No. 25-3285

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SARI ALQSOUS,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

O R D E R

Before: READLER, Circuit Judge.

Sari Alqsous, a pro se federal prisoner, appeals the district court's judgment denying his motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 and moves this court for a certificate of appealability (COA). As discussed below, the court denies the motion.

In 2018, a jury found Alqsous and his co-defendants guilty of various fraud and fraud-related counts related to their employment as dentists at a public hospital that received federal funding. Alqsous was sentenced to an aggregate prison term of 151 months. This court affirmed. *United States v. Hills*, 27 F.4th 1155, 1170 (6th Cir. 2022).

Alqsous then, through counsel, filed his § 2255 motion to vacate, which he later supplemented and amended. He claims that trial counsel was ineffective for failing to (1) investigate and present certain witnesses, (2) properly advise him during plea negotiations, (3) retain a particular expert witness, and (4) move for a severance, that he is entitled to relief in view of (5) *Snyder v. United States*, 144 S. Ct. 1947 (2024), (6) *Fischer v. United States*, 144 S. Ct. 2176 (2024); and (7) *Ciminelli v. United States*, 143 S. Ct. 1121 (2023); and that (8) he is entitled to de novo resentencing in view of *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024).

The district court denied the motion and declined to issue a COA, reasoning that Alqsous's claims are meritless, untimely, procedurally defaulted, barred by the concurrent-sentencing doctrine, or not cognizable on collateral review.

Now proceeding pro se, Alqsous seeks a COA on his first, second, third, and fifth claims. Because Alqsous has not requested a COA on his fourth, sixth, seventh, or eighth claims, he has forfeited review of those claims. *See Jackson v. United States*, 45 F. App'x 382, 385 (6th Cir. 2002) (per curiam).

A court may grant a COA "only if the applicant 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, 330 (2003) (quoting *Miller-El v. Johnson*, 261 F.3d 445, 449 (5th Cir. 2001)). An applicant satisfies this standard if he shows "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El*, 537 U.S. at 327 (citing *Slack v. McDaniel*, 529 U.S. 473, 481 (2000)).

Claim One

Alqsous claims that trial counsel was ineffective for failing to investigate and interview "key fact witnesses." Application for a Certificate of Appealability 3. He identifies 11 witnesses who he claims "would have buttressed [his] defense that he in fact worked more than 40 hours per week consistent with the employment policies of [the hospital] in place at that time," which would "undermin[e] the government's fraud charges against [him] and otherwise demonstrat[e] that [the hospital] suffered no loss." R. 693, PageID 25520.

To prevail on an ineffective-assistance-of-counsel claim, a petitioner must establish (1) that counsel's performance was deficient and (2) that the deficient performance prejudiced the litigant's defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Counsel's performance is considered deficient when "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* To establish prejudice, a

petitioner must show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id*. at 694.

The district court rejected this claim for several reasons. First, it reasoned that the claim was speculative and unsupported because Alqsous failed to provide any affidavits or other evidence showing what testimony the witnesses would have offered or that the witnesses would have been willing to testify in the first instance. No reasonable jurist could disagree. *See Tinsley v. Million*, 399 F.3d 796, 810 (6th Cir. 2005) (rejecting an ineffective-assistance claim based on the failure to call witnesses because the petitioner failed to introduce affidavits or other "evidence showing that they would have offered specific favorable testimony" and that "they would have testified"); *Clark v. Waller*, 490 F.3d 551, 557 (6th Cir. 2007) (same).

Second, the district court reasoned that Alqsous could not show prejudice—i.e., a reasonable likelihood that the witnesses' testimony would have changed the outcome of his trial. Again, no reasonable jurist could disagree. For example, the district court explained that the witnesses who purportedly would have testified that Alqsous worked more than 40 hours per week (e.g., dental hygienist Robin Wyatt) would not have benefitted Alqsous, as such testimony "would not have supported the argument that his flexible schedule, or any other charged employment benefit from [his superior and co-defendant], was not the result of bribery." R. 759, PageID 26060. As another example, testimony that Alqsous "provide[d] high quality care to his patients," R. 693, PageID 25524 (alteration in original), the district court explained, "would not have dispelled the notion that Alqsous engaged in bribery" and would have been cumulative of other trial testimony that "Alqsous was one of the most productive members of the [hospital] staff." R. 759, PageID 26060. Trial counsel's failure to present cumulative evidence does not constitute ineffective assistance. *See, e.g.*, *Hartman v. Bagley*, 492 F.3d 347, 361 (6th Cir. 2007) (quoting *Clark v. Mitchell*, 425 F.3d 270, 286 (6th Cir. 2005)). Furthermore, the district court explained that some of the proposed testimony would have damaged the defense (for instance, one proposed witness, Angela Marie Kane, was herself involved in the bribery conspiracies). And trial counsel's failure to present unfavorable testimony does not constitute ineffective assistance. *See Millender v.*

Adams, 376 F.3d 520, 527 (6th Cir. 2004); *Goldsby v. United States*, 152 F. App'x 431, 436 (6th Cir. 2005); *accord United States v. Gonzalez-Lopez*, 548 U.S. 140, 147 (2006).

In the end, reasonable jurists would agree that Alqsous has not overcome the presumption that trial counsel's tactical decision not to call the 11 identified witnesses was sound trial strategy. *See Strickland*, 466 U.S. at 690; *see also Darden v. Wainwright*, 477 U.S. 168, 185-87 (1986). They therefore would agree with the district court's rejection of Alqsous's first ineffective-assistance claim.

Claim Two

Alqsous claims that counsel was ineffective during plea negotiations. In particular, he claims that "had [he] been made aware of [his] sentencing exposure [(i.e., the possibility of 12 or more years)], by going to trial, [he] would have opted to plead guilty." R. 693-1, PageID 25532. In his declaration under penalty of perjury, Alqsous reiterated these allegations and averred that counsel told him that his "maximum custodial sentence would be 3 years" if he pleaded guilty. *Id.*

To show that trial counsel's deficient performance during plea negotiations prejudiced him, Alqsous must demonstrate a reasonable probability that (1) the government would have made, and he would have accepted, a plea offer, (2) the district court would have accepted the plea agreement, and (3) his sentence under the plea agreement would have been less severe than the sentence he actually received. *See Lafler v. Cooper*, 566 U.S. 156, 164 (2012). But Alqsous cannot merely claim after the fact that he would have accepted a plea offer if he had gotten different advice from trial counsel. *See Shimel v. Warren*, 838 F.3d 685, 698 (6th Cir. 2016) (quoting *Pilla v. United States*, 668 F.3d 368, 373 (6th Cir. 2012)). Rather, he must point to contemporaneous evidence that shows that he was willing to plead guilty. *See Wallace v. United States*, 43 F.4th 595, 603-04 (6th Cir. 2022) (citing *United States v. Hobbs*, 953 F.3d 853, 857 (6th Cir. 2020)).

The district court rejected this claim, reasoning that it was defied by the record. Indeed, at a pre-trial colloquy pursuant to *Missouri v. Frye*, 566 U.S. 134 (2012), it was established that the government never extended a formal plea offer. This fact is detrimental to Alqsous's claim. *See Lafler*, 566 U.S. at 164; *see also Thompson v. United States*, 728 F. App'x 527, 535 (6th Cir. 2018)

(stating that in the absence of a valid plea offer, a petitioner "would be hard-pressed to show a reasonable probability that the outcome of the plea process would have been different with competent advice"); *Merzbacher v. Shearin*, 706 F.3d 356, 370 (4th Cir. 2013) ("The lack of definition in the plea offer makes it substantially harder to determine it likely that a plea acceptable to [the petitioner] would have been 'entered without the prosecution canceling it or the trial court refusing to accept it.'" (quoting *Frye*, 566 U.S. at 147)). Further weakening Alqsous's claim is the district court's assertion that "it is likely that [it] would not have accepted Alqsous's guilty plea" given his "apparent unwillingness to admit" his criminal conduct, even if a plea offer had been extended to him. R. 759, PageID 26072-73 n.8.

Moreover, the record indeed refutes Alqsous's claim. At the pre-trial *Frye* colloquy, Alqsous confirmed that he was "aware of the statutory penalties" for the charged offenses and "the advisory guideline sentence that might apply in [his] case," as he had discussed with his attorney. R. 391, PageID 9263-64. Thereafter, the government stated the maximum statutory penalties that Alqsous faced for each count. When asked if he "underst[oo]d the maximum statutory penalties for each offense," Alqsous replied in the affirmative. *Id.*, PageID 9267. The government then stated Alqsous's estimated advisory guidelines range: 292 to 365 months of imprisonment. Alqsous again affirmed that he understood the estimated "advisory guideline sentencing range should [he] be convicted of all counts." *Id.*, PageID 9269. He also affirmed that he had been given enough time to "discuss resolving the case with [his] attorney" and that it was his "desire to proceed to trial in light of what may have been offered to [him] versus the maximum potential advisory guideline sentence and the maximum statutory penalties." *Id.*, PageID 9270. At the end of the colloquy, the district court thus found that Alqsous had "been informed of the likely consequences if convicted following trial" and that Alqsous knowingly, intelligently, and voluntarily exercised his right to proceed to trial. *Id.*, PageID 9271-72. And in rejecting this ineffective-assistance claim, the district court similarly concluded that the record shows that Alqsous received accurate information about his sentencing exposure and therefore made an informed choice to go to trial. Alqsous's "[s]olemn declarations in open court carry a strong

presumption of verity," *Blackledge v. Allison*, 431 U.S. 63, 74 (1977), which he has not overcome, *see Ramos v. Rogers*, 170 F.3d 560, 565-66 (6th Cir. 1999) (stating that, where the district court conducts a proper plea colloquy, a defendant cannot show prejudice arising from allegedly misleading information provided by his attorney). No reasonable jurist therefore could debate the district court's resolution of ground two.

Claim Three

Alqsous claims that trial counsel was ineffective for failing to retain an expert to opine on "dentistry billing practices." R. 693, PageID 25526. According to Alqsous, an expert could have testified that he "accrued over $130,000 in sick time" and that his "pattern of work was within normal parameters," could have "corroborated fact witnesses," and could have clarified the billing procedures were "not nearly as profitable [as the] Government alleged." *Id.*

Fatal to this claim, the district court reasoned, was Alqsous's failure to show that an expert witness would have provided favorable testimony and that the testimony would yield a reasonable probability that, but for counsel's failure to retain him, the result of the proceeding would have been different. Indeed, the speculative impact of expert testimony from an unidentified expert—i.e., that claimed by Alqsous here—is insufficient to support an ineffective-assistance claim.[1] *See Hanna v. Ishee*, 694 F.3d 596, 619 (6th Cir. 2012); *Tinsley*, 399 F.3d at 806. "When reviewing the adequacy of counsel's performance, the Supreme Court has often explained that strategic decisions—including whether to hire an expert—are entitled to a strong presumption of reasonableness." *Clardy v. Pounds*, 126 F.4th 1201, 1209 (6th Cir.) (citation modified). Here, the district court determined that Alqsous failed to overcome that strong presumption of reasonableness largely because "trial counsel thoroughly cross-examined the government's witnesses on flexible schedules and other employment-related benefits that Alqsous and his

[1] Although Alqsous identified an expert in his supplement to his § 2255 motion, he later clarified that he "no longer is relying" on that expert. R. 704, PageID 25577. Alqsous's attempt in his COA motion to revive his reliance on that expert is unavailing. *See United States v. Denkins*, 367 F.3d 537, 542-44 (6th Cir. 2004) (concluding that the defendant waived an issue by expressly abandoning it before the district court).

co-defendants allegedly received." R. 759, PageID 26075. "Such reliance on cross-examination can be a reasonable way to expose weakness in government witnesses' testimony." *United States v. Smith*, No. 24-1193, 2025 WL 1203189, at *3 (6th Cir. Apr. 25, 2025) (citing *Clardy*, 126 F.4th at 1209). That is precisely what happened here. No reasonable jurist therefore could debate the district court's rejection of Alqsous's third claim.

Claim Five

Alqsous claims in ground five that *Snyder* invalidates three bribery convictions: Count 2, under 18 U.S.C. § 1951; Count 3, under 18 U.S.C. § 371; and Count 5, under 18 U.S.C. § 666. *Snyder* held that § 666 does not make "it a crime for state and local officials to accept *gratuities*—for example, gift cards, lunches, plaques, books, framed photos, or the like—. . . given as a token of appreciation *after* the official act." 144 S. Ct. at 1951 (second emphasis added). According to Alqsous, the three bribery convictions listed above must be vacated because the jury instructions allowed him to be convicted based on payments made *after* the official acts in question.

The district court determined that this claim is barred by the concurrent-sentencing doctrine, pursuant to which a "court may decline to hear a substantive challenge to a conviction when the sentence on the challenged conviction is being served concurrently with an equal or longer sentence on a valid conviction." *Dale v. Haeberlin*, 878 F.2d 930, 935 n.3 (6th Cir. 1989). The "doctrine functions '[a]s a species of harmless-error analysis.'" *Amaya v. United States*, 71 F.4th 487, 491 (6th Cir. 2023) (alteration in original) (quoting *Al-'Owhali v. United States*, 36 F.4th 461, 466 (2d Cir. 2022)). It "allows a court to 'exercise its discretion not to review an issue where it is clear that there is no collateral consequence to the defendant and the issue does not otherwise involve a significant question meriting consideration.'" *United States v. Wade*, 266 F.3d 574, 578 (6th Cir. 2001) (quoting *United States v. Hughes*, 964 F.2d 536, 541 (6th Cir. 1992)).

The district court first noted that Alqsous's *Snyder* challenge applies only to Count 3, for which he received a 60-month prison sentence, and Count 5, for which he received a 120-month prison sentence. The court thoroughly explained that Alqsous's sentence on Count 2, for Hobbs Act bribery under § 1951, is unaffected by *Snyder* because the challenged language from that case

(regarding the acceptance of gratuities for past official acts, *see* 144 S. Ct. at 1951) appeared only in the jury instructions for Counts 3 and 5—not Count 2 (or any other bribery counts). And because Alqsous would still be required to serve his aggregate concurrent 151-month prison sentence for the other counts that remain unaffected by the adjudication of his § 2255 motion (including Count 2), any relief under ground five "cannot affect [Alqsous's] release from custody." R. 759, PageID 26083. No reasonable jurist could disagree.

Alqsous disagrees, though, arguing that applying the concurrent-sentencing doctrine "carries significant adverse collateral consequences beyond the sentence itself, which a RICO conviction undoubtedly does." Application for a Certificate of Appealability 14. We have recognized that "adverse collateral consequences" include a "delay of eligibility for parole, a harsher sentence under a recidivist statute for any future offense, credibility impeachment, and societal stigma." *United States v. DeCarlo*, 434 F.3d 447, 457 (6th Cir. 2006) (quoting *Rutledge v. United States*, 517 U.S. 292, 302 (1996)). But there are two issues with Alqsous's argument. First, such remote consequences, however, "are most salient on direct appeal, not on a collateral challenge." *Buffin v. United States*, 513 F. App'x 441, 448 (6th Cir. 2013). Second and in any event, Alqsous has not made a substantial showing that he will suffer adverse collateral consequences independent of his RICO and Hobbs Act convictions and sentences, which were unaffected by *Snyder*, because he does not identify any unique consequences flowing from Counts 3 and 5. No reasonable jurist therefore could debate the district court's rejection of ground five based on the concurrent-sentencing doctrine.[2]

Evidentiary Hearing

Alqsous seeks a COA for the district court's denial of an evidentiary hearing. In a § 2255 proceeding, a court should grant an evidentiary hearing where a petitioner creates "a legitimate dispute over a legally important fact." *Wallace*, 43 F.4th at 607. No hearing is necessary when a

[2] The district court also determined that this claim was subject to denial because it is procedurally defaulted. But because reasonable jurists would agree that the claim does not warrant § 2255 relief in view of the concurrent-sentencing doctrine, this court need not conduct the alternative procedural-default analysis.

movant's claims "cannot be accepted as true because they are contradicted by the record, inherently incredible, or conclusions rather than statements of fact." *Arredondo v. United States*, 178 F.3d 778, 782 (6th Cir. 1999) (quoting *Engelen v. United States*, 68 F.3d 238, 240 (8th Cir. 1995)). Here, as stated above, Alqsous's claims are contradicted by the record or meritless as a matter of law. Therefore, reasonable jurists would not debate the district court's denial of an evidentiary hearing.

New Claims

To the extent that Alqsous seeks to raise claims that are new and unrelated to the ones raised in his motion to vacate (e.g., that he is entitled to relief in view of *Yates v. United States*, 354 U.S. 298 (1957)), the court declines to consider them because they are raised for the first time on appeal. *See, e.g.*, *United States v. Watroba*, 56 F.3d 28, 29 (6th Cir. 1995); *Chandler v. Jones*, 813 F.2d 773, 777 (6th Cir. 1987).

The court therefore **DENIES** the motion for a COA.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk