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Appendix 1

Fifth Circuit's Denial of Certificate of Appealability

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 10, 2025

Lyle W. Cayce
Clerk

No. 25-40227

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

WAYNE ROSS MAITLAND,

Defendant—Appellant.

Application for Certificate of Appealability
the United States District Court
for the Eastern District of Texas
USDC No. 1:18-CV-449
USDC No. 1:14-CR-116-1

UNPUBLISHED ORDER

Before JONES, RICHMAN, and RAMIREZ, *Circuit Judges.*

PER CURIAM:

Wayne Ross Maitland, federal prisoner # 22794-078, moves for a certificate of appealability (COA) to appeal the denial of his 28 U.S.C. § 2255 motion. Maitland filed the § 2255 motion to challenge his jury trial convictions of kidnapping involving a child and kidnapping, for which he is serving concurrent 240-month terms of imprisonment.

As an initial matter, Maitland does not reprise his claims that (1) the kidnapping statute, 18 U.S.C. § 1201(a), was unconstitutionally applied in his case; (2) the residual clause of § 1201(a) is unconstitutionally vague; (3) the charge delivered to the jury was unconstitutional; (4) the district court violated his right to self-representation by failing to conduct a colloquy pursuant to *Faretta v. California*, 422 U.S. 806 (1975); and (5) the Government's admission that he was not guilty of kidnapping under state law precluded his federal conviction. Maitland also fails to renew his claims that his trial counsel was ineffective for failing to raise the enumerated issues. He has therefore abandoned these claims. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999).

Maitland renews his claim that his trial counsel violated his rights under *McCoy v. Louisiana*, 584 U.S. 414 (2018), by admitting his guilt during closing argument, against his wishes. Specifically, he asserts that his trial counsel admitted his guilt by acknowledging that there was a “sequence of events . . . that obviously were domestic violence and then raised to some new level.” He argues that reasonable jurists could disagree with the district court's determination that counsel's statement did not violate *McCoy*.

A COA may issue only if the movant has made “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). When the district court denies relief on the merits, a movant must show that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). When the district court denies relief on procedural grounds, a COA should issue if a movant establishes, at least, that jurists of reason would find it debatable whether the motion states a valid claim of the denial of a constitutional right and whether the district court was correct in its procedural ruling. *Id.*

Maitland has not made the requisite showing. Accordingly, his motion for a COA is DENIED. As Maitland fails to make the required showing for a COA, we do not reach the issue whether the district court erred by failing to hold an evidentiary hearing. *See United States v. Davis*, 971 F.3d 524, 534-35 (5th Cir. 2020). Finally, to the extent that Maitland moves for a new trial, his motion is DENIED.

Appendix 2

Maitland v. United States, 2025 U.S. Dist.

LEXIS 56970 (E.D. Tex. 2025)

WAYNE ROSS MAITLAND, Movant, versus UNITED STATES OF AMERICA, Respondent.
UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS
2025 U.S. Dist. LEXIS 56970; 2025 LX 148036
CIVIL ACTION NO. 1:18-CV-449
March 27, 2025, Decided
March 27, 2025, Filed

Editorial Information: Subsequent History

Appeal filed, 04/28/2025

Editorial Information: Prior History

Maitland v. United States, 2024 U.S. Dist. LEXIS 241749 (E.D. Tex., Oct. 16, 2024)

Counsel {2025 U.S. Dist. LEXIS 1}Wayne Ross Maitland, Petitioner, Pro se,
Beaumont, TX.

For USA, Respondent: Bradley E Visosky, LEAD ATTORNEY, U
S Attorney's Office - Plano, Plano, TX; Christopher Tony Tortorice, U S Attorney's Office -
Beaumont, Beaumont, TX.

Judges: MARCIA A. CRONE, UNITED STATES DISTRICT JUDGE.

Opinion

Opinion by: MARCIA A. CRONE

Opinion

**MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING THE MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION**

Wayne Ross Maitland, an inmate confined within the Bureau of Prisons, proceeding *pro se*, filed this motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. Movant challenges two convictions for kidnapping which resulted in a sentence of 240 months of imprisonment.

The court previously referred this matter to the Honorable Christine L. Stetson, United States Magistrate Judge, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge recommending the motion to vacate be denied.

The court has received the Report and Recommendation, along with the record, pleadings, and all available evidence. Movant filed objections. The court must therefore conduct a *de novo* review of the objections in relation{2025 U.S. Dist. LEXIS 2} to the pleadings and the applicable law.

Movant raised these grounds for review in his motion to vacate: (1) the federal kidnapping statute, as applied to him, is unconstitutional; (2) the phrase "for ransom or reward or otherwise" in 18 U.S.C. § 1201(a) is unconstitutionally vague; (3) the jury instructions were unconstitutional; (4) after movant filed a motion to represent himself, the court improperly failed to hold a hearing pursuant to *Faretta v. California*, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975); (5) the government's admission that his conduct would not be a crime under state law precludes a federal conviction based on the

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conduct; and (6) he received ineffective assistance of counsel because counsel: (a) violated his right to autonomy under *McCoy v. Louisiana*, 584 U.S. 414, 138 S. Ct. 1500, 200 L. Ed. 2d 821 (2018), and (b) failed to argue or preserve for appeal the issues raised in his first five grounds for review.

The magistrate judge correctly concluded movant's first five grounds for review were procedurally barred. They could have been raised on direct appeal and movant failed to show cause and prejudice for the failure to raise them.

Movant's first claim of ineffective assistance of counsel relies on the Supreme Court's decision in *McCoy*. In that case, the Supreme Court held that when the objective of a client's defense is to maintain{2025 U.S. Dist. LEXIS 3} his innocence, his attorney must abide by that objective and not override it by conceding guilt. 584 U.S. at 422. During closing argument, defense counsel acknowledged that during an altercation between movant and his wife, there was a "sequence of events . . . that obviously were domestic violence and then raised to some new level." *United States v. Maitland*, 1:14cr116 (E.D. Tex. July 25, 2016) (#154 at 564-65). In his objections, movant continues to maintain that counsel's statement violated his right to autonomy under *McCoy*. Movant correctly quotes the Supreme Court as stating: "Just as a defendant may steadfastly refuse to plead guilty in the face of overwhelming evidence . . . so may she insist on maintaining her innocence at the guilt phase of . . . trial." 584 U.S. at 422.

In *McCoy*, the defendant was charged with murder. Defense counsel stated that the defendant had "committed three murders . . . [H]e's guilty." *Id.* at 417. In contrast, movant was charged with kidnapping. While counsel acknowledged movant may have engaged in domestic violence, he did not state movant was guilty of kidnapping or imply that he was guilty. As a result, the magistrate judge correctly concluded counsel's statement during closing argument did not violate the holding in *McCoy*.

With respect to movant's remaining claims of ineffective{2025 U.S. Dist. LEXIS 4} assistance of counsel, the magistrate judge analyzed each of the claims and correctly found that none of the points movant states counsel should have argued or preserved for appeal were meritorious. As a result, movant failed to show that counsel's performance fell below an objective standard of reasonableness or resulted in prejudice. See *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). These grounds for review are therefore without merit.

ORDER

Accordingly, movant's objections (#33) to the Report and Recommendation are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge (#29) is **ADOPTED**. An appropriate final judgment will be entered.

Furthermore, the court is of the opinion movant is not entitled to a certificate of appealability in this matter. An appeal from a judgment denying post-conviction collateral relief may not proceed unless a judge issues a certificate of appealability. See 28 U.S.C. § 2253. The standard for issuing a certificate of appealability requires the movant to make a substantial showing of the denial of a federal constitutional right. See *Slack v. McDaniel*, 529 U.S. 473, 483-84, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the movant need not establish that he would prevail on the merits. Rather, he{2025 U.S. Dist. LEXIS 5} must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. See *Slack*, 529 U.S. at 483-84. Any doubt regarding whether to grant a certificate of appealability should be resolved in favor of the movant, and the severity of the penalty may be considered in making this determination. See *Miller v. Johnson*, 200 F.3d 274,

280-81 (5th Cir. 2000).

In this case, the movant has not shown that the issue of whether he is entitled to relief is subject to debate among jurists of reason. The factual and legal questions raised by movant have been consistently resolved adversely to his position and the questions presented are not worthy of encouragement to proceed further. As a result, a certificate of appealability shall not issue in this matter.

SIGNED at Beaumont, Texas, this 27th day of March, 2025.

/s/ Marcia A. Crone

MARCIA A. CRONE

UNITED STATES DISTRICT JUDGE

FINAL JUDGMENT

This action came on before the court, and the issues having been duly considered and a decision having been duly rendered, it is

ORDERED and **ADJUDGED** that this Motion to Vacate, Set Aside or Correct Sentence is **DENIED**.

All motions not previously ruled{2025 U.S. Dist. LEXIS 6} on are **DENIED**.

SIGNED at Beaumont, Texas, this 27th day of March, 2025.

/s/ Marcia A. Crone

MARCIA A. CRONE

UNITED STATES DISTRICT JUDGE

Appendix 3

United States Magistrate's Recommendation

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

WAYNE ROSS MAITLAND §
VS. § CIVIL ACTION NO. 1:18-cv-449
UNITED STATES OF AMERICA §

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Wayne Ross Maitland, proceeding *pro se*, filed this motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. This matter was referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636 for findings of fact, conclusions of law, and recommendations for the disposition of the case.

Prior Proceedings

In 2014, a federal grand jury returned an indictment charging movant with the kidnapping of a minor child. A first superseding indictment added a second kidnapping charge. Following a jury trial, movant was convicted of both charges. He was sentenced to 240 months of imprisonment. *United States v. Maitland*, 1:14cr116 (E.D. Tex. July 25, 2016). The convictions and sentence were affirmed by the United States Court of Appeals for the Fifth Circuit. *United States v. Maitland*, 690 F. App'x 181 (5th Cir. 2017).

Statement of the Case

Movant's appellate brief included a statement of the case which, in part, stated as follows:

On October 31, 2014, Mr. Maitland was married to Chelsea Hooper (C.H.). The two had been separated for four days prior to October 31st. C.H. had a one year old son, C.W., from a previous marriage. Mr. Maitland had called C.H. and told her that if she would agree to get off his bank account he would agree to a divorce. C.H. agreed to go with Mr. Maitland to the bank to sign the papers. The two went to the bank and C.H. signed the papers to get off of Mr. Maitland's bank account. After the bank, Mr. Maitland proceeded to a rural road and pulled out a roll of duct tape. C.H. and Mr. Maitland began struggling, but Mr. Maitland continued until C.H. allowed Mr. Maitland to put duct tape on her arms. Mr. Maitland then returned to the main road and began driving. C.H. at one point was able to free her hands and open the door and scream for help. Mr. Maitland pulled C.H. back into the car by her hair and began hitting her in the face. Mr. Maitland began pushing on C.H.'s throat, causing

her to have trouble breathing. C.H. bit Mr. Maitland's arm and jumped from the car and began running. Mr. Maitland stopped the car and got out and told C.H. that "alright I have your son now." Mr. Maitland then got back in the car and drove off. C.H. allowed that Mr. Maitland had served as a father figure for C.W. and had brought him food and diapers. C.W. called Mr. Maitland "daddy."

Mark Stoesser was leaving his farm in Dayton, Texas, when he was stopped by C.H. on a county road. C.H. was upset and had signs of having been assaulted. Mr. Stoesser took C.H. to a nearby convenience store where the police were summoned. Deputy John Bennett, with the Liberty County Sheriff's Department, was first to arrive at the convenience store. Deputy Bennett got a statement from C.H. and summoned other officers regarding issuing an "Amber" alert for the missing child, C.W. Approximately 3-4 hours later, Mr. Maitland called Deputy Bennett and informed him that he would take C.W. to a hospital. Deputy Bennett subsequently determined that C.W. had been dropped off at the New Iberia Regional Hospital in Louisiana. Mr. Maitland was on video putting C.W. at the emergency room entrance of the New Iberia Regional Hospital. Mr. Maitland called one more time to Deputy Bennett and stated he had done nothing wrong and wanted to take his own life.

Sergeant Paul Lasco, with the Liberty County Sheriff's Office, was summoned by Deputy Bennett to take over the investigation regarding C.H. and C.W. Sgt. Lasco took pictures of C. H.'s injuries on November 1st and 3rd, 2014. On November 2, 2014, Mr. Maitland called Sgt. Lasco and stated that he had only put tape on C.H.'s hands so he could talk to her and he intended to turn himself in. Mr. Maitland again called Sgt. Lasco and was complaining about some threats on Facebook that had been posted by C.H.'s ex-husband. Mr. Maitland also described where he had thrown C.H.'s cell-phone, which was subsequently located.

On November 11, 2014, Mr. Maitland was observed riding a bicycle down a road in Liberty County. Deputy James McQueen was dispatched to locate Mr. Maitland concerning the October 31st incident and [subsequently obtained] an arrest warrant for Mr. Maitland. Mr. Maitland was located hiding in an air conditioner return duct in a mobile home.

On December 3, 2014, Mr. Maitland was indicted for kidnapping in violation of 18 U.S.C. § 1201. [On August 5, 2015], a two count superseding indictment was filed against Mr. Maitland alleging two counts of kidnapping, in violation of 18 U.S.C. § 1201, against two different victims. In Count 1, the victim was C.W., a minor, and in Count 2 the victim was C.H., the parent of C.W. and wife of Mr. Maitland.

Mr. Maitland testified on his own behalf during the trial. Mr. Maitland noted that he was married to C.H. on August 22, 2014, and she did not file for divorce until February 24, 2015. Prior to the marriage, Mr. Maitland had known C.H. for six years. Mr. Maitland considered C.W. to be his son after he married C.H. Mr. Maitland had moved out on October 27, 2014, and separated from C.H. after the two had an argument while both were intoxicated on a rural road the day before. Mr. Maitland asserted that it was on October 26, 2014, that the two had an argument and physical confrontation in the car. After Mr. Maitland took C.H. to the bank he began asking her about her being involved in a relationship with her ex-husband. Mr. Maitland turned down a rural road and took C. H.'s cell phone. Mr. Maitland tried to get into the phone to see what she had been texting but the lock had been changed. C.H. would not provide the code to the phone so they continued to drive around. Mr.

Maitland admitted that the two struggled and he had put duct tape on C.H.'s arm but asserted this was to stop C.H. from stopping him from killing himself. After C.H. jumped from the car and began running, Mr. Maitland asserted he stopped and told her "you left your son in the car." Mr. Maitland panicked and drove away. Mr. Maitland stopped and got milk and food for C.W. before ending up at the New Iberia Regional Hospital where he dropped him off. Mr. Maitland then went to a field and took Advil PM pills in order to attempt suicide. Mr. Maitland subsequently drove back to Liberty County where he was arrested on November 11.

United States v. Maitland, No. 16-41089 (5th Cir. May 31, 2017) (doc. #29-1 at 5-11).

Grounds for Review

Movant asserts the following grounds for review: (1) the federal kidnapping statute, as applied in this case, is unconstitutional; (2) the phrase "for ransom or reward or otherwise" in 18 U.S.C. § 1201(a) is unconstitutionally vague under *Johnson v. United States*, 576 U.S. 591 (2015); (3) the jury instructions were unconstitutional; (4) after movant filed a motion seeking to represent himself, the court improperly failed to hold a hearing pursuant to *Faretta v. California*, 422 U.S. 806 (1975); (5) the government's admission that his conduct would not be a crime under Texas state law precludes a federal conviction based on the conduct and (6) he received ineffective assistance of counsel because counsel: (a) violated his right to autonomy under *McCoy v. Louisiana*, 584 U.S. 414 (2018), and (b) failed to argue or preserve for appeal the issues raised in his first five grounds for review.

Procedural Bar

Relief under 28 U.S.C. § 2255 is reserved for transgressions of constitutional rights and for a narrow range of injuries that could not have been raised on direct appeal and would, if condoned, result in a complete miscarriage of justice. *United States v. Gaudet*, 81 F.3d 585, 589 (5th Cir. 1996). It is well established that "a collateral challenge may not do service for an appeal." *United States v. Shaid*, 937 F.2d 228, 231 (5th Cir. 1991). Defendants may only collaterally attack their convictions on grounds of error omitted from their direct appeals by showing cause for the omission and actual prejudice resulting from the asserted error. *Id.* at 232. Even then, any new assertion of error is limited to issues of constitutional or jurisdictional magnitude. *Id.* The cause and prejudice test applies even to allegations of fundamental constitutional error. *Id.* The only exception to the

application of the test is when a movant can establish a fundamental miscarriage of justice, *i.e.*, that he is actually innocent of the crime of conviction. *Id.*

The government contends movant's first five grounds for review should be dismissed as procedurally barred. This assertion is correct. These five grounds for review could have been raised on direct appeal. Movant has not demonstrated cause and prejudice for the failure to raise them on direct appeal or shown he is actually innocent of the crimes for which he was convicted. As a result, consideration of these grounds for review has been procedurally defaulted.

Remaining Grounds for Review

Legal Standard

In order to establish an ineffectiveness of counsel claim, it must be shown: (1) counsel's performance fell below an objective standard of reasonableness and (2) counsel's deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1994). For a movant to demonstrate deficient performance, a strong presumption that counsel's conduct fell within a wide range of reasonable professional assistance must be overcome. *Id.* at 698; *Kitchens v. Johnson*, 190 F.3d 698, 701 (5th Cir. 1999). To show prejudice, there must be a reasonable probability that but for counsel's professional errors, the result of the proceeding would have been different. *Id.* at 687; *Lamb v. Johnson*, 179 F.3d 352, 359 (5th Cir. 1999). A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Strickland*, 466 U.S. at 694.

Application

A. Violation of Right to Autonomy

Movant asserts counsel improperly violated his right to autonomy under *McCoy v. Louisiana*, *supra*, by conceding his guilt. He states he repeatedly complained to counsel and the court that he wished to maintain his innocence. In asserting his right to autonomy was violated, movant cites the following statement made by counsel during closing arguments:

I think we can all agree that October 31st, that afternoon, a sequence of events happened that obviously were domestic violence and then raised to some new level. Now was there some kind of plan? Well you're supposed to guess there was a plan because there is no evidence there was any plan.

Maitland, No. 1:14cr116 (doc. #154 at 564-65).

In *McCoy*, the Supreme Court held that when a client makes it plain that the objective of his defense is to maintain his innocence of the charged criminal acts and pursue an acquittal, his attorney must abide by that objective and not override it by conceding guilt. 584 U.S. at 422. Autonomy to decide that the objective of the defense is to assert innocence is one of those decisions that are reserved for the client. *Id.*

As described above, movant acknowledged in his testimony having a physical confrontation with C.H. and using duct tape to bind her. These actions could fairly be described as domestic violence. However, movant was charged with committing kidnapping, not domestic violence. Counsel's statement during closing argument could be construed as admitting movant committed domestic violence. However, the statement does not admit movant was guilty of kidnapping and is not contrary to movant's assertion of innocence of that charge. As a result, movant has failed to demonstrate counsel violated the right to autonomy established in *McCoy*. This ground for review is therefore without merit.

B. Unconstitutional Statute

Movant was convicted of kidnapping, in violation of 18 U.S.C. § 1201(a). He asserts the statute is unconstitutional as applied in his case. The statute makes it a crime to unlawfully seize a person and hold them for ransom or reward or otherwise. Movant contends the phrase "for ransom or reward or otherwise" is overbroad and does not give a person of ordinary intelligence fair notice that their contemplated conduct is forbidden by statute. In particular, movant objects to the phrase "or otherwise."

Section 1201(a)(1) provides, in part, as follows:

Whoever, unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when . . . the offender travels in interstate or foreign commerce or uses the mail or any means, facility, or instrumentality of interstate or foreign commerce in committing or in furtherance of the commission of the offense . . . shall be punished by imprisonment for any terms of years or for life

“A conviction fails to comport with due process if the statute under which it is obtained fails to provide a person of ordinary intelligence fair notice of what is prohibited” *United States v. Williams*, 553 U.S. 285, 304 (2010). To prevail on an as-applied challenge, a defendant must show that the law has been unconstitutionally applied to him. *McCullen v. Coakley*, 573 U.S. 464, 485 n.4 (2014).

The phrase “as otherwise” in Section 1201(a)(1) has been interpreted “to encompass any benefit a captor might attempt to receive.” *United States v. Webster*, 162 F.3d 308, 328 (5th Cir. 1998). The phrase “or otherwise” is sufficient to inform a reasonable person that the taking of any person against their will is proscribed. *United States v. Vickers*, 578 F.2d 1057, 1058 (5th Cir. 1978).

Based on *Vickers*, Section 1201(a) is not unconstitutional as applied to movant. As a result, counsel’s failure to assert an as-applied challenge to the statute did not fall below an objective standard of reasonableness and did not result in prejudice.

C. Vagueness

In a related ground for review, movant, relying on *Johnson v. United States*, *supra*, asserts that Section 1201(a) is unconstitutionally vague. He states the statute is too vague to provide a person of ordinary intelligence with fair notice that his contemplated conduct is forbidden by the statute. Movant contends the phrase “or otherwise” in the statute invites arbitrary enforcement of the statute and states similar language was struck down in *Johnson*.

Johnson involved the Armed Career Criminal Act (“ACCA”) which includes the phrase “or otherwise involves conduct that presents a serious potential risk of physical injury to another.” 18 U.S.C. § 924(e)(2)(B). The Supreme Court held that the quoted phrase was unconstitutionally vague. 576 U.S. at 606.

However, movant was not convicted of violating the ACCA or sentenced pursuant to the ACCA. He cites no authority for the proposition that the decision in *Johnson*, which involved the ACCA, also applies to the “or otherwise” language in the kidnapping statute he was convicted of

violating. While the phrase “or otherwise” appears in both statutes, the ACCA includes additional language not found in the kidnapping statute.

Movant’s convictions did not involve the ACCA. As result, counsel’s failure to assert a challenge to the convictions based on *Johnson* did not fall below an objective standard of reasonableness. Nor did it cause movant to suffer prejudice.

D. Jury Instruction

Movant also faults counsel for failing to object to the jury instructions. He contends the instructions permitted the jury to arrive at a verdict that was not unanimous.

In general, the right to a jury trial carries with it the right to a unanimous jury. *United States v. Correa-Ventura*, 6 F.3d 1070, 1076 (5th Cir. 1993). The unanimity rule ensures that the jury has found guilt beyond a reasonable doubt. Disagreement as to critical facts may reflect such doubt. *Id.* at 1077. However, absolute factual concurrence is not mandatory. *Id.* at 1078.

The United States Court of Appeals for the Fifth Circuit has held that the jury need not concur on the benefit a defendant derived from holding the kidnapping victim. *Webster*, 162 F.3d at 329. The court stated that the act proscribed by the statute was the “holding of a victim.” *Id.* at 330. The benefit derived by the defendant, “ransom, reward, or otherwise,” merely adds purpose to the act of holding. *Id.* As a result, jurors need not agree on whether the benefit derived was ransom, reward, or otherwise. Unanimity on the factual basis of the benefit is not required. *Id.*

The court instructed the jury that it was required to find that movant kidnapped his victims “for ransom, reward, or some purpose or benefit.” *Maitland*, 1:14cr116 (doc. #155 at 163). The court further instructed the jury that it was not required to “unanimously agree on why the defendant kidnapped the person in question as long as you each find that he had some purpose or derived some benefit from the kidnapping.” *Id.* at 164.

Based on *Webster*, it cannot be concluded the court’s jury instructions were erroneous. Counsel would have therefore had no basis on which to object to the jury instructions. As a result, counsel’s failure to object did not fall below an objective standard of reasonableness and did not

result in prejudice.

E. Faretta Hearing

Movant states that even though he filed a series of documents with the court noting his displeasure with counsel and asking to proceed *pro se*, the court failed to hold a hearing as required by *Faretta v. California, supra*. Movant complained about both the assistant federal defender who was originally appointed to represent him, as well as the private attorney who was subsequently appointed. He states he asserted counsel failed to consult with him and failed to raise the type of defense he wished to pursue.

While a defendant may represent himself at trial, he must knowingly and intelligently waive his right to counsel and must clearly and unequivocally ask to proceed *pro se*. *United States v. Long*, 597 F.3d 720, 723-24 (5th Cir. 2010). Complaining about counsel or asking a court to replace counsel does not constitute a clear and unequivocal request to proceed *pro se*. *Id.* at 724. Once a defendant clearly asserts the right to represent himself, the court must hold a *Faretta* hearing to determine whether the defendant is knowingly and intelligently foregoing his right to counsel. *United States v. Cano*, 519 F.3d 512, 516 (5th Cir. 2008).

An assistant federal defender was originally appointed to represent movant. *Maitland*, No. 1:14cr116 (doc. #10). At movant's request, that attorney filed a motion to withdraw. *Maitland*, No. 1:14cr116 (doc. #38). The motion was granted and a private attorney was appointed. *Maitland*, No. 1:14cr116 (doc. #44). Less than three months later, movant filed a *pro se* motion asking that counsel file motions and investigate. *Maitland*, No. 1:14cr116 (doc. #63). In his motion, movant did not specifically ask that he be permitted to represent himself. He did state that he had not been given a chance to represent himself or seek another court appointed attorney. *Id.* at 3.

On November 17, 2015, a hearing was held on movant's motion. After the court asked movant whether he wanted the private attorney to withdraw from his case, movant stated he wanted the private attorney to represent him, although he did want the attorney to be in communication with him. *Maitland*, No. 1:14cv116 (doc. #149 at 14). The following colloquy then occurred:

THE COURT: Okay. So Mr. Maitland, do you want Mr. Makin to withdraw or not withdraw from your case?

THE DEFENDANT: Not at this moment. I do not want him to withdraw.

THE COURT: Not at this moment, okay, and so—

THE DEFENDANT: I'm trying to give him another chance. I mean—

THE COURT: Okay. So because you do not want him to withdraw you do not want to represent yourself then. Okay.

Id. at 16.

The record reflects that movant complained about counsel and sometimes indicated he wanted counsel replaced. However, at no point, during the hearing or otherwise, did movant clearly assert his right to represent himself. As a result, a *Faretta* hearing was not required. Counsel's failure to object to the court's failure to hold such a hearing therefore did not fall below an objective standard of reasonableness or result in prejudice.

F. Admission by Government

Finally, movant asserts that in a response he filed to a motion asking that his conviction on count 1 be vacated, the government admitted his conduct did not violate Texas state law. He states this admission renders his conviction on that count invalid.

After the verdict was returned, movant filed a motion asking that the verdict on Count 1 be vacated. *Maitland*, No. 1:14cr116 (doc. #114). Movant asserted, *inter alia*, that he could not be guilty of kidnapping his stepson because Section 20.01 of the Texas Penal Code defined the term "relative" to include a parent or stepparent and Section 22.02(a) made it an affirmative defense to the state offense of kidnapping that the actor was a relative of the victim. *Id.* at 5. In its response to the motion, the government stated that if movant had been indicted in a Texas state court, he would have had a valid defense to a charge of kidnapping as contained in Count 1. *Maitland*, No. 1:14cr116 (doc. #117 at 2). However, the government went on to argue that as this case was tried in federal court, the state statute was irrelevant. *Id.*

In denying movant's motion, the court agreed with the government's argument. *Maitland*, No. 1:14cr116 (doc. #120). The court stated that under the concept of dual sovereignty, the Texas Penal Code did not apply in federal court. *Id.* at 2. As a result, the affirmative defense contained in Section 22.02(a) was of no benefit to movant. *Id.*

The court correctly concluded that the cited provisions of the Texas Penal Code did not apply to movant's federal criminal case. Accordingly, counsel's failure to argue that the government's admission regarding Texas law entitled movant to an acquittal on Count 1 did not fall below an objective standard of reasonableness or cause movant to suffer prejudice.

Recommendation

This Motion to Vacate, Set Aside or Correct Sentence should be denied.

Objections

Within 14 days after receipt of the magistrate judge's report, any party may serve and file written objections to the findings of facts, conclusions of law and recommendations of the magistrate judge. 28 U.S.C. § 636 (b)(1)(C).

Failure to file written objections to the proposed findings of facts, conclusions of law and recommendations contained within this report within 14 days after service shall bar an aggrieved party from *de novo* review by the district court of the proposed findings, conclusions and recommendations and from appellate review of factual findings and legal conclusions accepted by the district court except on grounds of plain error. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1429 (5th Cir. 1996) (*en banc*); 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72.

SIGNED this the 16th day of October, 2024.



Christine L Stetson
UNITED STATES MAGISTRATE JUDGE

DOCKET NO. _____

BEFORE THE UNITED STATES SUPREME COURT

WAYNE MAITLAND,

Petitioner/Appellant/Defendant,

VS.

UNITED STATES OF AMERICA,

Respondant/Appellee/Plaintiff.

PROOF OF SERVICE

I, Wayne Maitland, do swear or declare that on this date, December 1, 2025, as required by Supreme Court Rule 29, I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR CERTIORARI on each party or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above document(s) in the BOP Legal Mail System for forwarding to the United States mail, properly addressed to each of those served and with first-class postage prepaid, or by delivery to a third party commercial carrier for delivery within 3 days.

The names and address of those served are as follows:

United States Supreme Court
Office of the Clerk
1 First Street, N.E.
Washington, D.C. 20543-0002

Mr. D. John Sauer
Solicitor General
United States Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

Michael W. Lockhart
United States Attorney's Office
550 Fannin Street, Suite 1250
Beaumont, Texas 77701

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 15th day of December, 2025.

Respectfully submitted,



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Pro se'