

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

No: 24-3134

Russell Kimble Jackson, also known as Russell Kimble Jackson, V

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-00165-RGE)

JUDGMENT

Before KELLY, ERICKSON, and GRASZ, 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.

The motion to compel production of case file is denied as moot.

February 05, 2025

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

/s/ Maureen W. Gornik

Appendix (A)

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

RUSSELL KIMBLE JACKSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Defendant.

No. 4:23-cv-00165-RGE

ORDER DENYING
DEFENDANT'S MOTION TO
VACATE, SET ASIDE,
OR CORRECT SENTENCE
UNDER 28 U.S.C. § 2255

Petitioner Russell Kimble Jackson seeks relief under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. Pet'r's Mot. Vacate, Set Aside, or Correct Sentence, ECF No. 1. Jackson argues he received ineffective assistance from both trial and appellate counsel in his criminal case—*United States v. Jackson*, No. 4:20-cr-00073-RGE-HCA (S.D. Iowa)—and his “procedural due process interests were violated.” Pet'r's Br. Supp. Mot. Vacate, Set Aside, or Correct Sentence 15, ECF No. 1-1; see also *id.* at 6–16; ECF No. 1 at 4–5, 7. The Court conducts the following initial review. Finding Jackson's claims do not have any arguable merit, the Court summarily dismisses the claims and denies a certificate of appealability.

I. PROCEDURAL HISTORY

In 2020, a grand jury in the Southern District of Iowa returned an indictment charging Jackson with drug and firearm offenses. Redacted Indictment, No. 4:20-cr-00073, ECF No. 26. Jackson pleaded guilty to possessing with intent to distribute a controlled substance. Change of Plea Hr'g Mins., No. 4:20-cr-00073, ECF No. 79; see also Am. Plea Agreement ¶ 1, No. 4:20-cr-00073, ECF No. 86. As a part of his guilty plea, Jackson “agree[d] to forfeit[] . . . the loaded firearm; \$5,707 in United States currency; and \$17,148 of the \$40,430 in United States currency

Appendix (B)

listed in the Indictment, less up to \$430 in antique currency seized from a Tommy Hilfiger box.” Am. Plea Agreement ¶ 1, No. 4:20-cr-00073, ECF No. 86. Jackson denied forfeiture of \$23,282 in United States currency. Gov’t’s Mot. Forfeiture Hr’g 1, No. 4:20-cr-00073, ECF No. 98.

The parties appeared for a forfeiture hearing in December 2020. Forfeiture Hr’g Mins., No. 4:20-cr-00073, ECF No. 107. The Court found the contested \$23,282 to be drug proceeds. Forfeiture Hr’g Tr. 52:3–14, No. 4:20-cr-00073, ECF No. 132. However, the Court could not “make the nexus finding between the count of conviction and the drug proceeds.” *Id.* at 52:15–17. The Court concluded: “the Government hasn’t met its burden to prove that nexus, so the motion for additional forfeiture for the other amounts of cash is denied.” *Id.* at 53:5–7. The Government then indicated it intended to “seek[] a fine based on the remaining money as an asset to [Jackson].” *Id.* at 54:24–25.

The draft presentence investigation report computed Jackson’s total offense level, finding Jackson a career offender pursuant to USSG §4B1.1. Sealed Draft Presentence Investigation Report ¶ 33, No. 4:20-cr-00073, ECF No. 92. Jackson objected to the career offender guideline enhancement. Def.’s Objs. Draft Presentence Investigation Report ¶ 2, No. 4:20-cr-00073, ECF No. 95; *see also* Def.’s Sentencing Br. 3–9, No. 4:20-cr-00073, ECF No. 111. At sentencing, the Court overruled Jackson’s objection, finding a recommended sentencing guideline range of 151 to 188 months. Sentencing Hr’g Tr. 30:4–5, No. 4:20-cr-00073, ECF No. 125; *id.* at 49:12–19. The Court varied downward, in part, to account for overrepresentation of criminal history, sentencing Jackson to 132 months of imprisonment. Sealed J. Crim. Case 10, No. 4:20-cr-00073, ECF No. 119. The Court also imposed a fine in the amount of \$23,282. *Id.* at 6–7. Jackson appealed his sentence. *See Op.*, No. 4:20-cr-00073, ECF No. 137-1. The Eighth Circuit affirmed both Jackson’s term of imprisonment and fine. *Id.* at 3–4.

Jackson now moves to vacate, set aside, or correct his sentence under 28 U.S.C.

§ 2255. ECF No. 1.

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.” Rule 4(b), Rules Governing

§ 2255 Proceedings. 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

Jackson seeks to vacate, set aside, or correct his sentence, claiming he received ineffective assistance of counsel. ECF No. 1 at 4–5, 7; ECF No. 1-1 at 6–16. For the reasons set forth below, the Court concludes Jackson’s arguments fail. Additionally, because “the motion, files and records of the case establish conclusively that [Jackson] 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. Ineffective Assistance of Trial Counsel: Career Offender

Jackson’s claimed Ground One argues his sentence was imposed in violation of the Sixth Amendment because trial counsel provided ineffective assistance by failing to object to the scoring of Jackson’s prior hemp-related state convictions when finding he qualifies as a career offender. ECF No. 1-1 at 6–8, 13; *see also id.* at 15. Jackson contends that his lawyer’s allegedly ineffective

representation “resulted in an enhanced sentence for Jackson as a career offender [and] heavily prejudiced Jackson.” *Id.* at 7. This argument fails.

Jackson’s claim is contrary to the record. A petitioner’s allegations need not be accepted as true if “they are contradicted by the record, inherently incredible, merely conclusions, or would not entitle the petitioner to relief.” *Garcia v. United States*, 679 F.3d 1013, 1014 (8th Cir. 2012). In his sentencing brief and at the sentencing hearing, counsel made the argument Jackson now claims counsel failed to make. *See* Def.’s Sentencing Br. 3–9, No. 4:20-cr-00073, ECF No. 111 (arguing “Jackson’s Iowa convictions for marijuana distribution are, categorically, not controlled substance offenses under USSG § 4B1.2, and [] Jackson is not a career offender under USSG §[] 4B1.1”); *see also* Sentencing Hr’g Tr. 22:11–24:16, No. 4:20-cr-00073, ECF No. 125; Op. 2–3, No. 4:20-cr-00073, ECF No. 137-1.

Regardless of whether Jackson has demonstrated defense counsel deficiently performed by not objecting to the career offender guideline enhancement, Jackson fails to demonstrate prejudice. *Cf. Strickland*, 466 U.S. at 687. Jackson makes no attempt to show—and nothing in the record indicates—how this “proceeding would have been different.” *Id.* at 694. Further, the record shows Jackson’s sentence would not have been less. *See* Sealed J. Crim. Case 10, No. 4:20-cr-00073, ECF No. 119 (the Court varied downward to account for “overrepresentation of the seriousness of [Jackson]’s prior controlled substance offenses”); Sentencing Hr’g Tr. 37:12–15, No. 4:20-cr-00073, ECF No. 125 (“[The Court] note[s] that if [Jackson] was not a career offender, based upon the Court’s findings, by [the Court’s] math, it would be a total offense level of 25 and a criminal history category VI, and the range would be 110 months to 137 months.”); *id.* at 49:12–19 (the Court noting the downward variance “from the recommended range of 151 to 188 months for the reasons . . . stated, including the potential overrepresentation of [Jackson]’s criminal history based upon the nature of his two qualifying controlled substance offenses”).

Ground One is dismissed.

B. Ineffective Assistance of Trial Counsel: Forfeiture

Jackson's claimed Ground Two appears related to the Court's imposition of a fine equal to the amount Jackson received from an auto accident settlement. *See* ECF No. 1-1 at 9–12; *see also id.* at 15–16. However, Jackson's arguments focus on the Government's attempt to forfeit the settlement money and Jackson's counsel's representation at the related forfeiture hearing. *Id.* This claim fails.

Jackson's complaints are contrary to the record. *Cf. Garcia*, 679 F.3d at 1014. Jackson's counsel's arguments against forfeiture of the settlement money were successful. *See* Forfeiture Hr'g Tr. 51:4–53:7, No. 4:20-cr-00073, ECF No. 132. Further, the Court's imposition of a fine was unrelated to the forfeiture proceedings or how Jackson came to possess the money to pay the fine. Jackson repeatedly declares the settlement money "qualif[ies] as an asset." ECF No. 1-1 at 11. At sentencing, the Court agreed the settlement money was an asset and, as a result, determined Jackson had the ability to pay a fine in the amount of \$23,282. Sentencing Hr'g Tr. 50:12–16, No. 4:20-cr-00073, ECF No. 125; *see also* Op. 3–4, No. 4:20cr00073, ECF No. 137-1.

Regardless of whether Jackson has demonstrated defense counsel deficiently performed by not effectively representing Jackson during the forfeiture proceedings, Jackson fails to demonstrate prejudice. *Cf. Strickland*, 466 U.S. at 687. Jackson makes no attempt to show—and nothing in the record indicates—how this "proceeding would have been different." *Id.* at 694.

Ground Two is dismissed.

C. Ineffective Assistance of Appellate Counsel

Jackson's claimed Ground Three argues he received ineffective assistance of appellate counsel because appellate counsel made a "frivolous" argument on direct appeal. ECF No. 1-1 at 14; *see also id.* at 13. Jackson contends appellate counsel "could have raised on direct appeal that

Rule 32.2 of the Federal Rules of Criminal Procedure were violated, along with Jackson's Fifth, Sixth, and Eighth Amendments to the U.S. Constitution." *Id.* at 14. This argument fails.

Jackson's complaints are contrary to the record. *Cf. Garcia*, 679 F.3d at 1014. As discussed above, Jackson's trial counsel's forfeiture argument was successful. *See supra* Part III.B. An appeal of the favorable forfeiture ruling would have been absurd. Further, Jackson fails to demonstrate prejudice. *Cf. Strickland*, 466 U.S. at 687. Jackson makes no attempt to show—and nothing in the record indicates—how this “proceeding would have been different” had appellate counsel not made a “frivolous” argument related to Jackson’s fine on direct appeal *Id.* at 694.

Ground Three is dismissed.

IV. CERTIFICATE OF APPEALABILITY

Before a petitioner can appeal a final order in a proceeding under § 2255 to the court of appeals, a court 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.’” (citation omitted)).

Here, Jackson 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

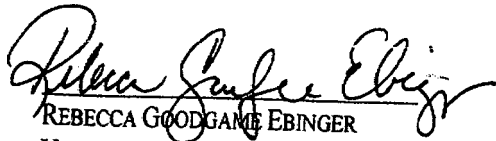
The Court finds Jackson is not entitled to relief under 28 U.S.C. § 2255.

IT IS ORDERED that Petitioner Russell Kimble Jackson's Motion to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255, ECF No. 1, 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 SO ORDERED.

Dated this 26th day of September, 2024.


REBECCA GOODGAME EBINGER
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA**

Russell Kimble Jackson

CIVIL NUMBER: 4:23-cv-00165-RGE

Petitioner,

v.

JUDGMENT IN A CIVIL CASE

United States of America

Respondent,

☒ **DECISION BY COURT.** This action came before the Court. The matter has been fully submitted and a decision has been rendered.

IT IS ORDERED AND ADJUDGED:

Petitioner's Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 is denied. Judgment entered in favor of respondent against petitioner. Case closed. Certificate of appealability is denied

Date: September 27, 2024

 CLERK, U.S. DISTRICT COURT

/s/ B.German

By: Deputy Clerk

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

No: 24-3134

Russell Kimble Jackson, also known as Russell Kimble Jackson, V

Appellant

v.

United States of America

Appellee

Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:23-cv-00165-RGE)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

April 24, 2025

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

/s/ Susan E. Bindler

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

No: 24-3134

Russell Kimble Jackson, also known as Russell Kimble Jackson, V

Appellant

v.

United States of America

Appellee

Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:23-cv-00165-RGE)

MANDATE

In accordance with the judgment of February 5, 2025, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

March 31, 2025

Clerk, U.S. Court of Appeals, Eighth Circuit

U.S. District Court
Southern District of Iowa (Central)
CIVIL DOCKET FOR CASE #: 4:23-cv-00165-RGE

Jackson v. United States of America
Assigned to: Judge Rebecca Goodgame Ebinger
related Case: 4:20-cr-00073-RGE-HCA-1
Cause: 28:2255 Motion to Vacate / Correct Illegal Sentenc

Date Filed: 05/15/2023
Date Terminated: 09/27/2024
Jury Demand: None
Nature of Suit: 510 Prisoner: Vacate
Sentence
Jurisdiction: U.S. Government Defendant

Petitioner**Russell Kimble Jackson**

represented by **Russell Kimble Jackson**
#19540-030
YAZOO CITY - FCI MEDIUM
Inmate Mail/Parcels
P.O. Box 5000
Yazoo City, MS 39194
PRO SE

V.

Respondent**United States of America**

represented by **Jonathan Louis Holscher**
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210 WALNUT STREET
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515-473-9307
Email: jonathan.holscher@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Government - Federal

Date Filed	#	Docket Text
10/21/2024	<u>2</u>	NOTIFICATION OF APPEAL and NOA Supplement by District Court Clerk to USCA re <u>8</u> Notice of Appeal filed on 10/9/2024. (vr) (Entered: 10/21/2024)
10/09/2024	<u>8</u>	NOTICE OF APPEAL as to <u>7</u> Judgment, <u>6</u> Order by Russell Kimble Jackson. (btg) (Entered: 10/09/2024)
09/27/2024	<u>7</u>	JUDGMENT in favor of United States of America against Russell Kimble Jackson. Signed by Clerk John S. Courter on 9/27/2024. (btg) (Entered: 09/27/2024)
09/26/2024	<u>6</u>	ORDER Denying <u>1</u> Motion to Vacate/Set Aside/Correct Sentence (2255) filed by Russell Kimble Jackson. See order for particulars. Signed by Judge Rebecca Goodgame Ebinger on 9/26/2024. Copy of order mailed by chambers to petitioner. (h) (Entered: 09/26/2024)

09/11/2024	<u>5</u>	MOTION to Appoint Counsel by Russell Kimble Jackson. Responses due by 9/25/2024. (btg) (Entered: 09/11/2024)
09/11/2024	<u>4</u>	SUPPLEMENT <u>1</u> Motion to Vacate/Set Aside/Correct Sentence (2255) by Russell Kimble Jackson. (Attachments: # <u>1</u> Certificate) (btg) (Entered: 09/11/2024)
06/11/2024	<u>3</u>	MOTION to Supplement re <u>1</u> Motion to Vacate/Set Aside/Correct Sentence (2255) by Russell Kimble Jackson. Responses due by 6/25/2024. (btg) (Entered: 06/11/2024)
05/16/2023	<u>2</u>	NOTICE of Appearance by Jonathan Louis Holscher on behalf of United States of America (Holscher, Jonathan) (Entered: 05/16/2023)
05/15/2023	<u>1</u>	MOTION to Vacate, Set Aside or Correct Sentence (2255), filed by Russell Kimble Jackson. (Attachments: # <u>1</u> Memorandum in Support) (kjlw) (Entered: 05/15/2023)