APPENDIX A

No. 24-5712

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

QUINN R. TURNER,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

ORDER

Before: WHITE, Circuit Judge.

Quinn R. Turner, a federal prisoner proceeding pro se, appeals the district court's judgment denying his motion to vacate, set aside, or correct his sentence, filed pursuant to 28 U.S.C. § 2255. Turner has filed an application for a certificate of appealability (COA) and a motion for leave to proceed in forma pauperis (IFP). For the following reasons, the COA application and the IFP motion are denied.

In 2021, a jury convicted Turner of conspiring to distribute and to possess with intent to distribute methamphetamine (Count 1), possession with intent to distribute methamphetamine (Count 2), possessing a firearm in furtherance of a drug-trafficking crime (Count 3), and being a felon in possession of a firearm (Count 4). The district court sentenced him to 300 months of imprisonment. This court affirmed. *United States v. Turner*, No. 21-5373, 2022 WL 2679103, at *8 (6th Cir. July 12, 2022).

In 2023, Turner filed a § 2255 motion raising six grounds for relief: (1) his attorney performed ineffectively by failing to move to dismiss Counts 1, 2, and 4 of the superseding indictment; (2) his trial counsel performed ineffectively by failing to argue that the trial court's jury instructions constructively amended the indictment with respect to Count 1; (3) his trial counsel performed ineffectively by failing to request a special jury verdict regarding the total

quantity of drugs involved in the conspiracy; (4) appellate counsel performed ineffectively by failing to raise grounds 1 through 3 on direct appeal; (5) trial counsel performed ineffectively by failing to appeal the district court's denial of his motion for a new trial; and (6) he is actually innocent of possessing a firearm as a convicted felon, in light of *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 10 (2022). He also moved to disqualify the district judge who sentenced him from adjudicating his § 2255 motion, arguing that comments that the judge made during his sentencing proceeding reflected a personal bias against him.

A magistrate judge recommended denying Turner's motion because each of his arguments lacked merit. Over Turner's objections, the district court adopted the magistrate judge's report and recommendation, denied Turner's § 2255 motion, and declined to issue a COA. It also denied his disqualification motion.

Turner now requests a COA on all six of his claims. He also argues that the district court erred by denying his motion to disqualify the district judge. The government opposes Turner's COA application.

A COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A movant may meet this standard by showing that reasonable jurists could debate whether the § 2255 motion should have been determined in a different manner or that the issues presented are "adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)).

I. *Claims 1, 2, and 3: Ineffective Assistance of Trial Counsel*

To succeed on the merits of his ineffective-assistance claims, Turner had to show that his trial attorney performed ineffectively and that counsel's deficient performance prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Prejudice is shown if "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. Counsel will not be deemed ineffective for failing to raise a meritless argument. *Moody v. United States*, 958 F.3d 485, 492 (6th Cir. 2020).

A. Claim 1: Defective Indictment

Turner's first claim argued that defense counsel should have moved to dismiss the second superseding indictment because it was defective in three ways. First, he claimed that Count 1 of the second superseding indictment failed to allege that he entered the charged drug conspiracy knowingly and intentionally. Second, Turner claimed that Count 1 of the second superseding indictment failed to name the "two or more individuals [with whom] he conspired." Third, Turner argued that Count 2 failed to name the individuals whom he allegedly aided and abetted and that Count 4 "omits the required statutory language of 'unlawfully'" and fails to allege that the firearm was shipped or previously traveled in interstate commerce. But to succeed on his ineffective-assistance claim, Turner had to show that his attorney's failure to file a motion to dismiss was objectively unreasonable and that he suffered prejudice. *See Strickland*, 466 U.S. at 688, 694. Reasonable jurists would agree that Turner did not make this showing, because he alleged no facts from which to infer that the government would have been unable to simply file a third superseding indictment to correct the alleged defects. *See* 18 U.S.C. § 3288 (savings clause permitting refiling of a felony indictment within six months of dismissal).

B. Claim 2: Constructive Amendment of Indictment

In his second claim, Turner argued that his attorney should have objected to the jury instruction requiring the jury to find that he knowingly and intentionally joined the conspiracy alleged in Count 1. He contended that the addition of this element constructively amended the superseding indictment. But an impermissible constructive amendment occurs only if the jury instructions and evidence presented during the trial "*broaden* the basis for conviction." *United States v. Bradley*, 917 F.3d 493, 502 (6th Cir. 2019) (emphasis added) (quoting *United States v. Kuehne*, 547 F.3d 667, 685 (6th Cir. 2008)); *see Lucas v. O'Dea*, 179 F.3d 412, 416 (6th Cir. 1999). Here, the change effectuated by the jury instructions *narrowed* the charge by *adding* a requirement—that the jury find that Turner knowingly and intentionally joined the conspiracy. Reasonable jurists would agree that counsel could not have raised a meritorious objection to the jury instructions because they did not broaden the charge alleged in the indictment.

C. Claim 3: Special Jury Verdict—Drug Quantity

In his third claim, Turner argued that his attorney provided ineffective assistance by failing to request a special jury verdict that would have required the jury to find "the maximum drug amount [that] the [c]onspiracy involved." He argued that *United States v. McReynolds*, 964 F.3d 555, 563-67 (6th Cir. 2020), required the jury to make such a finding. But, as the district court noted, *McReynolds* simply requires the *district court* to make factual findings regarding the scope of the conspiracy and the foreseeability of certain acts when making drug-quantity calculations under the United States Sentencing Guidelines. *Id.* at 564-66. It does not require the *jury* to make such findings. *See id.* Reasonable jurists would therefore agree that Turner was not prejudiced by counsel's failure to request a special jury instruction on this issue.

D. Claim 5: Failure to Appeal Order Denying Motion for New Trial

In his fifth claim, Turner argued that trial counsel performed ineffectively by filing a notice of appeal that listed only "the final judgment" as the decision being appealed and did not reference the order denying his motion for a new trial. The district court found that trial counsel did not perform deficiently, because the notice of appeal challenging the final judgment was sufficient to preserve review of the order denying the motion for a new trial. Reasonable jurists could not debate that conclusion. The district court denied the motion for a new trial before entering the final judgment, and courts "will entertain arguments on all objections and asserted errors prior to the final disposition of a case if a party indicates in its notice of appeal that it appeals . . . the final judgment." *Caudill v. Hollan*, 431 F.3d 900, 906 (6th Cir. 2005).

II. Claim 4: Ineffective Assistance of Appellate Counsel

In claim four, Turner argued that appellate counsel performed ineffectively by failing to raise the arguments presented in claims 1 through 3 of his § 2255 motion on direct appeal. But ineffective-assistance claims generally will not be addressed on direct appeal, *see United States v. Burrell*, 114 F.4th 537, 548 (6th Cir. 2024), and in any event, the arguments raised in claims 1 through 3 lack arguable merit. Appellate counsel cannot be deemed to have performed

ineffectively for failing to raise meritless claims on direct appeal. *Gilbert v. United States*, 64 F.4th 763, 778 (6th Cir. 2023).

III. Claim 6: Actual Innocence

Finally, in his sixth claim, Turner argued that he is actually innocent of Count 4, possessing a firearm as a convicted felon, because he possessed a firearm "for self-defense purposes," and the Supreme Court recently recognized that citizens have "a Second Amendment [r]ight to bear arms for self-defense purposes outside [their] [r]esidence[s]." This court recently addressed the effect of *Bruen*, 597 U.S. 1, on felon-in-possession convictions under 18 U.S.C. § 922(g)(1), holding that the statute "is constitutional on its face and as applied to dangerous people." *United States v. Williams*, 113 F.4th 637, 662-63 (6th Cir. 2024), *petition for cert. filed*, (U.S. Nov. 15, 2024) (No. 24-A-483). While that language leaves open the possibility of an as-applied Second Amendment challenge to § 922(g)(1), a defendant raising such a challenge must make "an individualized showing that he himself is not actually dangerous." *Id.* at 663. "A person convicted of a crime is 'dangerous,' and can thus be disarmed, if he has committed (1) a crime 'against the body of another human being,' including . . . robbery, or (2) a crime that inherently poses a significant threat of danger." *Id.* Before committing his § 922(g)(1) offense, Turner served 12 years in prison for robbing a bank by pointing a handgun at a bank teller. Reasonable jurists would agree that this satisfies *Williams*'s definition of dangerousness. *See id.*

IV. Denial of Disqualification Motion

Finally, Turner seeks to appeal the district court's denial of his motion to disqualify the district judge. A motion to disqualify a judge under 28 U.S.C. §§ 144 or 455 must identify "extrajudicial conduct rather than . . . judicial conduct" and allege "a personal bias 'as distinguished from a judicial one,' arising 'out of the judge's background and association' and not from the 'judge's view of the law.'" *United States v. Story*, 716 F.2d 1088, 1090 (6th Cir. 1983) (quoting *City of Cleveland v. Krupansky*, 619 F.2d 576, 578 (6th Cir. 1980) (per curiam), and *Oliver v. Mich. State Bd. of Educ.*, 508 F.2d 178, 180 (6th Cir. 1974)).

Turner's disqualification motion alleged that the judge who sentenced him—the same judge who adjudicated his § 2255 motion—made comments during his sentencing that reflected a personal bias against him. But reasonable jurists would agree that the comments Turner cited are merely judicial factfindings and do not reflect a personal bias against him. Any claim relating to the denial of the disqualification motion does not deserve encouragement to proceed further.

For the foregoing reasons, Turner's application for a COA is **DENIED** and his motion for leave to proceed IFP is **DENIED** as moot.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

APPENDIX B

Neutral
As of: June 8, 2025 8:30 PM Z

Turner v. United States

United States Court of Appeals for the Sixth Circuit

April 18, 2025, Filed

No. 24-5712

Reporter
2025 U.S. App. LEXIS 9347 *

QUINN R. **TURNER**, Petitioner-Appellant, v. UNITED STATES OF AMERICA, Respondent-Appellee.

Prior History: *Turner v. United States, 2025 U.S. App. LEXIS 2928 (6th Cir., Feb. 7, 2025)*

Core Terms

en banc, petition for rehearing

Counsel: [*1] **QUINN** R. **TURNER**, Petitioner - Appellant, Pro se, Memphis, TN.

For UNITED STATES OF AMERICA, Respondent - Appellee: Charles P. Wisdom, Jr., Assistant U.S. Attorney, Office of the U.S. Attorney, Lexington, KY.

Judges: Before: STRANCH, READLER, and MATHIS, Circuit Judges.

Opinion

ORDER

Quinn R. **Turner** petitions for rehearing en banc of this court's order entered on February 7, 2025, denying his application for a certificate of appealability. The petition was initially referred to this panel, on which the original deciding judge does not sit. After review of the petition, this panel issued an order announcing its conclusion that the original application was properly denied. The petition was then circulated to all active members of the court, none of whom requested a vote on the suggestion for an en banc rehearing. Pursuant to established court procedures, the panel now denies the petition for rehearing en banc.

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APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
COVINGTON

CRIMINAL ACTION NO. 18-53-DLB-MAS-1
CIVIL ACTION NO. 23-128-DLB-MAS

UNITED STATES OF AMERICA **PLAINTIFF**

v. **JUDGMENT**

QUINN R. TURNER **DEFENDANT**

****

Consistent with the Memorandum Order Adopting Report and Recommendation entered today, and pursuant to Federal Rule of Civil Procedure 58, it is hereby **ORDERED** and **ADJUDGED** as follows:

1) Defendant Quinn R. Turner's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Doc. # 309) is hereby **DENIED;**

2) For the reasons set forth in the Memorandum Order Adopting Report and Recommendation and the Report and Recommendation itself, the Court determines there would be no arguable merit for an appeal in this matter and, therefore, **no certificate of appealability shall issue;** and

3) This matter is hereby **DISMISSED WITH PREJUDICE** and **STRICKEN** from the Court's active docket.

This 5th day of June, 2024.

Signed By:
David L. Bunning DB
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
AT COVINGTON

CRIMINAL CASE NO. 18-53-DLB-MAS-1

UNITED STATES OF AMERICA **PLAINTIFF**

v. **ORDER ADOPTING REPORT AND RECOMMENDATION**

QUINN R. TURNER **DEFENDANT**

* * * * * * * * * * * * * * * * * * *

This matter is before the Court upon the February 13, 2024 Report and Recommendation ("R&R") of United States Magistrate Judge Matthew A. Stinnett wherein he recommends Plaintiff's *pro se* Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255, (Doc. # 309), be dismissed with prejudice. (Doc. # 323). Defendant having filed his Objections (Doc. # 324), and the United States having filed its Response (Doc. # 326), the R&R is now ripe for review. Also pending before the Court is Defendant's Motion to Grant Page Enlargement as to the Objections (Doc. # 325), and Defendant's Motion for Partial Disqualification of the undersigned (Doc. # 312). For the reasons stated below, the R&R is **adopted,** Defendant's § 2255 Motion is **denied with prejudice**, Defendant's Motion to Grant Page Enlargement is **granted,** and Defendant's Motion for Partial Disqualification is **denied**.

I. BACKGROUND

Defendant Turner was charged with four counts: (1) conspiracy to distribute 50 grams or more methamphetamine in violation of 21 U.S.C. § 846; (2) possession with intent to distribute 50 grams or more methamphetamine in violation of 21 U.S.C. §

841(a)(1); (3) possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c); and (4) possession of a firearm by a previously convicted felon in violation of 18 U.S.C. § 922(g)(1). (Doc. # 56) (second superseding indictment). On September 18, 2020, Defendant was convicted of all four counts after a three-day jury trial. (Doc. # 207). On April 9, 2021 Defendant was sentenced to a total term of 300 months of imprisonment. (Doc. # 261). Defendant appealed, and on July 12, 2022, the Sixth Circuit affirmed both his conviction and sentence. (Docs. # 299 & 299-1).

On September 22, 2023, Defendant timely filed the pending motion to vacate. (Doc. # 309). In his motion, Defendant asserts six grounds for relief. (*Id.*). In Grounds One, Two, Three, and Five Defendant asserts various allegations of trial counsel's ineffective assistance of counsel. (*Id.*). In Ground Four, Defendant asserts that appellate counsel was ineffective. (*Id.*). Finally, in Count Six, Defendant challenges the constitutionality of his 18 U.S.C. 922(g)(1) conviction. (*Id.*). Magistrate Judge Stinnett considered each of the six grounds for relief and recommended Defendant's Motion be denied. (Doc. # 323). Defendant submitted Objections to each finding by the Magistrate Judge (Doc. # 324), to which the United States has responded. (Doc. # 326). Pending before the Court is also Defendant's "Motion for Partial Disqualification of U.S. District Court David L. Bunning." (Doc. # 312). The Court will consider Defendant's Objections to the R&R before turning to the Motion for Disqualification.

II. DISCUSSION

A. Standard of Review

A district court reviews recommendations of the magistrate judge *de novo*. 28 U.S.C. § 636(b)(1)(C). Under Federal Rule of Criminal Procedure 59(b)(1)(2), following

a magistrate judge's recommended disposition, a party has fourteen days to file "specific written objections to the proposed findings and recommendations." The district judge is required to "consider de novo any objection to the magistrate judge's recommendation," and "may accept, reject, or modify the recommendation." Fed. R. Crim. P. 59(b)(3); *see also* 28 U.S.C. § 636(b)(1)(C). Pro se petitions are construed liberally by the court. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Castro v. United States*, 540 U.S. 375, 381-83 (2003); *Franklin v. Rose*, 765 F.2d 82, 85 (6th Cir. 1985).

"[A]n 'objection' that does nothing more than state a disagreement with a magistrate's suggested resolution, or simply summarizes what has been presented before, is not an 'objection' as that term is used in this context." *United States v. Hopper*, No. CIV.A. 13-7267-DLB, 2013 WL 6621123, at *1 (E.D. Ky. Dec. 16, 2013) (quoting *VanDiver v. Martin*, 304 F.Supp.2d 934, 938 (E.D. Mich. 2004)). Additionally, "[o]bjections that merely restate arguments raised in the memoranda considered by the Magistrate Judge are not proper, and the Court may consider such repetitive arguments waived." *Holl v. Potter*, No. C-1-09-618, 2011 WL 4337038, at *1 (S.D. Ohio Sept. 15, 2011), *aff'd sub nom. Holl v. U.S. Postal Serv.*, 506 F. App'x 428 (6th Cir. 2012). Therefore, the Court will only consider Defendant's objections to the extent they raise specific "potential errors in the Magistrate Judge's Report and Recommendation." *Hopper*, 2013 WL 6621123, at *1.

B. Defendant Turner's Objections

1. Ground One: Mens Rea Alleged in Indictment

Defendant objects to Magistrate Judge Stinnett's conclusion that trial counsel was not ineffective for failing to argue that the Second Superseding Indictment in which

Defendant was charged was defective. Defendant argues in his 2255 Motion that the Second Superseding Indictment was defective because the charge of Conspiracy in Count One did not include the mens rea element. (Doc. # 309 at 4-5). In his Objection, Defendant specifically takes issue with the Magistrate Judge's reliance on *Ruan v. United States* in his analysis of Ground One, arguing *Ruan* is distinguishable and not controlling here. (Doc. # 324 at 3). While Defendant is correct that *Ruan* involved a physician acting in an unauthorized manner, which Defendant is not, Defendant is incorrect as to *Ruan*'s applicability here. Judge Stinnett cited *Ruan* for the proposition that although at trial the prosecution would need to prove the defendant acted in an unauthorized manner, "the Government need not refer to a lack of authorization (or any other exemption or exception) in the criminal indictment." (Doc. # 323 at 6) (quoting *Ruan v. United States,* 142 S.Ct. 2370, 2379 (2022)). In other words, the government was not required to include the mens rea element in the indictment.

This Court's recent decision in *United States v. Fletcher* is also applicable. No. 21-cr-63-DLB, 2023 WL 4097026 (E.D. Ky. June 20, 2023). In *Fletcher*, a physician charged with violating 21 U.S.C. § 841, the defendant sought dismissal of the indictment because he claimed the United States had not included the mens rea element in the indictment, exactly as Defendant is arguing here. This Court concluded the United States was not required to allege the associated mens rea in the indictment. *Id.* As noted by Magistrate Judge Stinnett in the R&R, this holding is consistent with Sixth Circuit rulings. (*See* Doc. # 323 at 7) (citing *United States v. Martinez*, 981 F.2d 867, 872 (6th Cir. 1992)). An indictment will be found to have sufficiently alleged the requisite mens rea by citing the relevant statue, just as the indictment did here. *See Martinez*, 981 F.2d 867, 872.

The remainder of Defendant's arguments regarding the language in his indictment were addressed in full by the Magistrate Judge as being meritless. Trial counsel was not ineffective for failing to raise meritless arguments. *See United States v. Martin*, 45 Fed. App'x. 378, 381 (6th Cir. 2002). Therefore, this Objection is **overruled**.

2. Ground Two: Constructive Amendment/Variance

Defendant objects to Magistrate Judge Stinnett's conclusion that counsel was not ineffective for failing to object to the jury instructions during Defendant's trial. (Doc. # 324 at 13). Defendant argues in his 2255 Motion that trial counsel should have objected when the court instructed the jury that Count one required proof that Defendant "knowingly and voluntarily joined the conspiracy" because this constituted a constructive amendment and/or variance in this case. (Doc. # 309 at 7). As noted by Magistrate Judge Stinnett, this argument is an extension of Defendant's argument in Ground One regarding the language "knowingly and intentionally." (Doc. # 323 at 10). In the Objection before the Court, Defendant states that "it appears the U.S. Magistrate Judge did not read [Defendant's] 2255 Reply Brief . . . as [Defendant] clearly articulates how the Sixth Circuit Ruling in *McReynolds*, 964 F.3d 555, 561-62 (6th Cir. 2020), is distinguishable." (Doc. # 324 at 12).

Contrary to Defendant's Objection, Magistrate Judge Stinnett did consider the *McReynolds* case in his analysis of this issue. (*See* Doc. # 323 at 10-11). The *McReynolds* court held that although the indictment did not include the mens rea element to the charged crime, including that element within the jury instructions did not constructively amend the indictment. *See United States v. McReynolds*, 964 F.3d 555, 562 (6th Cir. 2020). Magistrate Judge Stinnett concluded that Defendant's argument that

the jury instructions in his trial constructively amended his indictment is similarly foreclosed here. (*Id.* at 11). The Court agrees. And as noted in the Objection itself, Defendant does not present any additional arguments not already raised before the Magistrate Judge. Therefore, this objection is **overruled**.

3. Ground Three: Special Verdict Form

Defendant objects to Magistrate Judge Stinnett's conclusion that counsel was not ineffective for failing to request a Special Jury Verdict Form. (Doc. # 324 at 17). Judge Stinnett concluded:

> [W]ith Turner, the only legal necessity is that jury instructions include a question asking if Turner had "50 grams or more of methamphetamine" as that would trigger a higher statutory ceiling for sentencing. [DE 207, Page ID# 785-86 (Verdict Form)]. "A conspiracy conviction 'does not mean that a jury need return a special verdict describing the precise amount of drugs involved in the conspiracy. It is enough that the jury supportably determines, beyond a reasonable doubt, that the conspiracy involves a drug quantity that surpasses the threshold amount.'" *United States v. Grooms*, 194 Fed. App'x 355, 364 (6th Cir. 2006) (quoting *Derman v. United States*, 298 F.3d 34, 43 n. 4 (1st Cir. 2002)).

(Doc. # 323 at 13).

Defendant argues that "his ex-lawyer could have requested a Special Jury Verdict Form Interrogatories in which request [sic] the Jury to find the minimum threshold amount to trigger an [sic] mandatory minimum sentence and also the maximum drug quantity amount." (Doc. # 324 at 17) (citing *United States v. Leontaritis*, 977 F.3d 447, 454 (5th Cir. 2020)). This is the same argument Defendant presented to, and was considered by and properly rejected by Magistrate Judge Stinnett. Therefore, this Objection is **overruled**.

4. Ground Four: Appellate Counsel

Defendant objects to Magistrate Judge Stinnett's conclusion that appellate counsel was not ineffective for failing to raise claims that did not have merit. Defendant argues the proper standard of review is whether Grounds One, Two, and Three presented a reasonable probability that the claims would have changed the result of Defendant's direct appeal. (Doc. # 324 at 21) (citing *Smith v. Robbins*, 528 U.S. 259, 285 (2000)). These claims are not meritorious and so, even applying this standard, do not present a reasonable probability that raising them on appeal would have changed the result of the appeal for the reasons set forth in this Order and in the R&R as to Grounds One, Two, and Three. Therefore, this Objection is **overruled**.

5. Ground Five: Scope of Appellate Review

Defendant objects to Magistrate Judge Stinnett's conclusion that trial counsel was not ineffective when he filed a Notice of Appeal on Defendant's behalf. Defendant argues that trial counsel rendered deficient performance because counsel did not specifically state he was appealing "the entire judgment" and rather only appealed "the final judgment." (Doc. # 324 at 21). Defendant argues this distinction resulted in the Sixth Circuit Court of Appeals not having jurisdiction to conduct an appellate review of his Motion for New Trial. (*Id.*). As noted by both Magistrate Judge Stinnett and the United States, "the law is well settled that an appeal from a final judgment draws into questions all prior non-final rulings and orders." *McLaurin v. Fischer*, 768 F.2d 98, 101 (6th Cir. 1985). Defendant's counsel was not ineffective on this basis because the notice effectively encompassed appellate review of Defendant's Motion for New Trial. Therefore, this Objection is **overruled**.

6. Ground Six: Bruen *Challenge*

Defendant objects to Magistrate Judge Stinnett's conclusion that Defendant's 922(g)(1) conviction is not rendered unconstitutional by *New York State Rifle & Pistol Assoc. v. Bruen*, 597 U.S. 1 (2022). Magistrate Judge Stinnett conducted an extensive analysis of the current state of this law in the Sixth Circuit as well as across other circuits in reaching this conclusion. (*See* Doc. # 323 at 15-17). The Court agrees with that analysis. Defendant raises no new arguments in his Objection. Therefore, this Objection is **overruled**.

7. Certificate of Appealability

Defendant argues that in the alternative, a Certificate of Appealability should issue because whether *Bruen* renders his conviction under 922(g)(1) unconstitutional is still an "open question" in this Circuit. (Doc. # 324 at 24) (citing *Powell v. United States*, 2022 U.S. App. LEXIS 24058, at* 4 (6th Cir. 2022)). However, courts in this Circuit have consistently rejected challenges to 922(g)(1) convictions. (*See* Doc. # 323 at 15-17) (collecting cases). Therefore, reasonable jurists would not debate that Defendant's 922(g)(1) conviction is constitutional. *See United States v. Davis*, No. 5:19-cr-159-DCR, 2022 WL 18587703 (E.D. Ky. Dec. 29, 2022).

C. Motion to Disqualify

Defendant has moved to disqualify the undersigned pursuant to 28 U.S.C. § 455(a), which allows for disqualification of any judge "in any proceeding in which his impartiality might reasonably be questioned." A judge "must recuse himself only 'if a reasonable, objective person, knowing all of the circumstances, would have questioned the judge's impartiality.'" *Kemp v. United States*, 52 F. App'x 731, 733–34 (6th Cir. 2002)

(quoting *United States v. Sammons*, 918 F.2d 592, 599 (6th Cir.1990)) (internal quotation marks and citations omitted). "The judge need not recuse himself under § 455(a) based on the subjective view of a party, no matter how strongly that view is held." *Id.* (citing *Sammons*, 918 F.2d at 599).

Defendant only presents his subjective view as the reason for disqualification. Defendant argues he "has a feeling based upon the comments made by this Court at sentencing that a personal bias exists preventing the Court from adjudicating his 2255 Motion to Vacate in a fair, unbiased and completely impartial" way. (Doc. # 312 at 2). In support of this assertion, Defendant quotes a large portion of the transcript from sentencing and states in his attached affidavit that:

> it appears that this Court possess ill-feelings towards me due to me being convicted of Methamphetamine case and as the result of the fact that, I did not cooperate and give up a Supplier and the Court stated upon the record if I were to prevail on appeal that my federal sentence would remain the same, thus, these comments and the look this Court gave me during my Jury Trial and during the Sentencing Hearing has lead me to reasonably believe that a personal bias and a judicial bias exists in the situation herein.

(Doc. # 312 at 19). These statements regarding the undersigned's statements during the sentencing hearing are insufficient to show bias. *See United States v. Gallion*, No. CR.A. 07-39 (WOB), 2007 WL 2746657, at *4 (E.D. Ky. Sept. 19, 2007) (*citing Liteky v. United States*, 510 U.S. 540, 555-56 (1994)) ("As the Supreme Court held in *Liteky*, however, judicial rulings and judicial remarks, even hostile ones, almost never constitute a valid basis for a bias or partiality motion.").

Defendant presents no additional facts that may show an improper bias stemming from extrajudicial sources. *See United States v. Hubbard*, No. CR 5:15-104-DCR, 2021 WL 1432215, at *1 (E.D. Ky. Apr. 15, 2021) ("as used in Sections 144 and 455, 'bias or

prejudice' refers only to *improper* biases and prejudices that generally stem from *extrajudicial* sources.") (emphasis in original). Considering the sentencing transcript and record before the Court, the Court concludes a reasonable, objective person would not question the impartiality of the undersigned. Therefore, this Motion is **denied.**

III. CONCLUSION

Accordingly, **IT IS ORDERED** that:

(1) Magistrate Judge Stinnett's Report and Recommendation (Doc. # 323) is hereby **ADOPTED** as the findings of fact and conclusions of law;

(2) Defendant Turner's Motion to Grant Page Enlargement as to R&R Objections (Doc. # 325) is hereby **GRANTED;**

(3) Defendant Turner's Objections (Doc. # 324) are hereby **OVERRULED**;

(4) Defendant Turner's Motion to Vacate under 28 U.S.C. § 2255 (Doc. # 309) is hereby **DENIED WITH PREJUDICE**;

(5) Defendant Turner's Motion for Partial Disqualification (Doc. # 312) is hereby **DENIED**;

(6) No Certificate of Appealability shall issue;

(7) This matter is **DISMISSED** and **STRICKEN** from the Court's active docket; and

(8) A Judgment shall be entered contemporaneously herewith.

This 5th day of June, 2024.

Signed By:
David L. Bunning DB
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
COVINGTON

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff/Respondent,	)	**Criminal Action No. 2:18-cr-00053-DLB-MAS**
	)	**and**
v.	)	**Civil Action No. 2:23-cv-00128-DLB-MAS**
	)	
QUINN R. TURNER,	)	
	)	
Defendant/Movant.	)	
	)	

REPORT & RECOMMENDATION

This matter is before the undersigned on Petitioner Quinn R. Turner's ("Turner") Motion to Vacate, Set Aside or Correct a Sentence pursuant to 28 U.S.C. § 2255. Turner argues both his trial and appellate counsel were ineffective he also challenges the legality of one of his firearm convictions. [DE 309]. The United States responded in opposition. [DE 317]. After thoroughly reviewing the record in its entirety, the Court recommends Turner's motion be denied for the reasons stated below.

I. RELEVANT BACKGROUND

In the operative Second Superseding Indictment, Turner was charged with four counts: (1) conspiracy to distribute 50 grams or more methamphetamine in violation of 21 U.S.C. § 846; (2) possession with intent to distribute 50 grams or more methamphetamine in violation of 21 U.S.C. § 841(a)(1); (3) possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c); and (4)

possession of a firearm by a previously convicted felon in violation of 18 U.S.C. § 922(g)(1). [DE 56]. The other two defendants in the case were Laura B. West ("West")[1] and Ashley N. Daugherty ("Daugherty").

Per the Sixth Circuit's opinion, the circumstances leading to these charges took place in the fall of 2018. [DE 299-1, Page ID# 2489-90 (Sixth Circuit Opinion)]. Through a confidential informant ("CI"), law enforcement arranged the purchase of methamphetamine with West. [DE 299-1, Page ID# 2489-90 (Sixth Circuit Opinion)]. On one occasion, the CI agreed to purchase one pound of methamphetamine from West and "her dude" at a Dollar General parking lot. [DE 299-1, Page ID# 2489-90 (Sixth Circuit Opinion)]. West arrived in a Nissan, just as she told the CI, with Turner driving, another woman in the passenger seat, and West in the back seat. [DE 299-1, Page ID# 2489-90 (Sixth Circuit Opinion)]. Upon searching the vehicle that was owned by Turner, law enforcement found a pound of methamphetamine and a firearm in the glove box. [DE 299-1, Page ID# 2489-90 (Sixth Circuit Opinion)].

Although West pleaded guilty, Turner and Daugherty proceeded to trial.

> At trial, both Daugherty and West testified that they acted as intermediaries between Turner (the supplier) and their clients. West testified that Turner was one of two suppliers she used throughout September and October 2018. She was introduced to him by another person, for the sole purpose of obtaining methamphetamine. After their introduction, she procured methamphetamine from him ten times before they were arrested together. At one point, she predicted that they would develop "a great relationship." (Trial Tr., R. 293, PageID 1963.)
>
> The government also presented evidence that Daugherty knew she was participating in a collective venture with Turner. Daugherty testified

[1] West pleaded guilty in response to the original Indictment [DE 33] and was not listed as a party in the Superseding Indictment or the Second Superseding Indictment.

> that she went with Turner to make sales, and knew he worked with other dealers, including West and a woman named Helen or Ann Hardin. Daugherty often went with Turner to [Sheira] Brown's home, where he kept drugs and at least one gun. West and Daugherty also testified that, on one occasion, Turner used Daugherty to supply drugs to West, rather than transferring them personally. This was Daugherty and West's only interaction.

[DE 299-1, Page ID# 2492 (Sixth Circuit Opinion)].

In the end, the jury convicted Turner on all counts. "As a part of the conspiracy, the jury found that Turner coordinated with Laura West, Ashley Daugherty, Helen 'Ann' Hardin, and Shiera Brown—at a minimum—to further his criminal enterprise. Relevantly, testimony from Turner's coconspirators revealed that Turner sold roughly fourteen pounds of methamphetamine of unknown quality per month between June and October 2018." [DE 299-1, Page ID# 2488 (Sixth Circuit Opinion)].

Turner was eventually sentenced to a total of 300 months imprisonment. [DE 261 (Judgment)]. Turner appealed; his conviction and sentenced was affirmed by the Sixth Circuit. [DE 299 (Sixth Circuit Opinion)]. Turner timely filed this habeas petition on September 22, 2023. [DE 309].

II. ANALYSIS

In his petition, Turner asserts six grounds for relief.

The first three grounds as well as the fifth ground argue Turner's trial counsel were ineffective. For Ground 1, Turner argues trial counsel should have filed a motion to dismiss for what he claims are various pleading defects in the Second Superseding Indictment. For Ground 2, Turner alleges trial counsel failed to object to certain jury instructions. In Ground 3 Turner suggests his trial counsel were wrong not to ask for a special jury verdict form. And for Ground 5, Turner claims

faults his trial counsel for failing to file a notice of appeal that encompassed his denied request for a new trial.

Ground 4 focuses on his appellate counsel as ineffective for failing to raise the arguments contained in Grounds 1, 2, and 3.

Finally, in Ground 6, Turner argues that his conviction in Count 4 under 18 U.S.C. § 922(g)(1) is unconstitutional considering the Supreme Court's recent ruling in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

The Court will address the claims of ineffective assistance of counsel before turning to the *Bruen* challenge.

A. INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS FOR TRIAL COUNSEL

1. Legal Standard

Under § 2255, a federal prisoner may obtain relief if his sentence violates the Constitution or federal law, the federal court lacked jurisdiction to impose such sentence, or the sentence exceeds the maximum authorized by law. 28 U.S.C. § 2255(a); *Mallett v. United States*, 334 F.3d 491, 496–97 (6th Cir. 2003) ("In order to prevail upon a § 2255 motion, the movant must allege as a basis for relief: '(1) an error of constitutional magnitude; (2) a sentence imposed outside the statutory limits; or (3) an error of fact or law that was so fundamental as to render the entire proceeding invalid.'" (quoting *Weinberger v. United States*, 268 F.3d 346, 351 (6th Cir. 2001)). A constitutional basis for § 2255 relief requires "an error of constitutional magnitude which had a substantial and injurious effect or influence on the proceedings." *Watson v. United States*, 165 F.3d 486, 488 (6th Cir. 1999) (citing *Brecht v. Abrahamson*, 507 U.S. 619, 637–38 (1993)). Any non-constitutional error must constitute a

"'fundamental defect which inherently results in a complete miscarriage of justice,' or, an error so egregious that it amounts to a violation of due process." *United States v. Ferguson*, 918 F.2d 627, 630 (6th Cir. 1990). A § 2255 movant typically must prove any factual assertions by a preponderance of the evidence. *McQueen v. United States*, 58 F. App'x 73, 76 (6th Cir. 2003) (per curiam).

One class of alleged constitutional error is ineffective assistance of counsel in violation of the Sixth Amendment. The standard outlined in *Strickland v. Washington*, 466 U.S. 668 (1984), governs ineffective assistance of counsel claims. To prevail, a movant must prove (1) that defense counsel's performance was deficient, and (2) that the demonstrated deficiency prejudiced the movant. *Id.* at 687. To establish deficient performance, a movant must show that "counsel's representation fell below an objective standard of reasonableness." *Id.* at 687–88. "Judicial scrutiny of counsel's performance must be highly deferential", and the "court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689. A prejudice showing requires a "reasonable probability that, but for counsel's errors, the judicial outcome would have been different." *Id.* at 694–95. The Court "must consider the totality of the evidence" in assessing prejudice. *Id.* at 695. The movant must satisfy both prongs of the *Strickland* analysis, but courts need "not address both components of the deficient performance and prejudice inquiry 'if the defendant makes an insufficient showing on one.'" *Id.* at 730; *Strickland*, 466 U.S. at 697.

2. Ground 1: Pleading Defects

According to Turner, he complains about three different, alleged defects in the Second Superseding Indictment. The Court will take each of these defects in turn.

a. Knowingly and Intentionally

First, for the charge of conspiracy to distribute methamphetamine, the United States "omit[ted] the mens rea second element of 'knowingly and intentionally' as required by the Sixth Circuit Precedents [*sic*]". [DE 309, Page ID# 2528]. The precedents, however, disagree with Turner.

In *Ruan v. United States*, 142 S.Ct. 2370 (2022), the Supreme Court held that while the United States must prove mens rea beyond a reasonable doubt, "the Government need not refer to a lack of authorization (or any other exemption or exception) in the criminal indictment." *Id.* at 2379. Judge Bunning recently held as much in *United States v. Fletcher*, No. 21-cr-63-DLB, 2023 WL 4097026 (E.D. Ky. June 20, 2023). There, Fletcher sought dismissal of the indictment charging him with drug distribution because the United States did not include the phrase "knowingly and intentionally." Relying upon *Ruan*, Judge Bunning denied the motion. "If the United States need not reference Fletcher's lack of authorization in an indictment, then it logically follows that the United States is also not required to allege the associated mens rea—that he knowingly and intentionally acted in an unauthorized

manner. Therefore, the United States is not required to specifically allege here that Fletcher knew or intended that his prescriptions were unauthorized." *Id.* at *4.[2]

These holdings are consistent with prior Sixth Circuit rulings. *United States v. Edington*, 526 F. App'x 584, 588 (6th Cir. 2013) (citing *United States v. Lentsch*, 369 F.3d 948, 953 (6th Cir. 2004) (holding that even if language in the indictment is "somewhat imprecise, this does not render [the indictment] insufficient," if it sets "forth the critical details of the offense charged."); *United States v. Martinez*, 981 F.2d 867, 872 (6th Cir. 1992) (holding that an indictment that omitted the mens rea element was sufficient because it cited the applicable statutes, which informed the defendant of the elements of the charged offense).

To prove his trial counsel deficient, Turner must "prove that counsel's representation was not merely below average, but rather that it 'fell below an objective standard of reasonableness." *United States v. Dado*, 759 F.3d 550, 563 (6th Cir. 2014) (quoting *Strickland*, 466 U.S. at 688). Courts "employ a 'strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* (quoting *Strickland*, 466 U.S. at 689); *see also O'Hara v. Wigginton*, 24 F.3d 823, 828 (6th Cir. 1994). Here, Turner's trial counsel are not deficient for raising an argument that has no legal merit. *United States v. Martin*,

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[2] Judge Bunning noted that while Fletcher's charge of distribution did not include the mens rea language, his conspiracy charge did. *Id.* at *5. Judge Bunning reasoned that, at minimum, because the mens rea is included in a related count, Fletcher was on notice. *Id.* The same is also true, albeit reversed, for Turner. While the charge of conspiracy against Turner does not include the mens rea language, the related charge of distribution in Count 2 does include the mens rea language. [DE 56, Page ID# 235].

45 Fed. App'x. 378, 381 (6th Cir. 2002) (discussing that one's counsel cannot provide deficient performance by failing to raise wholly meritless claims) (citing *Strickland v. Washington, supra* at 688). Thus, the Court should reject Turner's argument on this point.

b. Notice of Conspiracy

Second, Turner argues that the charge of conspiracy "fails to put him on **NOTICE** as to who Quinn R. Turner's two or more individuals in which he conspired with to commit an unlawful act." [DE 309, Page ID# 2528-29 (emphasis in original)].[3]

As with the prior claim, precedent disagrees. Generally, defendants are not entitled to require, through a bill of particular or other means, that the United States disclose each and every member of a conspiracy to a defendant. *United States v. Rey*, 923 F.2d 1217, 1222 (6th Cir. 1991); *see also United States v. Page*, 575 Fed. App'x 641, 643 (6th Cir. 2014) (observing that "the government is not obliged to provide the names of a defendant's alleged co-conspirators").

> A defendant may be indicted and convicted despite the names of his co-conspirators remaining unknown, as long as the government presents evidence to establish an agreement between two or more persons, a prerequisite to obtaining a conspiracy conviction. As long as the indictment is valid, contains the elements of the offense, and gives notice to the defendant of the charges against him, it is not essential that a conspirator know all other conspirators. "It is the grand jury's statement of the 'existence of the conspiracy agreement rather than the

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[3] Turner similarly complains that "Count 2 of Superseding Indictment PWID Aiding & Abetting fails to put him on NOTICE of who he aided and abetted with". [DE 309, Page ID# 2529]. Upon review, however, the Second Superseding Indictment does not charge him with aiding and abetting. Rarther, the charge is for possession with intent to distribute methamphetamine. [DE 56, Page ID# 234-35]. Thus, the Court need not address this argument.

> identity of those who agree' which places the defendant on notice of the charge he must be prepared to meet."

Id. (internal citations omitted) (quoting *United States v. Piccolo*, 723 F.2d 1234, 1239 (6th Cir. 1983)). Thus, the United States is not required to reveal the names of unindicted coconspirators. *United States v. Crayton*, 357 F.3d 560, 568 (6th Cir. 2004).

And Turner's trial counsel is not deficient, as detailed above, for not raising an argument that lacks legal merit. The Court should likewise dismiss Turner's arguments on this point.

c. Unlawful Possession of Firearm

Finally, Turner claims that the Second Superseding Indictment, in charging him with being a convicted felon in possession of a firearm, "omits the required statutory language of 'unlawfully' and omits a relevant section of the 'jurisdictional element' more specifically that: 'to ship or having previously traveled' as required by 18 U.S.C. 922(g) and (g)(1)." [DE 309, Page ID# 2529].

The statute reads "[i]t shall be unlawful for any person who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . to . . . possess in or affecting commerce, any firearm or ammunition[.]" 18 U.S.C. § 922(g)(1). The term unlawful is not an element the United States must prove at trial or even allege in an indictment. The word merely sets forth that the elements of 922(g)(1), when met, result in unlawful conduct.

"The indictment ... must be a plain, concise, and definite written statement of the essential facts constituting the offense charged[.]" Fed. R. Crim. P. 7(c)(1). As a general rule, an indictment passes constitutional muster if it "contains the elements

of the offense charged and fairly informs a defendant of the charge against which he must defend, and, second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense." *Hamling v. United States*, 418 U.S. 87, 117 (1974); *United States v. Landham*, 251 F.3d 1072, 1079 (6th Cir. 2001). Count 4 plainly charges Turner "had previously been convicted of a crime punishable by imprisonment for a term exceeding one year, that is, a felony, did knowingly possess in and affecting interstate and foreign commerce a firearm, to wit, a Smith & Wesson, Model M&P Bodyguard, .380 caliber pistol, bearing serial number KCU0884, all in violation of 18 U.S.C. § 922(g)(1)." [DE 56, Page ID# 235 (Second Superseding Indictment)]. From this, Turner was fully aware of the charge pending against him. Any motion made by Turner's trial counsel alleging the Court should dismiss Count 4 for failing to include the word "unlawful" would have been entirely without merit. Once more, Turner's trial counsel is not deficient for making meritless arguments.

3. **Ground 2: Challenged Jury Instructions**

For his second ground, Turner argues his trial counsel was ineffective for failing to object when the Court instructed the jury that Count 1 required proof that Turner "knowingly and voluntarily joined the conspiracy." [DE 309, Page ID# 2531-33]. This argument is the extension of Turner's prior argument in Ground 1 complaining the Second Superseding Indictment omitted the language "knowingly and intentionally." When the Court provided that instruction, Turner claims that the Court's instruction created "a Constructive Amendment and/or Fatal Variance" correcting the alleged error in the Second Superseding Indictment. [DE 309, Page ID# 2531-33].

The Sixth Circuit rejected this very argument in *United States v. McReynolds*, 964 F.3d 555 (6th Cir. 2020). There, McReynolds claimed "that his indictment was insufficient for failing to include every element of the charged offense, and he argues that the jury instructions constructively amended the indictment." *Id.* at 561. Initially, the Sixth Circuit rejected McReynolds' challenge of the indictment itself on the same grounds this Court did above with Turner. The Sixth Circuit then turned to the issue of the jury instruction.

> McReynolds' argument that the jury instructions constructively amended the indictment is likewise unavailing because it is premised on the same reasoning rejected above. "The Fifth Amendment guarantees that an accused be tried only on those offenses presented in an indictment and returned by a grand jury." *United States v. Chilingirian*, 280 F.3d 704, 711 (6th Cir. 2002). A constructive amendment occurs "when the terms of the indictment are in effect altered by the presentation of evidence and jury instructions which modify essential elements of the offense charged such that there is a substantial likelihood that the defendant may have been convicted of an offense other than the one charged in the indictment." *United States v. Siemaszko*, 612 F.3d 450, 469–70 (6th Cir. 2010) (quoting *United States v. Kuehne*, 547 F.3d 667, 683 (6th Cir. 2008)). McReynolds argues that the jury instructions constructively amended the indictment because the instructions asked the jury to determine, in part, whether McReynolds "knowingly and voluntarily joined" the conspiracy, while the indictment did not include this element. Because the indictment sufficiently charged this element of the offense as discussed above, we reject McReynolds' contention that the jury instructions constructively amended it.

Id. at 562.

The same logic of *McReynolds* that foreclosed Turner's argument that the Second Superseding Indictment was deficient for omitting "knowingly and intentionally" also forecloses his challenge as to the jury instruction. The logic is

sound and well grounded. For those reasons, the Court recommends dismissal of Turner's claims on this ground.

4. Ground 3: Special Jury Verdict Form

Turner's next argument concerns the jury instructions. For context, the jury instructions used at Turner's trial asked the jury to determine the quantity of methamphetamine Turner trafficked. Specifically, for both Count 1 and Count 2, the jury instructions charged the jury to determine "the amount of methamphetamine that was attributable" to Turner. [DE 207, Page ID# 785-86 (Verdict Form)]. For both counts, the jury returned a verdict that attributed "50 grams or more of methamphetamine" to Turner. [DE 207, Page ID# 785-86 (Verdict Form)]. Turner argues that his trial counsel should have challenged the jury instructions "to include the maximum drug amount in which the Conspiracy [*sic*] involved that would be attributed to Mr. Turner in [*sic*] would have impacted him during the sentencing phase". [DE 309, Page ID# 2535]. After careful review, Turner's argument is misguided.

In support of his argument, Turner cites *United States v. McReynolds*, 964 F.3d 555 (6th Cir. 2020). However, this precedent does not support Turner. In *McReynolds*, the Sixth Circuit examined whether the district court could attribute to McReynolds at sentencing the entire drug amount attributed to the entire conspiracy. *Id.* at 563-66. In rejecting this approach, the Sixth Circuit noted that while a district court could depart from the drug quantities determined by a jury, the district court could only do so through a preponderance of evidence. *Id.* at 565-66. In other words, the Sixth Circuit in *McReynolds* was not commenting on the propriety of any jury

instructions but simply the impact of jury determined drug quantities on the sentencing phase. And the Sixth Circuit certainly never suggested that a jury instruction need include a maximum drug amount as suggested by Turner.

Rather, the Supreme Court and Sixth Circuit have made clear that a jury instruction must merely include instructions that would increase the statutory maximum. "*Apprendi* [*v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000)] requires that all facts that increase the penalty for a crime beyond the statutory maximum be submitted to a jury and proved beyond a reasonable doubt." *United States v. Brown*, 332 F.3d 363, 369 (6th Cir. 2003). Thus, with Turner, the only legal necessity is that jury instructions include a question asking if Turner had "50 grams or more of methamphetamine" as that would trigger a higher statutory ceiling for sentencing. [DE 207, Page ID# 785-86 (Verdict Form)]. "A conspiracy conviction 'does not mean that a jury need return a special verdict describing the precise amount of drugs involved in the conspiracy. It is enough that the jury supportably determines, beyond a reasonable doubt, that the conspiracy involves a drug quantity that surpasses the threshold amount.'" *United States v. Grooms*, 194 Fed. App'x 355, 364 (6th Cir. 2006) (quoting *Derman v. United States*, 298 F.3d 34, 43 n. 4 (1st Cir. 2002)).

The jury instructions presented in Turner's case conformed with the requirements set forth in *Apprendi* and other precedents. There is no requirement to include a maximum or ceiling amount of drug quantity involved. If trial counsel for Turner made that argument, it would have no legal footing and no prejudice on

Turner. As already set forth, counsel is not deficient for making an argument without merit. *United States v. Martin*, 45 Fed. App'x. 378, 381 (6th Cir. 2002) (discussing that one's counsel cannot provide deficient performance by failing to raise wholly meritless claims) (citing *Strickland v. Washington, supra* at 688).

5. **Ground 5: Notice of Appeal**

Turner's final complaint against his trial counsel is that they failed "to include with his Notice of Appeal that []Turner was also appealing the denial of his Rule 33 Motion for New Trial." [DE 309, Page ID# 2540]. Trial counsel filed the Notice of Appeal concerning "the final judgment" on the same date as the entry of the Judgment against Turner. [DE 262].

As the United States indicated in its response, "the law is well settled that an appeal from a final judgment draws into questions all prior non-final rulings and orders." *McLaurin v. Fischer*, 768 F.2d 98, 101 (6th Cir. 1985). Indeed, if trial counsel had specified Turner's Motion for New Trial as Turner suggests, such a notice of appeal might be more problematic. "If an appellant [] chooses to designate specific determinations in his notice of appeal—rather than simply appealing from the entire judgment—only the specified issues may be raised on appeal." *Id.* at 102. By appealing the entire final judgment, trial counsel preserved any and all issues for Turner to raise on appeal.

Turner's final complaint against his trial counsel are without merit.

B. INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL CLAIM

"[I]neffective assistance of appellate counsel claims are governed by the same *Strickland* standard as claims of ineffective assistance of trial counsel." *Shaneberger*

v. Jones, 615 F.3d 448, 452 (6th Cir. 2010) (citing *Smith v. Robbins*, 528 U.S. 259, 285 (2000)). Thus, while the focus now turns from Turner's trial counsel to his appellate counsel, the legal framework remains the same.

1. **Ground 5: Arguments Raised On Appeal**

In his fifth ground, Turner claims that his appellate counsel should have raised on appeal the arguments set forth in Grounds 1, 2, and 3 discussed above. However, as already detailed above, those arguments lack any legal footing. And the fact that appellate counsel did not raise these meritless arguments is not a suggestion of ineffective assistance of counsel. Rather, appellate counsel's choice to focus on better arguments is to Turner's benefit. "This process of 'winnowing out weaker arguments on appeal and focusing on' those more likely to prevail, far from being evidence of incompetence, is the hallmark of effective appellate advocacy." *Smith v. Murray*, 477 U.S. 527, 536 (1986) (quoting *Jones v. Barnes*, 463 U.S. 745, 751-52) (1983). The Court should deny Turner's request on this ground.

C. **LEGAL CHALLENGE TO COUNT V OF THE SECOND SUPERSEDING INDICTMENT**

In his sixth and final ground, Turner argues his conviction for possessing a firearm as a previously convicted felon is improper under the Supreme Court's recent decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). The Court disagrees.

The Second Amendment provides that "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. CONST. amend. II. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court affirmed that the Second Amendment guarantees

the right of a person to possess a handgun in the home for self-defense. In *New York State Rifle & Pistol Assoc. v. Bruen*, the Supreme Court affirmed that the Second Amendment protects "an individual's right to carry a handgun for self-defense outside the home." 597 U.S. 1, 142 S. Ct. 2111, 2122, 213 L.Ed.2d 387 (2022). More importantly, *Bruen* altered how courts should examine the constitutionality of a statute that falls within the scope of activity governed by the Second Amendment. Namely, the Supreme Court rejected means-end scrutiny. *Bruen*, 142 S. Ct. at 2126-27. Rather, the Supreme Court adopted the following standard:

> When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with this Nation's historical tradition of firearm regulation.

Id. at 2129-30.

Under this new framework, Turner now argues his conviction under 18 U.S.C. § 922(g)(1) fails as a matter of law. As the United States details, however, no courts have agreed with Turner's argument as to 922(g)(1).

For example, courts here in the Eastern District of Kentucky have thoroughly analyzed this issue and uniformly rejected constitutional challenges to 922(g)(1) under *Bruen*. *See United States v. Goins*, 647 F. Supp. 3d 358 (E.D. Ky. 2022); *United States v. Davis*, No. 5:19-cr-159-DCR, 2022 WL 18587703 (E.D. Ky. Dec. 29, 2022) (rejecting the challenge in the context of a habeas petition); *United States v. Wilkins*, No. 5:22-cr-16-GFVT, 2023 WL 6050571 (E.D. Ky. Sept. 15, 2023); *United States v. Brooks*, No. 23-cr-26-DLB, 2023 WL 6880419 (E.D. Ky. Oct. 18, 2023); *United States v. Starghill*, No. 7:19-cr-5-KKC, 2023 WL 7385777 (E.D. Ky. Nov. 8, 2023) (rejecting

the challenge in the context of a habeas petition). Although the Sixth Circuit has yet to weigh in on the issue, every Circuit that has examined the issue has also found 922(g)(1) constitutional. *See, e.g., Vincent v. Garland*, 80 F.4th 1197 (10th Cir. 2023); *United States v. Cunningham*, 70 F. 4th 502 (8th Cir. 2023); *United States v. Jones*, No. 23-10198, 2023 WL 8074295, at *1 (5th Cir. Nov. 21, 2023) (per curiam published opinion); *Atkinson v. Garland*, 70 F.4th 1018 (7th Cir. 2023). The only circuit decision to reject 922(g)(1) was the Third Circuit in *Range v. Attorney General United States of America*, 69 F.4th 96 (3d Cir. 2023). However, the Third Circuit only held that 922(g)(1) was unconstitutional as applied to Range (previously convicted of a felony related to food stamp theft), not generally unconstitutional.

In short, the current legal landscape does not support Turner's argument that the holding in *Bruen* results in finding 922(g)(1) unconstitutional. In fact, it's just the opposite. The Court should deny Turner's petition on this ground.

D. REQUEST FOR A HEARING

In his reply, Turner requests an evidentiary hearing. [DE 321, Page ID# 2724]. The Court must conduct an evidentiary hearing on Turner's claims "[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." 28 U.S.C. § 2255(b). *See also* Rule 8(a) of the Rules Governing Section 2255 Cases in the United States District Courts (directing the Court to examine the filings and record "to determine whether an evidentiary hearing is warranted"). The Court must hold a hearing where the petitioner raises a factual dispute underlying his claims, though "[t]he burden for establishing an entitlement to an evidentiary hearing is relatively light[.]" *Martin v. United States*, 889 F.3d 827,

832 (6th Cir. 2018). However, "where the petitioner's allegations cannot be accepted as true because they are contradicted by the record, inherently incredible, or conclusions rather than statements of fact[,]" no evidentiary hearing is required. *Id.* The arguments presented by Turner in all six grounds are based in law, not fact. To the extent the Court examined the record, Turner made no allegation to dispute the record in his petition. Accordingly, the Court does not find a hearing is necessary.

III. CERTIFICATE OF APPEALABILITY

A certificate of appealability ("COA") shall issue only if a defendant has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). The Supreme Court fully explained the requirement associated with a "substantial showing of the denial of a constitutional right" in *Slack v. McDaniel*, 529 U.S. 473,484 (2000) (addressing issuance of a certificate of appealability in the context of a habeas petition filed under 28 U.S.C. § 2254, which legal reasoning applies with equal force to motions to vacate brought pursuant to 28 U.S.C. § 2255). In cases where a district court has rejected a petitioner's constitutional claims on the merits, "the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Id.*

Turner has asserted six grounds for relief, the first five of which are claims for ineffective assistance of counsel. The first ground argued trial counsel should have challenged various pleading deficiencies. However, the Sixth Circuit has plainly held such perceived errors as harmless. The second ground similarly attacked the jury instructions for supposedly correcting pleading errors. Again, the Sixth Circuit has rejected this argument as well. The third ground asked trial counsel to seek a special

jury verdict instruction, but there was no legal authority for such a request. The fourth claim argued appellate counsel should have raised the first three grounds on appeal, but appellate counsel is not obligated to raised arguments that have no legal merit. The fifth claim suggested trial counsel should have filed a more targeted notice of appeal. Such a request would have done more harm than good for Turner. And finally, Turner challenges one of his firearm convictions under *Bruen*. As the Court detailed, there is no current legal support for such a challenge.

Accordingly, it is **RECOMMENDED** that a certificate of appealability be **DENIED** upon the District Court's entry of its final order in this matter.

IV. CONCLUSION

For the reasons stated herein, the Court **RECOMMENDS**:

1) The District Court **DENY**, with prejudice, Turner's Motion to Vacate, Set Aside, or Correct his sentence pursuant to 28 U.S.C. § 2255 [DE 309]; and

2) The District Court **DENY** a certificate of appealability as to all issues, should movant request a COA.

The Court directs the parties to 28 U.S.C. § 636(b)(1) for appeal rights and mechanics concerning this Recommended Disposition, issued under subsection (B) of the statute. *See also* Rules Governing Section 2255 Proceedings for the United States District Courts, Rule 8(b). Within fourteen days after being served with a copy of this decision, any party may serve and file specific written objections to any or all findings or recommendations for determination, de novo, by the District Court. Failure to make a timely objection consistent with the statute and rule may, and usually does, result in waiver of further appeal to or review by the District Court and Court of

Appeals. *See United States v. Walters*, 638 F.2d 947, 950 (6th Cir. 1981); *Thomas v. Arn*, 106 S. Ct. 466 (1985).

Entered this the 13th day of February, 2024.

MATTHEW A. STINNETT
UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF KENTUCKY