

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ANTHONY SHAWN EWELL,

CASE NO. 25-60048-CIV-DIMITROULEAS
(22-60257-CR-DIMITROULEAS)

Movant,

Vs.

UNITED STATES OF AMERICA,

Respondent.

FINAL JUDGEMENT AND ORDER DENYING MOTION TO VACATE

THIS CAUSE is before the Court on Movant Ewell's January 2, 2025 Motion to Vacate [DE-1] along with a Memorandum [DE-1-1] and Exhibits [DE-1-2]. The Court has considered the Court file and having presided over this cause, finds as follows:

1. On December 5, 2022, Ewell was arrested and charged with Possession of Child Pornography based upon a complaint signed by Special Agent Eric Stowers. [CR-DE-1]. On December 5, 2022, a search warrant was served upon Ewell's residence. Over 50 images of child pornography were located on an iomega 2 terabyte external storage device. On that date, Ewell was interviewed and after having been read his *Miranda* rights, he admitted to being the only one living in his residence and that he had been downloading child pornography utilizing peer-to-peer software for approximately one year. He also admitted to transferring child pornography to the external storage device located in his residence. On December 6, 2022, the Federal Public Defender was appointed [CR-DE-2].
2. On December 8, 2022, an Indictment was returned charging Ewell with Possession of Child Pornography, involving a pre-pubescent minor or minor under twelve (12) years of age,

pursuant to 18 U.S.C. 2252(a)(4)(B). [CR-DE-7]. On December 28, 2022, trial was set for January 27, 2023. [CR-DE-10].

3. On January 27, 2023, a defense continuance was granted, and the trial was reset to March 13, 2023. [CR-DE-13].
4. On January 27, 2023, the Public Defender's office transferred this case to another assistant: Allari Dominguez [CR-DE-14].
5. On March 10, 2023, Ewell pled guilty pursuant to an open plea [CR-DE-16]. Sentencing was set for May 19, 2023 [CR-DE-16]. The Court conducted a thorough plea colloquy [CR-DEE-67].
 - A. The Court indicated that it would allow a lawyer to come into the case, but that if a continuance was denied, he'd have to try the case on Monday (page 5).
 - B. The Court required a factual basis that if the case went to trial, it would go to the jury (page 6). The prosecutor recited the facts, including that Ewell knew that at least one victim was under twelve years old or was prepubescent (an element of the crime). (pages 28-30). Ewell admitted the facts (page 33); both defense counsel stipulated to the factual basis (page 33)
 - C. Ewell threw himself on the mercy of the Court (pages 8, 10, 11, 12, 13, 14, 25).
 - D. Ewell understood that he would not later be allowed to withdraw his plea (pages 10, 14, 19). He understood that this was the end of the case, except for sentencing (pages 19, 36, 37). He wouldn't be able to come back later and complain (pages 36, 37). He was making a decision he was willing to live by (page 28). He gave up all defenses (page 35).
 - E. Ewell did not need more time to think about it (pages 11, 12, 20, 23, 36-37).
 - F. No promises were made (page 21). He was not forced to make the decision (pages 17, 22). He was satisfied with his attorneys (page 22). He realized he was not giving his

lawyers a chance to finish any investigation that they may have wanted to conduct (page 22).

- G. He was pleading guilty because he was guilty (page 23).
6. On April 3, 2023, defense counsel filed a Motion to Withdraw Plea [CR-DE-19]. On April 7, 2023, the motion was denied. [CR-DE -20].
 7. On April 21, 2023, private counsel Dameka Davis, filed an Amended Motion for Withdrawal of Plea. [CR-DE-24]. The Government filed a response on April 28, 2023. [CR-DE-26]. On May 4, 2023, the Amended Mbtion was denied. [CR-DE-28].
 8. Defense counsel filed a psychological report from Michael P. Brannon, Psy. D. on June 12, 2023. [CR-DE-47]. Dr. Brannon's report concerned a sex offender risk assessment and mitigation evaluation. Nothing in the report indicated that Ewell was incompetent to assist counsel or insane at the time of the offense.
 9. On June 23, 2023, Ewell was sentenced to 46 months in prison. [CR-DE-51].
 10. On April 29, 2024, the Eleventh Circuit affirmed. [CR-DE-77]. *U.S. v. Ewell*, 2024WL1854415 (11th Cir. 2024). Ewell had argued that he was denied the close assistance of counsel and that his plea was not free of coercion. Mandate issued on July 11, 2024. Ewell claims his petition for writ of certiorari was denied by the U.S. Supreme Court.
 11. In this timely collateral attack, Ewell complains that:

A. The Court denied his request to substitute counsel.¹

¹ Although the Court denied a request to continue the trial, the Court indicated that new counsel could appear on Monday and request a continuance. However, if the continuance were denied, he would have to proceed with the trial. Apparently, new counsel was unwilling to appear absent a continuance being guaranteed [CR-DE-67, pp. 5-6]. The Eleventh Circuit agreed that experienced counsel had had enough time to prepare for trial and review recent discovery. Ewell's voluntary guilty plea waived this non-jurisdictional issue. [CR-DE-67, p. 28]. *Wilson v. U.S.*, 962 F. 2d 996 (11th Cir. 1992).

- B. Counsel was ineffective in failing to properly investigate the defense².
- C. Counsel was ineffective in not confronting or interviewing defense witnesses or forensic experts.³
- D. Counsel has a conflict of interest because she was pregnant.⁴
- E. Due Process Violation.
 - (1) No substitution of counsel.⁵
 - (2) Insufficient time to review papers of discovery.⁶
 - (3) Ineffective counsel.⁷
 - (4) Improper judicial involvement in plea contrary to Rule 11(c)(1).⁸
- F. Insufficient Factual Basis.⁹
- G. Due Process Violation.
 - (1) No confrontation of witnesses¹⁰
 - (2) Ineffective Assistance of Counsel¹¹
- H. Ineffective Counsel failed to request mental health evaluation.¹²

² This conclusory allegation is insufficient upon to base any relief; Ewell waived this complaint [CR-DE-67, pp. 22, 28].

³ This conclusory allegation is insufficient upon which to base any relief. Ewell waived this complaint during the plea colloquy [CR-DE-67, p. 22].

⁴ Ewell had two experienced public defenders, only one of whom was pregnant. This conclusory allegation does not warrant any relief.

⁵ The Eleventh-hour request was properly denied as there was no conflict of interest. *U.S. v. Saffiotti*, 795 Fed Appx 731 (11th Cir. 2019). See fn 1.

⁶ Conclusory allegation that 11th Circuit addressed.

⁷ Conclusory allegation about experienced counsel. *Chandler v. U.S.*, 218 F. 3d 1305, 1316 (11th Cir. 2000).

⁸ Conclusory allegation; the plea colloquy speaks for itself.

⁹ Ewell confessed to possessing and downloading child pornography to an external device; he admitted the facts in the prosecutor's proffer, which included a prepubescent minor..

¹⁰ Conclusory allegation; his guilty plea eliminated the trial where a witness could be confronted.

¹¹ See fn 7.

¹² Conclusory allegation; the plea colloquy demonstrated that Ewell was competent

I. Ineffective Counsel allowed prosecutor to coerce plea, without correcting him that only a Grand Jury could add charges.¹³

J. Cumulative Error¹⁴.

12. Matters that could have been raised on direct appeal should not be heard later on a collateral attack. *Mills v. U.S.*, 36 F. 3d 1052, 1055 (11th Cir. 1995).

13. Matters that were heard on direct appeal should not again be heard on a collateral attack. *Hidalgo v. U.S.*, 138 Fed Appx 290 (11th Cir. 2005).

14. Conclusory allegations are insufficient upon which to base any relief. *Lynn v. U.S.*, 365 F. 3d 1225, 1239 (11th Cir. 2004).

Wherefore, Ewell's Motion to Vacate [DE-1] is Denied.

The Clerk shall close this case and deny any pending motions as Moot.

The Clerk shall mail Defendant Ewell a copy of this order.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 14th day of January, 2025.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:

Counsel of Record

Ajay Alexander, AUSA

¹³ Experienced defense counsel knew only a grand jury could add charges. They also likely knew that had a continuance been granted a superseding indictment could have been justified without a finding of prosecutorial vindictiveness.

¹⁴ No error to accumulate. *Morris v. Sec'y, D.O.C.*, 677 F. 3d 1117, 1133 n. 3 (11th Cir. 2012).

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

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

July 29, 2025

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 25-10271-D
Case Style: Anthony Ewell v. USA
District Court Docket No: 0:25-cv-60048-WPD
Secondary Case Number: 0:22-cr-60257-WPD-1

The enclosed copy of this Court's order denying the application for a Certificate of Appealability is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Any pending motions are now rendered moot in light of the attached order.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-10271

ANTHONY SHAWN EWELL,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:25-cv-60048-WPD

ORDER:

Anthony Ewell appeals the denial of his 28 U.S.C. § 2255 motion to vacate, seeking a certificate of appealability (“COA”). His motion for a COA is DENIED because he failed to make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2). Ewell’s motion to “consider government’s response waived” is also DENIED as moot.

/s/ Andrew L. Brasher

UNITED STATES CIRCUIT JUDGE

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-10271

ANTHONY SHAWN EWELL,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:25-cv-60048-WPD

Before GRANT and BRASHER, Circuit Judges.

BY THE COURT:

Anthony Ewell is a federal prisoner seeking a certificate of appealability ("COA") to appeal the district court's denial of his pro se 28 U.S.C. § 2255 motion. He now moves this Court to reconsider its July 29, 2025, order denying a COA. After careful review, Ewell's motion for reconsideration is DENIED, as he has offered no new evidence or arguments of merit to warrant relief.

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