APPENDIX "E"

District Court Order
Denying Rule 15(c) Amendment
ECF 1094

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GEZO GOEONG EDWARDS,

Defendant.

Criminal No. 11-CR-00129-1 (CKK)
Civil Action No. 24-195

MEMORANDUM OPINION AND ORDER

Pending before this Court is Defendant Gezo Goeong Edwards' [1090] Motion for Reconsideration of his [1085] [Section 2255] Motion to Vacate, and Defendant's [1091] Motion proposing an amendment to his 2255 motion. For the reasons set forth herein, both motions may be summarily DENIED because they are without merit.

Mr. Edwards is currently incarcerated after having been found guilty of one count of Conspiracy to Distribute and Possess with Intent to Distribute Five Kilograms of More of Cocaine. *See* Jury Verdict Form, ECF No. 651. Mr. Edwards was sentenced by this Court to life imprisonment and a ten-year term of supervised release; *see* March 24, 2014 Amended Judgment, ECF No. 878, and his appeal from that Judgment was denied. *See* July 8, 2016 Judgment in Appeal No. 13-3019 (consolidated with Appeal No. 14-3012 [Mr. Edwards' case]) (affirming Mr. Edwards' judgment).

On December 26, 2017, Mr. Edwards filed a [975] *pro se* Motion, pursuant to 28 U.S.C. § 2255, to Vacate, Set Aside or Correct his Sentence, which was based on multiple allegations of ineffective assistance of counsel. More specifically, Mr. Edwards contested his counsel's:

(1) handling of the criminal forfeiture aspect of the case both pre-trial and post-trial; (2) alleged conflict of interest; (3) alleged failure to call an expert witness and to conduct independent testing to rebut the Government's claims regarding the source of the cocaine; (4) alleged failure to accurately and adequately argue that the evidence obtained from the wiretap should have been suppressed; (5) alleged failure to challenge the sufficiency of the Superseding Indictment; and (6) the cumulative effect of the alleged ineffective representation. This Court analyzed each claim, *see* November 21, 2019 Memorandum Opinion, ECF No 1045, at 10-27, but declined to address whether a cumulative prejudice analysis was appropriate "because Mr. Edwards ha[d] not demonstrated that he was prejudiced by any of the claims he ma[de]." Memorandum Opinion, ECF No. 1045, at 28. Accordingly, Mr. Edward's Section 2255 Motion was denied by this Court, and this Court declined to issue a certificate of appealability ("COA"). *See* Order, ECF No. 1044. Mr. Edwards requested a COA from the Court of Appeals for the District of Columbia Circuit ("D.C. Circuit"), but the Circuit Court denied his request. *See* August 7, 2020 Judgment in Appeal No. 19-3096 (denying the motion for a COA and dismissing the appeal).

Three and one-half years later, Mr. Edwards filed another *pro se* Motion, pursuant to 28 U.S.C. § 2255, to Vacate, Set Aside or Correct his Sentence. *See* Motion, ECF No. 1085 (dated May 18, 2023). Defendant's Section 2255 Motion was treated by this Court as a second or successive [habeas] petition that was not authorized by the court of appeals, and accordingly, this court had to either dismiss the petition or transfer it to the court of appeals. *See* 28 U.S.C. § 2255(h) ("A second or successive [§ 2255] motion must be certified as provided in section 2244 . . . "); 28 U.S.C. §2244(b)(3)(A) ("Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application")

In its [1086] Order dated October 18, 2023, this Court noted that "Defendant's second Motion [was] based on the same claims of ineffective assistance of counsel raised in the prior motion, as well as a [new] tenuous allegation that he might have accepted a plea deal and accordingly received a lesser sentence if he had understood his options." October 18, 2023 Order, ECF No. 1086, at 2. The Court addressed Defendant's allegation about plea negotiations, noting that "plea negotiations in this co-defendant case went on for months, and furthermore, in advance of a June 1, 2012 status hearing, this Court issued a May 1, 2012 Minute Order[.]" *Id.* That Minute Order stated that:

> Pursuant to *Missouri v. Frye*, 132 S. Ct. 1399 (2012), in order to preserve the Defendants' Sixth Amendment rights, during the status hearing to be held June 1, 2012, the Government and Defendants shall be prepared to discuss the latest plea offer extended to each Defendant. Specifically, counsel for each Defendant and the Government shall each be prepared to explain on the record (1) the statutory penalties and Federal Advisory Sentencing Guidelines range the Defendant faces if convicted of all charges at trial; and (2) the statutory penalties and Federal Advisory Sentencing Guidelines range applicable to the Defendant pursuant to the latest plea offer from the Government.

May 1, 2012 Minute Order.

The Court held a status conference on June 1, 2012, and after that status conference, a Minute Order posted by this Court indicated that, at the July 27, 2012 status conference, the latest plea offer extended to co-Defendants Edwards, Richards, and Williams would be placed on the record. Accordingly, the Court found that Mr. Edwards' allegation that he was not made aware of his options during plea negotiations was contradicted by the record in this case. In his [second] Section 2255 motion, Mr. Edwards cited also to a Supreme Court case, *Ruan v. United States*, 142 S. Ct. 2370 (2022), without any reference to how it related to his case, and he alleged that his was an "actual innocence claim" without any further explanation. This Court denied Defendant's

[1085] Motion, pursuant to 28 U.S.C. § 2255, to Vacate, Set Aside or Correct his Sentence, as it was an unauthorized second or successive habeas petition, and further, the ineffective assistance of counsel claims had been previously litigated, with the exception of the claims relating to awareness of the plea negotiations, which the Court found to be contradicted by the record in the case.[1] *See* Order, ECF No. 1086. Five months after filing his [second] 2255 motion, and one day prior to the Court's issuance of that Order denying that motion, Defendant attempted to supplement his motion, where such supplement reiterated yet again arguments relating to ineffective assistance of counsel that had already been largely raised by Defendant. The Court denied leave to file that supplement.

In November of 2023, Mr. Edwards filed a document entitled "Judicial Notice," which requested clarification about the Court's denial of leave to file the supplement proffered by Mr. Edwards, and requested a copy of the docket sheet in this case. This Court issued its [1089] Order on December 19, 2023, explaining the procedural posture in this case and granting Defendant a copy of the docket sheet. Less than one month later, Mr. Edwards filed the currently pending motions, namely, Defendant's [1090] Motion for Reconsideration of the Court's denial of his [second] 2255 motion and Defendant's [1091] Motion proposing an amendment to his 2255 motion.

In the instant Motion for Reconsideration, Defendant requests that this Court reconsider

[1] A second or successive motion must be certified to contain "newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense," or "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." 28 U.S.C. §2255(f). Mr. Edwards' [second] 2255 motion addressed neither newly discovery evidence nor a new rule of constitutional law.

the denial of his second 2255 motion (ECF No. 1085), which he alleges was not intended as a second or successive 2255 motion but rather a motion that related back to the original 2255 motion pursuant to Rule 15(c). Def.'s Mot. for Reconsideration, ECF No. 1090, at 2. Federal Rule of Civil Procedure 15(c)(1)(B) provides that an amendment to a pleading relates back when the "amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out – or attempted to be set out – in the original pleading." Defendant's so-called amendment reiterated his claims of ineffective assistance of counsel, which have already been analyzed and denied by this Court, and which are not subject to being relitigated. Defendant further added a claim in the Supplement (which the Court denied leave to file) that "Petitioner was prejudiced by not receiving notice that the government had to prove he knew the mixture or substance contained a detectable amount of the controlled substance, cocaine, because the indictment did not provide the constitutional protections that an indictment must" and as such, the "indictment [ ] omit[ted] an essential element of the offense [and was] defective." Attachment to Def.'s Mot. for Reconsideration, ECF No. 1090-1, at 6-7; Motion Proposing an Amendment, ECF No. 1091, at 7 (where Defendant argues further that this *mens rea* claim relates back to the "original 2255 deficient indictment claim").

Interpreting the "relation back" provision in a light most favorable to Defendant, who is acting *pro se*, this Court finds that this claim, its most general sense, relates back to Defendant's previous challenge to the sufficiency of the Indictment (which was based on defendant's theory of an alleged distinction between crack, powder cocaine, and cocaine base and which included a discussion of the term "detectable amount of cocaine"). *See* Memorandum Opinion, ECF No. 1045, at 26-27. Accordingly, the Court addresses herein Mr. Edwards' claim that the government

Expidite Consideration
28 USCS 1657

had to prove that he knew that the mixture or substance contained a detectable amount of the controlled substance, cocaine, (Defendant's "*mens rea*" claim) as if that claim relates back to the initial 2255 motion, which was filed in 2017.

First, this Court notes that Defendant's *mens rea* claim (which is separate from the ineffective assistance claims) would have been subject to the one- year statute of limitations period applicable to habeas motions. Specifically, §2255 motions must be filed within one year of:

> (1) the date on which the judgment of conviction becomes final;
>
> (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action [inapplicable here];
>
> (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review [inapplicable here]; or
>
> (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. §2255(f). In this case, Defendant's Judgment became final in 2014, and the Judgment was affirmed by the D.C. Court of Appeals in July, 2016. Defendant filed his initial Section 2255 motion (based on ineffective assistance of counsel claims) in December, 2017. Because Defendant's *mens rea* claim in his 2255 motion would be subject to a one-year limitations period, it would arguably be time-barred.

Second, this Court notes next that a defendant's failure to raise a challenge to his conviction or sentencing on direct appeal results in that claim being procedurally defaulted, and as such, it may "be raised in habeas only if the defendant establishes [ ] cause for the default and actual prejudice arising from the alleged violation, . . . " *United States v. Hicks*, 911 F.3d 623, 627 (D.C. Cir. 2018) (internal quotation marks and citation omitted). Cause requires that a claim "is so novel

that its legal basis [was] not reasonably available to counsel" at the time of appeal. *Bousley v. United States*, 523 U.S. 614, 622 (1998).

In this regard, Defendant appears to asserts his reliance on the Supreme Court case of *Ruan v. United States*, 142 S. Ct. 2370 (2022), which involves prosecution of doctors under the Comprehensive Drug Abuse Prevention and Control Act, where the Supreme Court held that, after the defendant meets his burden of producing evidence of "authorized conduct," the Government must prove that the defendant knowingly or intentionally acted in an unauthorized manner [*mens rea*]. In his 2255 motion, Defendant acknowledges however that "*Ruan* did not announce a new rule of constitutional law" but, rather, Defendant proffers that "the case clarified the *mens rea* element that the government must prove to convict a defendant under §841." Def.'s 2255 Motion, ECF No. 1085, at 30 (emphasis added by the Court). In this case, Defendant's own statement about *Ruan* demonstrates that his claim is not novel because the legal basis – a potential challenge regarding *mens rea* – existed at the time of his conviction and initial appeal, and accordingly, Defendant's claim would arguably be procedurally defaulted.

Assuming *arguendo* that Defendant's *mens rea* claim is not time-barred or procedurally defaulted, the Court turns now to Defendant's claim that he is "entitled to the benefit of the *Ruan* decision because he is actually innocent of his §841 conviction. . ." *Id.* at 31.[2] More specifically, Defendant proffers that "both the indictment and jury instructions give the false impression that the government only needs to prove beyond a reasonable doubt that Petitioner knowingly and intentionally distributed and possessed with intent to distribute cocaine[,] without Petitioner having to know beyond a reasonable doubt that the mixture and substance contained a detectable amount of cocaine." *Id.* at 32. Defendant alleges that there was no evidence of his knowing that

[2] Defendant makes only a passing reference to "actual innocence," without further explanation.

the mixture or substance in this case contained cocaine, but the Court finds that this allegation is contradicted by the record evidence in this case. As noted by this Court in its [1045] Memorandum Opinion:

> Mr. Edwards was a member of a wholesale cocaine trafficking organization operating in the District of Columbia [ ] metropolitan area from January 2009 through April 26, 2011, when he was arrested as a result of an investigation by the Federal Bureau of Investigation and the District of Columbia Metropolitan Police Department. The Government obtained evidence of Mr. Edwards' participation in the organization through various methods, including pen registers, arranged undercover drug buys, judicially-authorized wiretaps, physical surveillance, and surveillance videos. Mr. Edwards and his co-conspirators acquired large quantities of cocaine in California, shipped it to the District, and distributed it to mid-level and street-level dealers. Mr. Edwards was responsible for contacting suppliers in California, ensuring that the multi-kilogram quantities of cocaine were shipped from California to the District, and even cutting and processing the cocaine.

Mem. Op., ECF No. 1045, at 2; *see* Pre-Sentence Investigation Report, ECF No. 716, at 7-11.

Similarly, in its affirmance of this Court's judgment, the D.C. Circuit noted that:

> During the case-in-chief, the Government played audio recordings of phone calls obtained from the wiretaps, showed numerous surveillance videos, and presented testimony from investigating agents, narcotics experts, and cooperating witnesses. The Government offered evidence to show that Edwards and Bowman were the leaders of a cocaine-trafficking network in the Washington D.C. area. According to one of the prosecution's cooperating witnesses, Edwards and Bowman repeatedly acquired large quantities of cocaine from California and used cross-country shipping pods to transport it to the Washington, D.C. area. . . . The Government adduced testimony that Edwards processed, weighed, and repackaged the cocaine into smaller blocks for resale to mid-level drug dealers.

United States v. Williams, 827 F.3d 1134, 1144 (D.C. Cir. 2016). Considering the vast evidence presented during trial, this Court finds that Defendant's claim – that there is no evidence that he knew that the mixture or substance he possessed with intent to distribute contained cocaine –is completely without merit. After analyzing Defendant's *mens rea* claim, as if it related back to Defendant's initial Section 2255 motion, the Court finds that such claim is untimely, procedurally

defaulted, and ultimately contradicted by the record evidence, and accordingly, it is hereby this 7th day of November, 2024,

ORDERED that Defendant Gezo Goeong Edwards' [1090] Motion for Reconsideration of his [1085] Motion to Vacate is DENIED, and it is further

ORDERED that Defendant's [1091] Motion Proposing an Amendment to the Motion to Vacate is DENIED.

Colleen Kollar-Kotelly
COLLEEN KOLLAR-KOTELLY
UNITED STATES DISTRICT JUDGE

actual/factual innocence
Judge only get to determine facts

APPENDIX "F"

Appeals Court Orders
Denying COA and Rehearing

8-21-25 received order

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 25-3022 **September Term, 2024**

1:11-cr-00129-CKK-1

Filed On: August 8, 2025

United States of America,

Appellee

v.

Gezo Goeong Edwards, also known as Zo,
also known as Gezo Edwards,

Appellant

BEFORE: Henderson, Wilkins, and Garcia, Circuit Judges

ORDER

Upon consideration of the motion for a certificate of appealability and the supplements thereto; the motion to dismiss for lack of a certificate of appealability and the opposition thereto; the motion to amend or supplement the motion for a certificate of appealability and to construe that earlier motion as a brief; the motion for judicial notice; the motion for disclosure of records; and the motion to appoint counsel, it is

ORDERED that the motion for judicial notice be denied. Appellant has not shown that the alleged facts for which he requests judicial notice have any bearing on whether this court should grant him a certificate of appealability. It is

FURTHER ORDERED that the motion for disclosure of records be denied. Appellant has informed the court that he has already received the Clerk's order dated March 27, 2025. So long as appellant remains at his current prison facility, the court will address any mail directly to appellant rather than to the warden of that facility. It is

FURTHER ORDERED that the motion to appoint counsel be denied. The interests of justice do not warrant appointment of counsel in this case. See 18 U.S.C. § 3006A(a)(2)(B). It is

No. 25-3022 **September Term, 2024**

FURTHER ORDERED that the motion for a certificate of appealability be denied and the motion to dismiss be granted. Because appellant has not made "a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), no certificate of appealability is warranted. See Slack v. McDaniel, 529 U.S: 473, 484 (2000). As an initial matter, appellant has forfeited any claim that his counsel provided ineffective assistance in his plea negotiations by not pressing that claim on appeal. See U.S. ex rel. Totten v. Bombardier Corp., 380 F.3d 488, 497 (D.C. Cir. 2004). In any event, appellant has failed to overcome the "plain procedural bar" that he did not bring that claim within the one-year statute of limitations. United States v. Arrington, 763 F.3d 17, 24 (D.C. Cir. 2014) (quoting Davis v. Roberts, 425 F.3d 830, 834 (10th Cir. 2005)); see 28 U.S.C. § 2255(f). That claim clearly does not relate back to appellant's original motion under 28 U.S.C. § 2255 because the claim and the original motion do not arise from a common "core of operative facts." Mayle v. Felix, 545 U.S. 644, 659 (2005) (quoting Clipper Exxpress v. Rocky Mountain Motor Tariff Bureau, Inc., 690 F.2d 1240, 1259 n.29 (9th Cir. 1982)). The same holds true for appellant's mens rea claim, at least to the extent that the mens rea claim focuses on the jury instructions or the sufficiency of the evidence. Even assuming that appellant could establish relation back for his mens rea claim insofar as that claim pertains to the sufficiency of his indictment, reasonable jurists would not disagree that the claim fails on the merits because the indictment adequately tracked the underlying statutes. See United States v. Williamson, 903 F.3d 124, 130–32 (D.C. Cir. 2018). Lastly, this court will not grant a certificate of appealability with respect to issues that appellant failed to raise in the district court. See Waters v. Lockett, 896 F.3d 559, 571–72 (D.C. Cir. 2018). It is

FURTHER ORDERED that the motion to amend or supplement the motion for a certificate of appealability and to construe that earlier motion as a brief be dismissed as moot. This court has already accepted and considered appellant's supplements to his motion for a certificate of appealability. Because the court now denies that motion and grants appellee's motion to dismiss this appeal, appellant has no need to file a brief.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. Because no certificate of appealability has been allowed, no mandate will issue.

Per Curiam

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 25-3022 **September Term, 2025**

1:11-cr-00129-CKK-1

Filed On: October 17, 2025

United States of America,

Appellee

v.

Gezo Goeong Edwards, also known as Zo,
also known as Gezo Edwards,

Appellant

BEFORE: Henderson, Wilkins, and Garcia, Circuit Judges

ORDER

Upon consideration of the motion for reconsideration of the court's order filed August 8, 2025, it is

ORDERED that the motion for reconsideration be denied.

Per Curiam

FOR THE COURT:
Clifton B. Cislak, Clerk

BY: /s/
Selena R. Gancasz
Deputy Clerk

received
11-3-2025
@ 5pm

APPENDIX "G"

21 USCS 841(a) and 846 (text)

Title 21 United States Code

Section 841(a) Unlawful acts

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally --

(1) to manufacture, distribute, or dispense, or possess with intent to distribute or dispense, a controlled substance[.]

Section 846 Attempt and conspiracy

Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

Additional material from this filing is available in the Clerk's Office.