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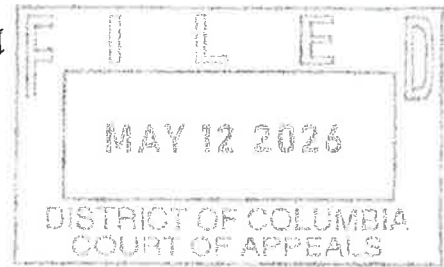
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APPENDIX A

Unpublished Judgment issued by the District of Columbia Court of Appeals, *Fowler v. United States*, No. 25-CO-0396 (May 12, 2026)

**District of Columbia
Court of Appeals**



No. 25-CO-0396

MARC SHELTON FOWLER,
Appellant,

v.

2006-CF1-025926

UNITED STATES,
Appellee.

BEFORE: Howard and Shanker, Associate Judges, and Thompson, Senior Judge.

J U D G M E N T

On consideration of appellant's motion for summary reversal, appellee's opposition and cross-motion for summary affirmance, and the record on appeal, it is

ORDERED that appellant's motion for summary reversal is denied. *See Watson v. United States*, 73 A.3d 130, 131 (D.C. 2013) (citing *Oliver T. Carr Mgmt., Inc. v. Nat'l Delicatessen, Inc.*, 397 A.2d 914, 915 (D.C. 1979) (per curiam)). It is

FURTHER ORDERED that appellee's motion for summary affirmance is granted. *See id.* Upon review of the record, we conclude that the trial court did not abuse its discretion in denying appellant's D.C. Code § 23-110 motion because even if appellant's attorneys failed to provide effective assistance, appellant did not establish prejudice. *See Gardner v. United States*, 140 A.3d 1172, 1195 (D.C. 2016) (explaining that this court reviews a trial court's denial of a § 23-110 motion for abuse of discretion); *see also Strickland v. Washington*, 466 U.S. 668, 687 (1984) (stating that to establish ineffective assistance of counsel, appellant must demonstrate that his trial counsel's representation fell below an objective standard of reasonableness and that he suffered prejudice as a result of the allegedly deficient performance). The trial court's conclusion that appellant would not have accepted a plea offer even if fully informed of the offer and his sentencing exposure is supported by the evidence. *See Blackmon v. United States*, 215 A.3d 760, 764 (D.C. 2019) ("[A] defendant who contends that his counsel's deficient advice caused him to reject a plea offer must show that the outcome of the plea process would have been different with competent advice." (internal quotation marks and brackets omitted)). Appellant testified that he never told the judge at any of the status

No. 25-CO-0396

hearings that he wanted to plead guilty, he never told his attorneys that he had committed the offenses or wanted to plead guilty, he told his mother on a phone call from jail that he was innocent, and he was aware that the government was trying to find a witness needed for trial. Additionally, his counsel testified that she remembered appellant being eager to go to trial and did not recall him expressing interest in a plea offer. Appellant's arguments to the contrary are unavailing. First, appellant's expression of innocence to his mother combined with his counsel's testimony that he was eager to go to trial supports the permissible inference that his disinterest in a plea offer was not solely based on any failure to be properly informed. Second, the fact that the plea offer letter was dated five days before the first time the government revealed that it was trying to find the missing witness does not mean that he could not have been influenced by the possibility that the trial court would dismiss the case if the witness was not found. Appellant would not have necessarily learned about the offer on the same day as the letter was written. The fact that the witness was found prior to the alleged second plea offer does not negate the trial court's other findings regarding appellant's general disinterest in pleading guilty. Further, even if appellant did not understand the legal nuances concerning witness unavailability, his attorney moved to dismiss the case based on the missing witness multiple times in his presence, which would have conveyed that the case could be dismissed if the witness was not found. Lastly, the trial court limited the comparison of appellant's case with *Blackmon* to the fact that both appellants were not inclined to accept a plea offer even if they understood their sentencing exposure, which was an accurate comparison. It is

FURTHER ORDERED and ADJUDGED that the order on appeal is affirmed.

ENTERED BY DIRECTION OF THE COURT:

Jason Lavey for

JULIO A. CASTILLO
Clerk of the Court

Copies e-served to:

Honorable Michael O'Keefe

Director, Criminal Division

No. 25-CO-0396

Natasha Ravisetti, Esquire

Chrisellen R. Kolb, Esquire

Kevin Birney, Esquire

Assistant United States Attorneys

cml

APPENDIX B

Unpublished Order issued by Associate Judge Michael K. O’Keefe
Denying motion to vacate convictions, *United States v. Fowler*, No. 2006
CF1 025826, District of Columbia Superior Court (April 18, 2025)

**SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION – FELONY BRANCH**

UNITED STATES

v.

MARC FOWLER

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**Case No. 2006 CF1 025926
Judge Michael K. O’Keefe**

ORDER

On May 7, 2019, Defendant Marc Fowler filed a *pro se Motion to Vacate, Set Aside or Correct Conviction and Sentence by a Person in Federal Custody Pursuant to (D.C. Code 23-110)* (“Motion”). Defendant asks the Court to vacate his conviction and allow him to accept the government’s plea offer made on the eve of trial in 2008. Mr. Fowler asserts that although he received a written copy of the plea offer and his trial “counsel told [him] of the offer, [s]he failed to provide him with competent and meaningful advice necessary for Mr. Fowler to make an informed and intelligent decision on whether to accept the offer.” Motion at 4. In his Motion, Mr. Fowler alleges that his lawyer assured him that if he went to trial, he would be facing a maximum of 18 years in prison, instead of the 44.5 years he received. *Id.* at 5. Mr. Fowler claims that because his lawyer failed to inform him of the consequences of losing at trial, he was unable to appreciate the value of the plea offer. *Id.* at 7. The Government opposes Mr. Fowler’s motion, claiming it is procedurally barred and meritless. For the reason set forth below, the Court denies Mr. Fowler’s Motion.

I. BACKGROUND¹

¹ Every court hearing was recorded on Courtsmart, and both the government and Mr. Fowler did not object to this judicial officer listening to the hearings leading up to the trial in 2008. The content of the hearings provides important context under which the plea offer was made to Mr. Fowler on the eve of trial in 2008. Attached as an

a. Trial

On August 10, 2002, at 7:50 in the morning, in front of 1271 4th Street, NE, Marc Fowler approached Allen Price from behind and shot him in the head and neck. Miraculously, Allen Price survived. Undeterred, several months later, on January 31, 2003, at 9:37 a.m., Mr. Fowler saw Mr. Price again at a Hess gas station at 5th Street and Florida Avenue, NE. Mr. Fowler approached Mr. Price and shot him in the head again, killing him. Physical evidence connected Mr. Fowler to the August 10, 2002, shooting. There was grainy video of the January 31, 2003, shooting, but several witnesses who knew Mr. Fowler testified that he admitted to shooting Mr. Price, including his girlfriend, Tralesha Faison. In January 2006, Ms. Faison had called the Prince George's County Police Department and on a recorded 911 call stated that her boyfriend, Marc Fowler, told her that he killed Mr. Price at a gas station in Washington, D.C.

The government considered Ms. Faison to be an essential witness to its case. Ms. Faison was subpoenaed to the grand jury. During the course of the grand jury proceeding, Ms. Faison asserted that she was not competent to testify because she suffered from auditory and visual hallucinations. The issue of competency was referred to Chief Judge Rufus King. After months of delay, Ms. Faison was examined by a psychologist and determined to be malingering. At that point, she was ordered to testify before the grand jury and did so.

Mr. Fowler was not arrested until November 2006. His case was assigned to an experienced trial attorney with the D.C. Public Defender Service ("PDS"), Maribeth Raffinan.² Ms. Raffinan had been with PDS since 1999 and had worked at the Federal Public Defender Service for the District of Columbia prior to that. Ms. Raffinan withdrew from Mr. Fowler's case

appendix to this Order is a chart summarizing all the court hearings in the case and incorporating Mr. Fowler's visitation log at the DC Jail that was admitted into evidence by Defendant.

² In 2010, Ms. Raffinan was appointed and confirmed as an Associate Judge of the D.C. Superior Court.

in April 2007 while on maternity leave, but later resumed representation in October 2007. The case was initially scheduled for trial on November 6, 2007, but due to the change in counsel, the defense moved to continue the trial to January 15, 2008, and then again to March 26, 2008.

On March 21, 2008, the Assistant United States Attorney handling the case made a plea offer to Mr. Fowler and sent it by U.S. Mail to Defendant and via fax to defense counsel.³ The plea offer read:

The government is extending the following plea offer in this case: If your client pleads guilty to one count of Assault with a Dangerous Weapon and one count of Second Degree Murder while Armed, the government will dismiss the remaining counts at sentencing.

Pet'r's Closing 23-110 Arg. Ex. A, at 1, July 14, 2024. On the morning of March 25, 2008, government counsel indicated she had not heard a response from defense counsel regarding the plea offer. *See* Pet'r's Closing 23-110 Arg. Ex. B, at 3. On March 26, 2008, the parties were in court for the first day of trial and nothing was mentioned on the record about the existence, rejection, or acceptance of any plea offer. The hearing focused on the fact that the government was not ready for trial because an essential witness—Ms. Faison—could not be found. Defense counsel moved the court to dismiss the charges and release Mr. Fowler. The Honorable Frederic Weisberg denied the motion to dismiss, stating that good cause had been shown and that Ms. Faison appeared to be evading service.

On March 27, 2008, the parties returned to court and the government indicated that they believed Ms. Faison was actively evading efforts to locate her. Judge Weisberg denied another motion to dismiss, but stated he would give the government until Monday, March 31, 2008, to produce the witness. Judge Weisberg instructed the government to decide whether to proceed trial without Ms. Faison or else he might agree to dismiss the case or release Mr. Fowler.

³ March 21, 2008, was Good Friday before the Easter Holiday in 2008. The fax was sent at 4:30 PM.

On March 31, 2008, the government indicated that the witness had still not been found and asked for a two-week continuance while the U.S. Marshal Service continued efforts to locate Ms. Faison. Defense counsel moved to dismiss which Judge Weisberg denied but instructed the parties to come back the next day for an update. On April 1, 2008, U.S. Marshal Tommy O'Brien informed the court that there was a high probability they would apprehend Ms. Faison by the next morning and that he had 11 U.S. Marshals working on the case. The defense renewed its motion to dismiss, and Judge Weisberg deferred ruling on the motion, but indicated he may grant it. The case was recalled at 1:30 pm, but there were no updates. Defense moved again to dismiss or release Mr. Fowler. Judge Weisberg stated that based upon his review of the record, there was a deliberate attempt by Ms. Faison to avoid testifying but recognized that efforts were being made to locate her. Judge Weisberg decided to carry the case day by day. On April 4, 2008, the U.S. Marshals located and detained Ms. Faison. The parties appeared on April 7, 2008, and agreed to begin trial on April 22, 2008.

On May 1, 2008, the jury sent a note indicating they had reached a unanimous verdict and convicted Mr. Fowler on all counts submitted to them. Judge Weisberg sentenced Mr. Fowler on July 18, 2008, to an aggregate term of 534 months: 360 months for first-degree murder, 114 months for assault with intent to kill while armed, and 60 months for obstruction of justice to run consecutive to each other. Mr. Fowler timely noted his appeal and his conviction was affirmed by the D.C. Court of Appeals on November 10, 2011. Mr. Fowler did not raise ineffective assistance of counsel on appeal.

Eleven years after his conviction, Mr. Fowler filed the following Motion and raises ineffective assistance of counsel for the first time. On January 15, 2020, the government filed *Government's Opposition to Defendant's Pro Se Motion to Vacate, Set Aside or Correct*

Conviction and Sentence by Person in Federal Custody Pursuant to D.C. Code § 23-110

(“Government Opposition”). Defendants have a presumptive right to a prompt hearing. D.C. Code § 23-110(c); *Hollis v. United States*, 623 A.2d 1229, 1232 (D.C. 1993). Accordingly, this Court held a hearing at the convenience of the parties.

b. Motions Hearing

The Court held a hearing on the Motion on May 31, 2024, sixteen years after the trial occurred, in which both Mr. Fowler and his trial counsel testified. Not surprisingly, both witnesses had difficulty recalling the events leading up to the trial in 2008. Notwithstanding the assertions made in his Motion, Mr. Fowler’s testimony was hampered by a lack of memory and his testimony did not match the claims of ineffectiveness he made in his Motion. Ms. Raffinan testified and had a memory of Mr. Fowler and the facts of the case, as well as the trial. However, Ms. Raffinan had limited recollection of specific conversations with Mr. Fowler or of plea negotiations, if any.

Testimony of Mr. Fowler

Mr. Fowler was sworn in and testified on his own behalf. His lawyer asked frequent leading questions and had to ask Mr. Fowler to speak up several times when his voice dropped off and was difficult to hear. Mr. Fowler repeatedly remarked that he could not recall specifics because the trial occurred so long ago. Mr. Fowler testified that he remembered being arrested in November 2006 and that Ms. Raffinan was his assigned counsel. In the 18 months that the case progressed through Superior Court, Mr. Fowler could only recall one jail visit by Ms. Raffinan and one visit by a male lawyer in the case. He stated that Ms. Raffinan met with him in November shortly after he was arrested and spoke about the crime he was charged with. Mr. Fowler acknowledged that he knew the charge was murder and that it was serious, but did

not know how much time he was facing. Mr. Fowler stated that Ms. Raffinan left the case at some point and a male lawyer took over. The male lawyer represented him for a while, but he does not recall him talking about the charges or the penalty. According to Mr. Fowler, neither lawyer discussed any plea offer. Mr. Fowler recalled that there were many hearings in the case, but that he could not recall most of them.

Regarding his discussion of the case, Mr. Fowler testified that he never told Ms. Raffinan that he wanted to plead guilty or that he shot Mr. Price. Mr. Fowler acknowledged that he received a written plea offer from the government in the mail, but he claims he did not discuss it with his lawyer. Mr. Fowler testified that Ms. Raffinan did not discuss the government's plea to second degree murder but on April 22, 2008, the day he started trial, Ms. Raffinan came back to the cell block behind the courtroom and handed him a piece of paper with the number 18 written on it. He said he assumed that it was the amount of time the plea would be capped at, stating, "I don't know what else it could be." 5/31/24 Tr. 36 : 2. Mr. Fowler said he rejected the supposed plea offer and Ms. Raffinan walked out because, according to him, she did not have any time to talk about it. Mr. Fowler did not testify that someone told him the maximum exposure at trial was 17 to 18 years as he alleged in his Motion. Mr. Fowler testified that he would have taken a plea that offered up to 20 years.

Testimony of Trial Counsel

Trial counsel testified that while she did not have a specific recollection of her interactions with Mr. Fowler, she "certainly remember[ed] the case and I remember[ed] the trial. So I don't have a specific recollection, but I certainly remember visiting him at the jail and discussing the case with him and discussing the—what the witnesses might testify about, what the trial might look like, and so no specific recollection about the discussion of the plea or the

maximum sentences, but it was my practice to do that.” 5/31/24 Tr. 48 : 18-25, 49 : 1.

Ms. Raffinan testified that her practice was to go over the charges with the client and let them know the time they were facing. Her procedure was as follows: “I would tell them what they were charged with, and then I would tell them, certainly in serious cases like murder cases and first-degree murder cases, I would let them know that there was a mandatory minimum of 30 years for first-degree murder; and for an AWIK, I would let them know what the statutory maximum was . . . so that they would know what they were facing, what they were looking at.” *Id.* at 49 : 9-17.

Ms. Raffinan was shown a copy of the plea offer from March 21, 2008. Ms. Raffinan did not recall the specific plea offer but testified that she had a duty to discuss plea offers with her clients and would have done so in this case. When asked whether Mr. Fowler was receptive to a plea offer, Ms. Raffinan stated that, “my recollection is that Mr. Fowler was eager to go to trial. I don’t recall that he was interested in taking a plea in the matter.” *Id.* at 51 : 14-16. She added later that, “In the back of my mind, I have some recollection that I may have talked to him about it and he just—I think, probably, also leading up to trial, he was not interested in taking a plea, but I don’t have a specific recollection.” *Id.* at 58 : 8-12. Ms. Raffinan also remarked that while she understood her duty to convey plea offers to her clients, some people make it clear that they are not interested in accepting any plea and therefore the length and depth of the discussion would depend on the client’s willingness to engage.⁴ Ms. Raffinan indicated that no matter when she received the plea offer she would discuss it with her client, and if her client needed more time to consider a plea offer, she would have asked the judge for more time.

⁴ “I mean, I think that unless—sometimes there are situations where there are individuals who are clear that they don’t want to take a plea and have maybe expressed that, so we—I certainly have an obligation to discuss the plea with my client. But there are certainly situations, also, where I think a client says no matter what he’s not interested in a plea, but I would still discuss it with him.” 5/31/24 Tr. 69 : 19-25, 70 : 1.

Although Mr. Fowler did not testify about the allegation in his motion that he was told that his maximum exposure would be 17 to 18 years if he were to lose at trial, the government asked Ms. Raffinan whether she would have made such a representation:

Government: In this case would you have told him that if he took it to trial he was only facing 18 years [in prison]?

Raffinan: No. Mr. Fowler was facing a number of charges . . . and so I recall it being a combined AWIK and first-degree murder case, and I would not have made him any promises about what sentences he would get.

5/31/24 Tr. 53: 8-19. Following the hearing, the parties filed their closing arguments with the Court.

II. LEGAL STANDARD

a. Claims that Merit Summary Dismissal

When a defendant files a motion challenging their conviction under D.C. Code § 23-110, courts are required to hold a hearing on the motion. *Shepherd v. United States*, 269 A.3d 389, 392 (D.C. 2023). However, precedent has identified three instances where summary dismissal of these claims is warranted: “(1) vague and conclusory allegations, (2) palpably incredible claims, and (3) assertions that would not merit relief even if true.” *Ramsey v. United States*, 569 A.2d 142, 147 (D.C. 1990). Incredible and vague claims are ones unsupported by facts and do not require a hearing to assess their merit. *See Thomas v. United States*, 772 A.2d 818, 824-825 (D.C. 2001) (finding that defendant who “provided no ‘affidavit or other credible proffer’” to support his allegations of ineffective assistance of counsel was not entitled to a hearing on his §23-110 motion”); *Pettaway v. United States*, 390 A.2d 981, 984 (D.C. 1978) (“A § 23-110 motion will be vulnerable to dismissal as ‘vague and conclusory’ when a prisoner does not present a factual foundation in some detail.”). Nonetheless, there remains a presumption in favor of a hearing where ineffective assistance of counsel is alleged. *Lanton v. United States*, 779 A.2d

895, 901 (D.C. 2001); D.C. Code § 23-110(c). This Court held a hearing on Mr. Fowler's Motion out of an abundance of caution and the statutory presumption in favor of a hearing. Thus, the Court also reviewed the merits of Mr. Fowler's Motion, which alleged ineffective assistance of counsel.

b. Ineffective Assistance of Counsel

In order to establish a claim for ineffective assistance of counsel, the defendant must first show that his attorney's "performance was deficient." *Strickland v. Washington*, 466 U.S. 668, 687 (1984). If the defendant can establish this first prong, then "the defendant must show that the deficient performance prejudiced the defense." *Id.* When deciding whether counsel's performance was deficient, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689. The defendant must show "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 687. The standard for judging attorney performance is whether she provided reasonably effective assistance "under prevailing professional norms." *Id.* at 688, *see also Missouri v. Frye*, 566 U.S. 134, 145 (2012) (establishing the standard that for counsel to be effective when handling plea offers, they must communicate formal plea offers from the prosecution to a defendant).

If counsel's performance was deficient, the defendant must also show they were prejudiced by counsel's ineffective advice. *Strickland*, 466 U.S. at 687. The defendant can demonstrate prejudice only when he can show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. In the context of a rejected plea offer, a defendant must show prejudice by proving that but for ineffective counsel, "there is a reasonable probability that the plea offer would have been

presented to the court (i.e., that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed." *Lafler v. Cooper*, 566 U.S. 156, 164 (2012); *see also Blackmon v. United States*, 215 A.3d 760, 764, 767 (D.C. 2019) (finding no prejudicial effect on defendant who refused plea offer of 25 years because he was not inclined to admit his guilt and to accept the plea after he was assured by the trial court he would receive a maximum sentence of 34 years if he were to proceed to trial). When deciding an ineffective assistance of counsel claim, a court need not "address both components of the inquiry if the defendant makes an insufficient showing on one." *Strickland*, 466 U.S. at 697.

III. ANALYSIS

Although Mr. Fowler could overcome the procedural bar of his claims, they do not merit relief because they are either vague and conclusory or palpably incredible. Even assuming *arguendo* that trial counsel was deficient, given the circumstances under which the plea offer was made, it is unlikely that Mr. Fowler would have accepted the plea and hence, fails to show that he was prejudiced by counsel's actions.

a. Procedurally Barred Claims

The Government's Opposition alleges that the claims Mr. Fowler raises in his § 23-110 motion are no longer available because he failed to raise them on appeal. Gov't Opp'n at 9. When a defendant raises a claim in a § 23-110 motion that he failed to raise in a previous appeal, that claim is procedurally barred unless the defendant can show cause for his failure to previously raise the claim and can show prejudice. *Wu v. United States*, 798 A.2d 1083, 1089

(D.C. 2002) (*quoting Head v. United States*, 489 A.2d 450, 451 (D.C. 1985)). However, a defendant who was “represented on direct appeal by the same counsel that represented him at trial . . . is not procedurally barred from making a collateral attack based upon claims of ineffective assistance of counsel although the issue was not raised during the pendency of his direct appeal.” *Shepherd v. United States*, 296 A.3d 389, 394 (quoting *Little v. United States*, 748 A.2d 920, 923 (D.C. 2000)), *see also Sullivan v. United States*, 712 A.2d 936, 937 (D.C. 1998) (“This court has found ‘cause’ when appellant is represented by the same counsel at trial and at subsequent proceedings where an ineffective assistance claim might be raised.”).

In his appeal, Mr. Fowler did not raise any of the claims that he raises in his § 23-110 motion. What is more, Mr. Fowler does not provide any explanation at all for this failing. Because both Mr. Fowler’s trial counsel and appellate counsel worked for PDS, Mr. Fowler asks the Court to infer that they either did not recognize their own ineffectiveness or they were conflicted in their duties, which provides cause for his failure to raise the claim in his appeal. Thus, this Court held a hearing on Mr. Fowler’s Motion. However, this Court is unable to make such an inference of ineffectiveness based on the record before it, both due to the incredible nature of the claims and Mr. Fowler’s failure to show he was prejudiced by his counsel’s actions.

b. Claims of Ineffective Assistance of Counsel are Vague and Conclusory

Mr. Fowler’s claims would not merit relief, even if they are not procedurally barred, because they are vague and conclusory. Mr. Fowler’s memory of the events that took place between him and his counsel is skewed, inconsistent with many of the statements made in his Motion, and not supported by affidavits or a clear factual foundation, which requires a dismissal of his claims. *See Thomas*, 772 A.2d at 824-25. First, the defendant’s claim in his Motion that trial counsel was ineffective for failing to advise him of the penal consequences upon conviction

after trial is palpably incredible. Setting aside that Mr. Fowler did not testify to this point at the motions hearing, his trial counsel was an experienced major felony trial attorney at PDS who testified that it was her practice to inform her clients of the potential maximum penalties associated with the charged offense as well as any mandatory minimum sentences. It is doubtful Ms. Raffinan failed to have these discussions with Mr. Fowler and there is no factual foundation that proves otherwise. Assuming there was a miscommunication, as the government points out, the government stated to Judge Weisberg in Mr. Fowler's presence on April 2, 2008—before trial proceeded—that Mr. Fowler was “indicted on the most serious offenses that we know, two such serious offenses, each of which carry a term of imprisonment that would probably mean, *if convicted, he dies in jail.*” 4/2/08 Tr. 43 : 5-8 (emphasis added). Mr. Fowler and his lawyers were hence on notice that he was facing substantial time in jail if he were convicted at trial. The idea that Mr. Fowler was surprised by the harshness of his sentence after the fact is self-serving fiction.

Second, Mr. Fowler's claim that his trial attorney failed to adequately inform him of the plea offer itself was solely based on his own memory, which was shown to be extremely limited and contradicted by his own testimony and credible evidence. For example, Mr. Fowler stated that no one spoke to him about a plea offer, but he also testified that he only remembers one conversation with his Ms. Raffinan in November 2006 despite jail records showing multiple legal visits. *See* Pet'r's Closing 23-110 Arg. Ex. C, at 3. Mr. Fowler also testified that he rejected what he believed was a plea offer to 18 years in April of 2008 right before starting trial, even though he now claims he would have taken a plea to 18 years. His memory of his discussions with counsel are lost to history, either naturally or purposefully.⁵ While this Court held a hearing

⁵ While this issue was not raised by the government, the Court notes that D.C. Code § 23-110(b)(2) states, “A motion for such relief may be dismissed if the government demonstrates that it has been materially prejudiced in its

on the merits of Mr. Fowler's Motion, it cannot base a finding of ineffectiveness on such a thin record and the claims should be denied due to their vagueness.

c. Ineffective Assistance of Counsel and Lack of Prejudice

Having found that Mr. Fowler's assertions that his counsel failed to inform him of the penal consequences if he lost at trial or discussed the plea offer with him are not credible, the Court will nonetheless evaluate the hypothetical scenario in which Mr. Fowler was unaware of the jail time he faced or the details of the plea offer. In order to establish an ineffective assistance of counsel claim, Mr. Fowler must show both that his trial counsel was deficient, and that the deficiency prejudiced him. *Strickland*, 466 U.S. at 687. The first issue is whether trial counsel discussed the plea offer with Mr. Fowler at all as required by *Missouri v. Frye*. Based on the record, there is no reason to believe that Ms. Raffinan, who had a wealth of experience as a defense attorney, did not discuss the plea offer with Mr. Fowler, and the testimony during the motions hearing indicates that the parties did in fact discuss the offer.

Both Mr. Fowler and Ms. Raffinan received the plea offer transmitted on March 21, 2008. While Ms. Raffinan testified she has no specific recollection about the plea offer, she distinctly remembers that Mr. Fowler was determined to go to trial and never indicated any sense of remorse or culpability for the crime. Ms. Raffinan also testified that she understood her ethical obligation to present any plea offers to her client, regardless of the client's interest in pleading guilty. She explained that some clients indicate unambiguously their disinterest in accepting a plea offer, but nonetheless it was her duty to inform the client of any offers. Mr. Fowler corroborated Ms. Raffinan's testimony, stating he rejected the plea offer even though he later

ability to respond to the motion by the delay in its filing . . ." Mr. Fowler's delay in raising these claims led to the fractured memories of all parties previously involved in his case, leading to a thin record that hampers both the government's and this Court's ability to assess his allegations.

testified he would have accepted a plea to 20 years. Mr. Fowler also testified that Ms. Raffinan let him know the plea offer included a cap of 18 years. Given Ms. Raffinan's level of experience as a defense attorney at the time of Mr. Fowler's trial and testimony from Mr. Fowler and Ms. Raffinan regarding their conversations about the plea offer—despite Mr. Fowler's assertions in his Motion that no such discussions occurred—it is clear that Ms. Raffinan and Mr. Fowler did discuss the plea in some detail. Thus, Ms. Raffinan fulfilled her duty of discussing the plea offer with her client.

Mr. Fowler also alleges that his lawyer either did not inform him of his penal exposure or told him if he lost at trial, he was facing significantly fewer years than the law requires. Assuming *arguendo* that experienced attorneys Maribeth Raffinan, Christopher McKee, and Grey Gardner failed to discuss the plea offer with Mr. Fowler, or incorrectly represented to him that his maximum sentence after trial would be between 17 and 18 years, the question is whether Mr. Fowler would have taken the plea instead of going to trial. *See Lafler*, 566 U.S. at 163 (“In the context of pleas a defendant must show the outcome of the plea process would have been different with competent advice.”). The Court finds he would not.

Mr. Fowler was given an eve-of-trial plea offer upon the government's discovery that they were unable to find a crucial witness: Ms. Faison, who had testified before the grand jury that Mr. Fowler confessed his crime to her. Ms. Faison had continuously attempted to circumvent testifying against Mr. Fowler throughout the duration of his case by feigning incompetence to avoid testifying before the grand jury and evading efforts to locate her during the week Mr. Fowler's trial was scheduled to begin. Because Ms. Faison was a key witness and her whereabouts were unknown, Ms. Raffinan continuously moved to dismiss Mr. Fowler's case. While Judge Weisberg did not grant Ms. Raffinan's motions, he did take them under

consideration and indicated that he would either dismiss the case or release Mr. Fowler if Ms. Faison did not appear. Mr. Fowler, who was present during all pre-trial hearings, was keenly aware that the government was unprepared to proceed without Ms. Faison and that if Ms. Faison was not found, the court may have been inclined to dismiss his case. Knowing this, Mr. Fowler was in no way inclined to take a plea to any time if he faced the possibility of having his case be completely dismissed.

Moreover, while both Mr. Fowler's and Ms. Raffinan's memories have faded, they both recalled two critical pieces of information: Mr. Fowler never admitted culpability—an essential element of pleading guilty—and he was not interested in pleading. The following circumstances are similar to *Blackmon v. United States*, where the D.C. Court of Appeals found that a defendant was not prejudiced by counsel's erroneous advice because he was unwilling to plead guilty to his crimes and was not inclined to accept a plea offer for 25 years after the trial court stated that the defendant risked facing a sentence of 34 years. Here, Mr. Fowler was both unwilling to accept responsibility for his crime and the government's statements prior to his trial clearly indicated that Mr. Fowler would face a long sentence if he was convicted by a jury. Given the Government's state of readiness for trial, Judge Weisberg's promise to dismiss the case if Ms. Faison could not be found, and Mr. Fowler's disinterest in admitting to his crime, Mr. Fowler's claim that he would have accepted a plea offer to 18 years—if his assertions that he did not receive competent advice regarding the plea offer were true—is simply not plausible. Based on these circumstances, the Court finds that Mr. Fowler was not prejudiced by his trial counsel.

IV. CONCLUSION

Based on the following evidence, Mr. Fowler's claim of ineffective assistance of counsel are both vague and meritless. Mr. Fowler's testimony during the motions hearing was inconsistent with his claims made in his Motion and lacked necessary factual foundation, requiring a summary dismissal of the allegations. Even if the Court were to disregard the vagueness and implausibility of Mr. Fowler's claims and make a determination on whether there was ineffective assistance of counsel on the evidence presented, Mr. Fowler's allegations fall apart. Not only was he represented by an experienced trial attorney, who recalled and testified that Mr. Fowler was not interested in taking a plea and was intent on taking the case to trial, but the context of the plea offer being made on the eve of trial made it unlikely that Mr. Fowler would accept any plea offer. Given the circumstances surrounding the last-minute plea deal, and Judge Weisberg's promise to dismiss the case if Ms. Faison could not be found, it is not credible that any offer would have been acceptable to Mr. Fowler when dismissal appeared imminent. Thus, seeing as there was no prejudicial effect on Mr. Fowler from the advice offered by his trial counsel, his Motion is denied.

WHEREFORE, it is on this 18th day of April 2025, hereby

ORDERED, that Defendant's *Motion to Vacate, Set Aside or Correct Conviction and Sentence by a Person in Federal Custody Pursuant to (D.C. Code 23-110)* is **DENIED**.

A handwritten signature in dark ink, appearing to read "MOK-1", with a long horizontal stroke extending to the right.

MICHAEL K. O'KEEFE
D.C. SUPERIOR COURT JUDGE

APPENDIX C

Unpublished Order issued by the District of Columbia
Court of Appeals, denying petition for rehearing, *Fowler*
v. United States, No. 25-CO-0396 (June 29, 2026)

**District of Columbia
Court of Appeals**



No. 25-CO-0396

MARC SHELTON FOWLER,
Appellant,

v.

2006-CF1-025926

UNITED STATES,
Appellee.

BEFORE: Howard and Shanker, Associate Judges, and Thompson, Senior Judge.

O R D E R

On consideration of appellant's petition for rehearing, it is
ORDERED that appellant's petition for rehearing is denied.

P E R C U R I A M

Copies emailed to:

Honorable Michael O'Keefe

Director, Criminal Division

Copies e-served to:

Natasha Ravisetti, Esquire

Chrisellen R. Kolb, Esquire
Assistant United States Attorney

Kevin Birney, Esquire
Assistant United States Attorney

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