appoint Counsel, ECF No. 4; *see also* Pet'r's Suppl. Mot. Appoint Counsel, ECF No. 5. Ali moves for extension of time to file his memorandum supporting his § 2255 motion. Pet'r's Mot. Extension of Time, ECF No. 6.

II. LEGAL STANDARD

Title 28 of the United States Code, section 2255(a), provides:

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

Section 2255 does not provide a remedy for “all claimed errors in conviction and sentencing.” *United States 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 on direct appeal and, if uncorrected, would result in a complete miscarriage of justice.”). A § 2255 claim is a collateral challenge that is not interchangeable with a direct appeal, and an error that could be reversed on direct appeal “will not necessarily support a collateral attack on a final judgment.” *United States v. Frady*, 456 U.S. 152, 165 (1982) (internal quotations marks omitted) (quoting *Addonizio*, 442 U.S. at 184).

Section 2255 motions are subject to an initial review by the district court. Rule 4, Rules Governing § 2255 Proceedings. “If it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the [court] must dismiss the motion and direct the clerk to notify the moving party.” *Id.* Conversely, if the movant’s

claims have arguable merit, “the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto.” 28 U.S.C. § 2255(b). Finally, pro se documents must be liberally construed. *See United States v. Sellner*, 773 F.3d 927, 932 (8th Cir. 2014) (citing *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)).

The Sixth Amendment to the United States Constitution provides, “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel.” U.S. Const. amend. VI. The Supreme Court has made clear “the right to counsel is the right to the effective assistance of counsel.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984) (internal quotation marks omitted) (quoting *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970)). A defendant must demonstrate both deficient performance and prejudice to show he or she has been denied the effective assistance of counsel. *Id.* at 687. A court does not need to analyze both *Strickland* prongs when “the defendant makes an insufficient showing on one.” *Id.* at 697; *accord United States v. Lee*, 715 F.3d 215, 221 (8th Cir. 2013).

III. DISCUSSION

Ali seeks to vacate, set aside, or correct his sentence, claiming 1) “[t]he amount of THC attributed to [him]” “violated [his] constitutional rights,” ECF No. 1 at 4; 2) the disparity between Ali’s sentence and those of his codefendants “violated [his] constitutional rights,” *id.* at 5; 3) the Court’s decision to admit only an excerpt of a phone call into evidence at trial “violated [his] constitutional rights,” *id.* at 7; and 4) the Court’s denial of Ali’s motion to continue trial “violated [his] constitutional rights,” *id.* at 8. Ali also asserts a variety of ineffective assistance of counsel claims. ECF No. 3 at 1–7; ECF No. 7 at 2, 3. For the reasons set forth below, the Court concludes Ali’s arguments fail. Additionally, because “the motion, files and records of the case establish conclusively that [Ali] is not entitled to relief,” the Court determines an evidentiary hearing is unnecessary. *Kingsberry v. United States*, 202 F.3d 1030, 1032 (8th Cir. 2000).

A. Drug Attribution

Ali's first ground for relief states in its entirety: "THC — Controlled Substance amount attributed to [Ali]. The amount of THC attributed to [Ali] is not same as the other codefendants and what was found during the 07/31/2019 search and seizure at the 408 Olinda Ave, which is not [Ali]'s residence. Violated [Ali]'s constitutional rights." ECF No. 1 at 4. The Court construes Ali's claim as a collateral attack on the Court's interpretation and application of the Sentencing Guidelines related to determining the quantity of drugs attributable to Ali and the resulting offense level. Such claims are not proper § 2255 claims. *Sun Bear v. United States*, 644 F.3d 700, 704 (8th Cir. 2011) ("[O]rdinary questions of guideline interpretation falling short of the 'miscarriage of justice' standard do not present a proper section 2255 claim." (quoting *Auman v. United States*, 67 F.3d 157, 161 (8th Cir. 1995))). Therefore, this claim is dismissed.

B. Sentence Disparity

Ali claims the disparity between his sentence of 235 months and his codefendants' sentences "violated [his] constitutional rights." This claim fails because sentencing disparity is generally considered at a national scale except in "unusual circumstances" involving an "extreme disparity" in sentencing for "similarly situated" codefendants. *United States v. Fry*, 792 F.3d 884, 892 (8th Cir. 2015). The record indicates Ali and his codefendant are not "similarly situated." *Cf. id.* This claim is dismissed.

C. Admission of Call Excerpt into Evidence

Ali claims the Court "violated [his] constitutional rights" in admitting portions of a phone call into evidence. ECF No. 7. This claim fails because the law previously established in this case bars Ali's argument. *See Thompson v. Comm'r*, 821 F.3d 1008, 1011 (8th Cir. 2016) (reaffirming law-of-the-case doctrine which requires courts to follow decisions made in earlier). Ali made similar arguments at trial. *See* Trial Day 3 Tr. 454:25–465:3, No. 4:19-cr-00213-5, ECF No. 555. The United States Court of Appeals for the Eighth Circuit affirmed the district court's decision to

permit the introduction of the call excerpts. Op. 10–13, No. 4:19-cr-00213-5, ECF No. 624-1. “Issues raised and decided on direct appeal cannot ordinarily be relitigated in a collateral proceeding based on 28 U.S.C. § 2255.” *United States v. Wiley*, 245 F.3d 750, 752 (8th Cir. 2001). Ali demonstrates no reason for ignoring “this well-established principle.” *Id.* This claim is dismissed.

D. Denial of Continuance

Ali claims that “[d]ue to the denial of continuance of trial, [Ali] did not have a fair trial and the trial attorney could not be prepared and ready for trial as he stated to the district court and during the direct appeal oral argument.” ECF No. 1 at 8. This claim fails and is dismissed because the argument was addressed on direct appeal. Op. 8–9, No. 4:19-cr-00213-5, ECF No. 624-1; *cf. Wiley*, 245 F.3d at 752.

E. Ineffective Assistance of Counsel

Ali’s ineffective assistance of counsel claims consist of a list of unsubstantiated conclusory statements. ECF No. 3 at 1–7. These claims do not satisfy Rule 2(b)(2) of the Rules Governing Section 2255 Proceedings requiring the petitioner to state the facts supporting each ground. 28 U.S.C. § 2255, Rule 2(b)(2). Furthermore, upon investigation of the record, the Court finds no factual bases for any of these allegations. Because the record contradicts all of Ali’s claims, these claims are dismissed.

IV. CERTIFICATE OF APPEALABILITY

Before a petitioner can appeal a final order in a proceeding under § 2255 to the court of appeals, the district court judge must issue a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B). Such certificate may be issued if “the applicant has made a substantial showing of the denial of a constitutional right.” *Id.* § 2253(c)(2). The certificate must indicate “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) (quoting *Tennard v. Dretke*, 542 U.S. 274, 276 (2004)); *see also Randolph v. Kemna*, 276 F.3d 401, 403 n.1 (8th Cir. 2002) (“[T]he 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.’” (second alteration in original) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983))).

Here, Ali cannot show that reasonable jurists would disagree or debate whether the issues presented should have had a different outcome. The Court denies a certificate of appealability.

V. CONCLUSION

The Court finds Ali is not entitled to relief under 28 U.S.C. § 2255.

IT IS ORDERED that Petitioner Muzammil Ali’s Motion to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255, ECF No. 6, is **DENIED**. The Clerk of Court shall enter judgment in favor of Respondent United States of America.

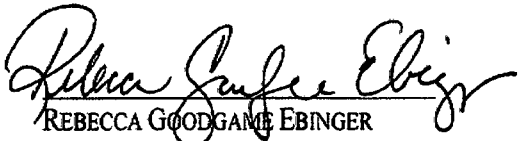
IT IS FURTHER ORDERED that a Certificate of Appealability is **DENIED**.

IT IS FURTHER ORDERED that Petitioner Muzammil Ali’s Motion for Appointment of Counsel, ECF No. 4, is **DENIED as moot**.

IT IS FURTHER ORDERED that Petitioner Muzammil Ali’s Motion for Extension of Time to File Memorandum, ECF No. 6, is **GRANTED**. The Court considered Ali’s Supplemental Motion to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255, ECF No. 7.

IT IS SO ORDERED.

Dated this 4th day of November, 2024.


REBECCA GOODGAME EBINGER
UNITED STATES DISTRICT JUDGE