UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 25-2279

Nicholas Dwayne Jones

Petitioner - Appellant

v.

United States of America

Respondent - Appellee

Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:24-cv-00156-SMR)

JUDGMENT

Before LOKEN, SMITH, and KOBES, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

October 24, 2025

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

/s/ Susan E. Bindler

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

NICHOLAS DWAYNE JONES, Movant, v. UNITED STATES OF AMERICA, Respondent.	)	Case No. 4:24-cv-00156-SMR Crim. No. 4:20-cr-00075-SMR-HCA-1 ORDER ON MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE

Movant Nicholas Dwayne Jones filed this Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. [ECF No. 1]. He challenges his sentence imposed in *United States v. Jones*, 4:20-cr-00075-SMR-HCA-1 (S.D. Iowa) ("Crim. Case"). The Court takes judicial notice of the proceedings in that case.

I. BACKGROUND

A. Factual Background[1]

In March 2020, investigators identified a distribution network in which a confidential source could purchase cocaine from a middleman who procured it from a supplier. Crim. Case, PSR, ECF No. 339 ¶ 7. Between March and April 2020, law enforcement orchestrated four controlled buys during which the confidential source purchased cocaine from the middleman, who unknowingly served as an intermediary between the source and the suppliers, Nicholas Jones and his wife Nashia Jones. *Id.* ¶¶ 8–12. Officers conducting surveillance observed both Nicholas and Nashia delivering cocaine during these transactions, with Nashia traveling in vehicles registered

[1] This factual account is drawn from the Presentence Investigation Report ("PSR"). *See* Crim. Case, PSR, ECF No. 339. For clarity in this section alone, the Court refers to Nicholas Jones as "Nicholas" and Nashia Jones as "Nashia."

to Nicholas. Following each buy, surveillance teams tracked Nashia back to a Des Moines residence that she shared with Nicholas. *Id.* ¶¶ 9, 11.

On May 4, 2020, officers executed a search warrant at the Jones residence. *Id.* ¶ 13. The search yielded substantial evidence of drug trafficking and firearms possession. Officers recovered multiple firearms, including an I.O. Inc. Sporter rifle, a Springfield XDS .45 caliber pistol, and high-capacity magazines concealed beneath the bed. *Id.* ¶ 13(a). Additionally, investigators found a Ruger 95 nine-millimeter pistol in a bedroom safe and a loaded Ruger LC9 in Nashia's purse. *Id.* ¶ 13(b), (c). The search also revealed two digital scales bearing cocaine residue, cutting agents, drug ledger notes, more than 1,200 rounds of ammunition, and $154,000 in U.S. currency. *Id.* ¶ 13(d)–(h).

In post-*Miranda* interviews, Nicholas admitted he was unemployed, smoked marijuana daily, and acknowledged he was prohibited from possessing firearms due to prior felony convictions. *Id.* ¶ 14. Nevertheless, he admitted to purchasing both the handgun found under the mattress and the rifle. *Id.* Nicholas summarized that he possessed "weed, guns, and money." *Id.* Nashia subsequently corroborated Nicholas's regular marijuana use and confirmed her awareness that he was legally barred from possessing firearms. *Id.* ¶ 15. Based on the controlled buys and the evidence seized during the search, investigators determined Nicholas was responsible for approximately 3.32 kilograms of cocaine. *Id.* ¶ 16.

B. Procedural Background

In May 2020, the Government charged Jones with being a prohibited person in possession of firearms. Crim. Case, Complaint, ECF No. 1. Shortly thereafter, a federal grand jury returned a more comprehensive three-count indictment against Jones. Crim. Case, Indictment, ECF No. 16. The indictment charged him with conspiracy to distribute controlled substances (Count 1), possession of a firearm in furtherance of a drug trafficking crime (Count 2), and being a prohibited

person in possession of a firearm (Count 3). Additionally, the Government filed an enhancement information pursuant to 21 U.S.C. § 851, citing Jones's prior felony drug conviction as grounds for increased penalties. Crim. Case, Enhancement Information and Notice of Prior Conviction, ECF No. 21.

Following a four-day trial in December 2021, a jury convicted Jones on all counts. Crim. Case, Jury Verdict, ECF No. 242. The jury, through a special verdict form, made an explicit finding that Jones had been convicted of a prior felony drug offense in April 2011. Crim. Case, Jury Verdict, ECF No. 246. After trial, Jones obtained new counsel and filed numerous *pro se* motions and letters with the Court, including a motion to dismiss and several objections to the presentence investigation report. *See, e.g.,* Crim. Case, ECF Nos. 269, 320.

The Court sentenced Jones on April 18, 2022, imposing a total term of imprisonment of 322 months. Crim. Case, J., ECF No. 343. This sentence comprised 262 months on Count 1 (conspiracy to distribute a controlled substance) and 120 months on Count 3 (prohibited person in possession of a firearm), to run concurrently, followed by a consecutive term of 60 months on Count 2 (possession of a firearm in furtherance of a drug trafficking crime). *Id.* Jones appealed his conviction to the United States Court of Appeals for the Eighth Circuit, which affirmed the judgment on July 24, 2023. *United States v. Jones*, 74 F.4th 941, 952 (8th Cir. 2023). Subsequently, the United States Supreme Court denied Jones's petition for a writ of certiorari on February 20, 2024. *Jones v. United States*, 144 S. Ct. 862 (2024).

Following the denial of certiorari, Jones filed this motion under 28 U.S.C. § 2255. His motion raises five grounds for relief: (1) prosecutorial misconduct and *Brady* violations; (2) ineffective assistance of pretrial counsel; (3) ineffective assistance of trial counsel; (4) ineffective assistance of sentencing counsel; and (5) ineffective assistance of appellate counsel. [ECF No. 1].

II. LEGAL STANDARD

Section 2255 allows federal prisoners to challenge sentences that were "imposed in violation of the Constitution or laws of the United States," that were imposed without proper jurisdiction, that exceed statutory maximums, or that are otherwise subject to collateral attack. 28 U.S.C. § 2255(a). Although this provision offers "a remedy identical in scope to federal habeas corpus," it was never intended as a vehicle to challenge "all claimed errors in conviction and sentencing." *Sun Bear v. United States*, 644 F.3d 700, 704 (8th Cir. 2011) (citations omitted). Rather, the errors cognizable under Section 2255 are limited to constitutional and jurisdictional defects, or errors of such fundamental magnitude that they result in a "complete miscarriage of justice." *Davis v. United States*, 417 U.S. 333, 346–47 (1974). The Eighth Circuit has characterized the scope of available relief under Section 2255 as "severely limited." *Sun Bear*, 644 F.3d at 704.

The statutory text further constrains the availability of evidentiary hearings in these proceedings. If "the files and records of the case conclusively show" that a petitioner is not entitled to relief, no evidentiary hearing is required. *Voytik v. United States*, 778 F.2d 1306, 1308 (8th Cir. 1985) (citing 28 U.S.C. § 2255). This principle applies with particular force when a claim is "inadequate on its face or if the record affirmatively refutes the factual assertions upon which it is based." *Franco v. United States*, 762 F.3d 761, 763 (8th Cir. 2014) (citation omitted). Courts are not obligated to accept a petitioner's allegations as true if those claims are "contradicted by the record, inherently incredible, or conclusions rather than statements of fact." *Walker v. United States*, 810 F.3d 568, 580 (8th Cir. 2016) (citation omitted). This procedure preserves the remedial function of a Section 2255 motion while respecting the strong interest in finality in the criminal justice system.

III. DISCUSSION

A. Prosecutorial Misconduct Claims

Jones raises several claims alleging prosecutorial misconduct. He contends that the Government tampered with evidence, presented false witness testimony, and improperly handled his sentencing enhancement. The Court addresses each allegation in turn, examining whether any constitutional violation occurred. As explained below, the record contains no support for these claims, which are contradicted by the documented proceedings in this case.

1. Evidence Handling

Jones raises three distinct allegations of evidence tampering. [ECF No. 1 at 17–18]. First, he contends the government proceeded without probable cause for drug charges at his preliminary hearing. Second, he argues that search warrant photographs are missing from the record. Third, he asserts that drug evidence presented against him contained scratched barcodes, suggesting improper handling.

The probable cause argument fails because Jones was not charged with any drug offenses at his May 11, 2020 preliminary hearing. At that stage, the complaint contained only a firearms charge. *See* Crim. Case, Complaint, ECF No. 1. It was not until the following day that the grand jury returned an indictment that expanded the charges against Jones to include drug offenses and additional firearm violations. Crim. Case, Indictment, ECF No. 16.

As to the search warrant photographs, Jones correctly observes that they are absent from the record. However, the evidence introduced at trial established that law enforcement inadvertently left the camera at the search location and never recovered it. Jones previously raised this precise issue in his appellate brief and pursued it on direct appeal. The Eighth Circuit considered and rejected his sufficiency of the evidence argument. *Jones*, 74 F.4th at 950–52.

Claims resolved on direct appeal cannot be relitigated in a Section 2255 motion. *Bear Stops v. United States*, 339 F.3d 777, 780 (8th Cir. 2003) (citation omitted).

The claim about scratched barcodes on drug evidence fails for two reasons. First, evidentiary challenges regarding chain of custody lack constitutional or jurisdictional significance and thus fall outside the scope of Section 2255 motions. *Anderson v. United States*, 25 F.3d 704, 707 (8th Cir. 1994) (explaining that a motion to vacate, set aside, or correct sentence "is not a substitute for a direct appeal, and is not the proper way to complain about simple trial errors") (citations omitted). Second, Jones stipulated to the foundation and chain of custody of this evidence in his signed trial strategy document, which defense counsel appended to his affidavit submitted in these proceedings, and Jones raised no objection when this evidence was admitted at trial. [ECF No. 5 at 32]. He also failed to raise this issue on direct appeal, resulting in procedural default absent a showing of cause and prejudice. *Jennings v. United States*, 696 F.3d 759, 762–63 (8th Cir. 2012) ("[A] petitioner may not raise an issue before the district court for the first time in a § 2255 motion if the issue was not presented on direct appeal from the conviction.").

2. Witness Testimony and Evidentiary Presentation

Jones asserts he was unaware that certain witnesses would testify about his prior criminal convictions and that jurors were presented with evidence of unrelated crimes. [ECF No. 1 at 18]. The record thoroughly contradicts these contentions.

The Government properly filed all required notices well in advance of trial. On May 14, 2020—more than eighteen months before trial—the Government filed its Section 851 enhancement notice. Later, on July 28, 2021, it submitted a Rule 404(b) notice detailing evidence of other crimes. The Government also provided comprehensive witness lists on August 12, 2021 and December 2, 2021. *See* Crim. Case, ECF Nos. 21, 124, 158, 208.

Jones's counsel responded by filing a motion in limine challenging the admissibility of the Rule 404(b) evidence. Crim. Case, Mtn. in Limine, ECF No. 130. After careful consideration, the Court denied this motion. Crim. Case, Minute Entry, ECF No. 167.

Furthermore, Jones has already litigated this precise issue on direct appeal. The Eighth Circuit conducted a comprehensive analysis regarding the admissibility of the 2011 conviction and affirmed the Court's determination. The appellate court determined that the trial court properly exercised its discretion in admitting this evidence, recognizing its dual relevance: it established essential elements of the felon-in-possession charge while simultaneously demonstrating Jones's knowledge and intent with respect to the drug conspiracy. *Jones*, 74 F.4th at 950. Jones's allegations regarding false evidence and witness testimony are thoroughly refuted by the record, which shows proper notice, appropriate evidentiary challenges by defense counsel, and judicial confirmation of the evidence's admissibility.

3. Section 851 Enhancement Procedure

Jones incorrectly claims that the Court improperly amended his judgment to add the Section 851 enhancement after the jury's verdict without jury determination of his prior drug felony. [ECF No. 1 at 18]. The trial record thoroughly dispels this allegation as well.

The jury explicitly found that Jones had been convicted of a felony drug offense on April 20, 2011, as documented in the verdict form. Crim. Case, Jury Verdict, ECF No. 246. This specific factual determination—not any post-verdict judicial action—formed the basis for the sentencing enhancement. Jones's assertion thus fails for lack of both factual and legal support.

B. Ineffective Assistance of Counsel Claims

Jones also brings claims asserting a violation of his right to counsel protected by the Sixth Amendment to the United States Constitution. To prevail on a claim of ineffective assistance of counsel under Section 2255, a petitioner must satisfy the two-prong test established in *Strickland*

v. Washington, 466 U.S. 668 (1984). Under this standard, Jones must demonstrate both "that counsel's performance was deficient" and "that the deficient performance prejudiced the defense." *Id.* at 687.

The first prong requires showing counsel's representation "fell below an objective standard of reasonableness" when measured against prevailing professional norms. *Id.* at 688. Judicial review of counsel's performance is highly deferential. As the Supreme Court has emphasized, courts "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689. Accordingly, strategic choices made after thorough investigation are "virtually unchallengeable." *Id.* at 690–91.

The second prong requires demonstrating "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. A "reasonable probability" is one that undermines confidence in the outcome, but the petitioner need not show that counsel's deficient conduct more likely than not altered the result. *Id.* Even so, "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 112 (2011) (citing *Strickland*, 466 U.S. at 693).

A court may address the *Strickland* components in either order and need not analyze both if a petitioner makes an insufficient showing on one. *Strickland*, 466 U.S. at 697 ("If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, . . . that course should be followed."). The burden of establishing entitlement to relief rests entirely with the petitioner.

Jones asserts multiple ineffective assistance of counsel claims spanning throughout the entirety of his criminal proceedings. He challenges the performance of his pretrial and trial counsel, his sentencing counsel, and his appellate counsel, arguing that each attorney rendered constitutionally deficient representation that prejudiced his case. The Court examines these

allegations under the well-established *Strickland* standard, which requires Jones to demonstrate both deficient performance and resulting prejudice. The record, as detailed below, reveals that Jones received thorough, competent representation throughout each phase of his case.

1. Pretrial and Trial Counsel

a. Attorney-Client Communication and Case Strategy

Jones contends that his trial counsel, Attorney Van Plumb, failed to communicate with him adequately and developed no strategy beyond simply proceeding to trial. [ECF No. 1 at 32]. There is no support in the record for these assertions.

Attorney Plumb's affidavit and supporting exhibits document consistent and substantive communication throughout his representation of Jones. The record shows in-person meetings, written exchanges, and a signed trial strategy memorandum. *See* [ECF No. 5 at 32]. Jones himself actively participated in his defense, sending counsel written communications questioning procedural issues and challenging the government's evidence. *Id.* at 36–37. This documentary evidence reveals not deficient representation, but an engaged attorney-client relationship focused on strategic defense planning.

Attorney Plumb properly advised Jones about the Government's strong case and its likelihood of meeting its burden at trial. *Id.* at 32. Jones fully understood the evidence against him. During his detention hearing—at which Jones was present—United States Magistrate Judge Helen C. Adams specifically noted the substantial evidence of his involvement in a significant cocaine distribution operation, his knowing possession of firearms, and his accumulation of over $150,000 in cash assets. Crim. Case, Detention Hearing Transcript, ECF No. 48 at 36.

With respect to plea negotiations, the evidence establishes that Jones was fully informed. In August 2021, Jones acknowledged in writing that a plea offer would have reduced his sentence by approximately five years. [ECF No. 5 at 32–33]. More tellingly, in an October 2021 letter to

Attorney Plumb, Jones unequivocally stated: "I'm not ever going to plead guilty so I'm not going to entertain any plea deals." *Id.* at 36–37. At the final pretrial conference, Attorney Plumb made a record that he had advised Jones about plea offers and guidelines throughout the proceedings. When addressed by the Court, Jones himself confirmed his awareness of the December 2021 plea offers and his decision to reject them.

When challenging counsel's effectiveness in the plea negotiation context, the Supreme Court has established specific requirements beyond the general *Strickland* standard. To demonstrate prejudice in this context, a defendant must establish a "reasonable probability" of three distinct elements: first, that he would have accepted the plea offer but for counsel's deficient advice; second, that the plea would have proceeded without the prosecution withdrawing it or the court rejecting it; and third, that the ultimate outcome would have been more favorable than the result actually obtained. *See Lafler v. Cooper*, 566 U.S. 156, 164 (2012) (establishing three-part test for prejudice in rejected plea offer claims); *Missouri v. Frye*, 566 U.S. 134, 148 (2012) (clarifying that prejudice in missed plea cases focuses on whether defendant would have accepted the original offer).

Jones fails to make the first required showing. To succeed on this claim, he must offer credible and specific evidence—not mere conjecture—that he would have accepted a plea agreement had counsel provided different advice. *Roundtree v. United States*, 751 F.3d 923, 926 (8th Cir. 2014) (citing *Sanders v. United States*, 341 F.3d 720, 722 (8th Cir. 2003)). The record, however, reveals precisely the opposite intention.

The documentary record directly contradicts Jones's claims regarding plea negotiations. His October 2021 letter to Attorney Plumb contains an explicit, unequivocal rejection of any plea discussions. [ECF No. 5 at 36–37]. This contemporaneous written declaration—stating in categorical terms that he would never plead guilty or entertain any plea deals—demonstrates

Jones's fixed determination to proceed to trial, irrespective of any advice counsel might have provided.

Jones reinforced this position during the final pretrial conference, where he acknowledged to the Court that he was aware of the December 2021 plea offers and confirmed his decision to reject them. Crim. Case, Pretrial Conf. Transcript, ECF No. 292 at 8. During this same hearing, Attorney Plumb informed the Court that despite having advised Jones about both the strength of the government's case and the potential sentencing consequences, Jones remained adamant that he wanted to proceed with trial. *Id.* at 12.

As courts have consistently recognized, post-conviction expressions of regret about the decision to proceed to trial, standing alone, do not constitute ineffective assistance of counsel. *United States v. Lefkowitz*, 289 F. Supp. 2d 1076, 1088 (D. Minn. 2003). Without specific allegations that satisfy all three elements of the *Lafler* prejudice requirement, Jones's claim that counsel was ineffective regarding plea negotiations must fail.

b. Pretrial Motions and Investigation

Jones asserts that his counsel failed to file substantive pretrial motions. [ECF No. 1 at 24]. The case record plainly contradicts this claim. The docket reveals an extensive pretrial litigation conducted by Attorney Plumb. These efforts included multiple motions to suppress evidence, motions to compel discovery, and motions in limine addressing the admissibility of controlled buys, Rule 404(b) evidence, and audio and video recordings. *See, e.g.,* Crim. Case, ECF Nos. 89, 110, 130, 133, 174. The Court held evidentiary hearings on several of these motions, underscoring their substantive nature. *See, e.g.,* Crim. Case, ECF Nos. 118, 122, 190. Far from showing any deficiency, the record reveals counsel's pretrial motion practice was comprehensive and strategically targeted—rendering Jones's claim wholly without merit.

Jones also alleges inadequate pretrial investigation, but this claim falls considerably short of the specificity required to warrant relief under Section 2255. Vague assertions of investigative deficiencies, without more, cannot sustain an ineffective assistance of counsel claim. *See Hill*, 474 U.S. at 57–60 (requiring specific factual allegations to establish both deficient performance and prejudice, rather than general ineffective assistance claims). To establish constitutionally deficient investigation, a petitioner must identify with particularity what evidence counsel failed to discover, what witnesses should have been interviewed, or what documents should have been obtained. Nowhere in his petition does Jones identify any specific witness counsel should have interviewed, any particular document counsel should have obtained, or any forensic testing counsel should have conducted—offering instead only vague and conclusory allegations. Such generalized assertions, devoid of factual specificity, fall well short of the particularity required to warrant relief under Section 2255. *Voytik*, 778 F.2d at 1310 (requiring specific facts to support ineffective assistance claims).

Most critical to Jones's claim is his failure to establish prejudice under *Strickland* by demonstrating how any additional investigation would have altered the trial outcome—a particularly steep challenge given the substantial evidence arrayed against him: controlled drug buys, surveillance observations, physical evidence recovered from his residence, and his own post-*Miranda* admissions to law enforcement. *Strickland*, 466 U.S. at 694. Without explaining how further investigation would have created a "reasonable probability" of a different result, Jones cannot establish the prejudice necessary for Section 2255 relief. His claim of inadequate investigation therefore provides no basis for disturbing his conviction.

Furthermore, Attorney Plumb's affidavit documents a thorough approach to his client's defense, encompassing all essential aspects of pretrial preparation. [ECF No. 5]. These actions represent precisely the type of reasoned professional judgment that courts have consistently found

to satisfy constitutional standards. As the Supreme Court emphasized in *Strickland*, judicial scrutiny of counsel's performance must be "highly deferential," with courts required to "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689. Strategic choices about investigative priorities, particularly when made after substantial inquiry into the facts, fall squarely within this protected zone of professional judgment.

The law is clear that counsel need not exhaust every conceivable investigative avenue to provide constitutionally adequate representation. This principle applies with particular force where, as here, a defendant has expressed unwavering determination to proceed to trial regardless of the evidence against him. As evidenced by Jones's written statement that he would never plead guilty and his insistence on proceeding to trial despite counsel's candid assessment of the Government's case, additional investigation would likely not have altered the course of proceedings. The Supreme Court and the Eighth Circuit have consistently emphasized that courts must give substantial deference to strategic decisions counsel makes after thoroughly investigating the relevant law and facts. *Armstrong v. Kemna*, 534 F.3d 857, 864 (8th Cir. 2008) (citing *Strickland*, 466 U.S. at 690).

Jones fails to overcome the substantial deference afforded to counsel's strategic decisions. His vague assertions, unsupported by particularized evidence of investigative deficiencies or any showing that additional steps would have reasonably affected the outcome, provide no foundation for relief under Section 2255.

2. Sentencing Counsel

Jones claims that his sentencing counsel, Attorney Dennis McKelvie, failed to adequately review the PSR with him and neglected to file meaningful objections. [ECF No. 1 at 36]. There is no basis for these claims.

Attorney McKelvie's sworn affidavit documents his approach to PSR review. He first mailed Jones the draft PSR along with correspondence outlining his plan to discuss the document after Jones had examined it. [ECF No. 4 at 2]. The affidavit further reveals that Jones demonstrated marked resistance to counsel's professional guidance regarding potential objections. Rather than focusing on specific contestable portions of the report, Jones simply rejected the entire document outright. *Id.*

The record supports Attorney McKelvie's account of his competent representation. On March 6, 2022, Attorney McKelvie submitted formal objections to the PSR that faithfully represented Jones's position, stating: "The Defendant disputes every paragraph of the Draft Report that establishes a factual basis for the conviction. The Defendant maintains his innocence and states that he should not be sentenced at all." Crim. Case, Objection to PSR, ECF No. 307 at 1. Notably, when Jones subsequently filed his own *pro se* Motion to Appoint Counsel with attached PSR objections one week later, these objections contained no material distinctions from those Attorney McKelvie had already submitted. *See* Crim. Case, ECF No. 320.

At the sentencing hearing, Attorney McKelvie accurately characterized Jones's position, informing the Court that Jones objected to "everything." Crim. Case, Sent'g Hearing Transcript, ECF No. 363 at 5. The Court discussed the comprehensive nature of the defense objections, noting they encompassed multiple aspects of the PSR, including the offense conduct narrative, career offender designation, drug quantity calculation, drug premises enhancement, and criminal history computations. *Id.* at 4.

The record reflects Attorney McKelvie's comprehensive review process. At the sentencing hearing, Attorney McKelvie told the Court that he had mailed the draft PSR to Jones while in custody and subsequently arranged two separate video conferences specifically devoted to reviewing the document. *Id.* at 19. These detailed sessions occurred after Attorney McKelvie

noted that Jones had already examined the report "in its entirety." *Id.* During these conferences, counsel and client systematically examined each paragraph and sentence of the PSR. Attorney McKelvie expressed complete confidence that Jones had become thoroughly familiar with "every single paragraph, every fact that exists in that presentence report." *Id.* 19–20.

This contemporaneous account of counsel's methodical review process, coupled with Jones's demonstrated command of the PSR's contents—as evidenced by his specific objections to at least 46 distinct paragraphs—definitively refutes any claim of ineffective assistance. Throughout the proceedings, Jones consistently maintained his innocence, disputed the underlying criminal conduct, and rejected the jury's determinations. *See* Crim. Case, Objection to PSR, ECF No. 307 at 1. These circumstances establish not only that Attorney McKelvie delivered representation that easily met constitutional standards, but also that Jones suffered no prejudice whatsoever from counsel's handling of sentencing matters.

The thoroughness of counsel's review, the extent of Jones's participation in that process, and his demonstrated understanding of the PSR's contents all point to the same conclusion: Jones received precisely the type of effective assistance the Sixth Amendment guarantees.

3. Appellate Counsel

a. Confrontation Clause Arguments

Jones contends that Attorney McKelvie failed to advance a Confrontation Clause challenge on appeal, but the record categorically refutes this claim. [ECF No. 1 at 37]. Far from being neglected, this precise issue was comprehensively briefed and argued during direct appeal. Attorney McKelvie's appellate brief developed the argument that Jones's constitutional rights were violated when the confidential informant did not testify at trial, thereby depriving Jones of the opportunity to cross-examine this witness before the jury. The Eighth Circuit gave full consideration to this claim on its merits, ultimately concluding that because the confidential

informant's recorded statements were non-testimonial in nature, their admission did not violate Jones's confrontation rights. *Jones*, 74 F.4th at 952.

It is well established that when an issue has been "raised and decided on direct appeal," as the Confrontation Clause challenge indisputably was, that issue "cannot be relitigated" through a Section 2255 motion. *Davis v. United States*, 673 F.3d 849, 852 (8th Cir. 2012) (citation omitted). This reflects the fundamental principle embodied in the law of the case doctrine, which mandates that appellate determinations remain undisturbed in subsequent proceedings. *Baranski v. United States*, 515 F.3d 857, 861 (8th Cir. 2008). Jones's effort to reformulate this previously adjudicated claim under the guise of ineffective assistance cannot succeed. The law does not permit such tactical recharacterization of issues already presented to and resolved by the appellate court.

b. Communication and Issue Selection

Jones further alleges that appellate counsel failed to maintain adequate communication, impeded his participation in the appeal, and neglected to advance "stronger" appellate issues. [ECF No. 1 at 37]. These assertions lack specificity, offer mere conclusions, and stand contradicted by the record evidence.

Attorney McKelvie's sworn affidavit documents that he "communicated with Mr. Jones as necessary to prepare and file the appellate brief" and systematically forwarded all pertinent case materials, including "transcripts and briefs as they became available." [ECF Nos. 4 at 3; 4-1, 4-2, 4-3]. The record demonstrates not exclusion but active participation by Jones in the appellate process—he communicated directly with the Eighth Circuit, a fact the appellate court explicitly acknowledged in its opinion. *See Jones*, 74 F.4th at 952 n.4.

Regarding Jones's claim that counsel overlooked "stronger" issues, he fails to articulate with any particularity what these supposedly superior arguments might have encompassed. This absence of specificity is independently sufficient to defeat his claim. *See Blackledge v. Allison*,

431 U.S. 63, 75 n.7 (1977) (establishing that specific factual allegations are required to support ineffective assistance claims). Effective appellate advocacy demands strategic selection among potential arguments and courts properly presume that counsel's selection of appellate issues reflects sound strategy. *Jones v. Barnes*, 463 U.S. 745, 751 (1983) (recognizing that effective appellate advocacy requires winnowing out weaker arguments); *United States v. Brown*, 528 F.3d 1030, 1033 (8th Cir. 2008).

Attorney McKelvie's appellate strategy—featuring targeted arguments addressing confrontation rights, evidentiary challenges, and judicial bias—exemplifies the reasoned professional judgment to which courts accord substantial deference under *Strickland*. By selecting these arguments over others, counsel fulfilled his professional obligation to focus the appeal on the most promising issues.

To prevail on this claim, Jones would need to identify particular issues that should have been raised and establish a reasonable probability that raising them would have produced a different outcome in his appeal. *See Howard v. Gramley*, 225 F.3d 784, 791 (7th Cir. 2000). Having failed to make either showing, Jones cannot demonstrate deficient performance or prejudice. Accordingly, his ineffective assistance claims concerning appellate representation provide no basis for relief.

IV. CONCLUSION

For the foregoing reasons, the files and records of this case conclusively show that Jones is not entitled to relief. Accordingly, his Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 is DENIED. [ECF No. 1].

A certificate of appealability 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). This requires showing that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have

been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). Jones has not made such a showing. Accordingly, a certificate of appealability is DENIED. He may seek a certificate from a judge with the United States Court of Appeals for the Eighth Circuit.

IT IS SO ORDERED.

Dated this 29th day of May, 2025.

STEPHANIE M. ROSE, CHIEF JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 25-2279

Nicholas Dwayne Jones

Appellant

v.

United States of America

Appellee

Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:24-cv-00156-SMR)

ORDER

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

December 12, 2025

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

/s/ Susan E. Bindler