

United States Court of Appeals
for the Fifth Circuit

No. 24-50557

United States Court of Appeals
Fifth Circuit

FILED

November 26, 2024

UNITED STATES OF AMERICA,

Lyle W. Cayce
Clerk

Plaintiff—Appellee,

versus

MARTIN RENTERIA,

Defendant—Appellant.

Application for Certificate of Appealability
the United States District Court
for the Western District of Texas
USDC No. 7:24-CV-26
USDC No. 7:20-CR-355-1

UNPUBLISHED ORDER

Before SOUTHWICK, WILLETT, and OLDHAM, *Circuit Judges*.

PER CURIAM:

Martin Renteria, federal prisoner # 18318-509, seeks a certificate of appealability (COA) to appeal the denial of his 28 U.S.C. § 2255 motion challenging his convictions for (i) production of child pornography; (ii) committing a felony against a minor while being a registered sex offender; (iii) possession of child pornography; and (iv) sex trafficking of a child.

[Appendix A]

No. 24-50557

Renteria argues that (a) the trial court lacked subject matter jurisdiction because his indictment was deficient; (b) he received ineffective assistance when his trial counsel failed to argue that his arrest warrant lacked probable cause, challenge the October 27, 2020 search warrant on the ground that it contained a false statement, and challenge the November 2, 2020 search warrant on the ground that the affidavit in support of the warrant failed to describe his cell phone with particularity; and (c) he received ineffective assistance when his appellate counsel failed to argue on appeal that the district court erred in denying his motion to suppress based on the inevitable discovery exception to the exclusionary rule and that there was insufficient evidence to support his sex trafficking conviction. He additionally argues that the district court erred by failing to hold an evidentiary hearing on his § 2255 motion.

In order to obtain a COA, Renteria must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). When the district court denies relief on the merits, an applicant must show that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Renteria has failed to make the requisite showing. *See Slack*, 529 U.S. at 484. Consequently, we DENY a COA. Renteria’s motion to proceed in forma pauperis on appeal and motion to appoint counsel are likewise DENIED. As Renteria fails to make the required showing for a COA, we do not reach the issue whether the district court erred by failing to conduct an evidentiary hearing. *See United States v. Davis*, 971 F.3d 524, 534-35 (5th Cir. 2020).

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND/ODESSA DIVISION

UNITED STATES OF AMERICA,

v.

(1) MARTIN RENTERIA

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§

MO:20-CR-00355-DC
MO:24-CV-00026-DC

ORDER

BEFORE THE COURT is Defendant Martin Renteria's Motion to Vacate, Set Aside, or Correct his sentence under 28 U.S.C. § 2255. After considering the record and the Parties' briefing, the Court will deny Defendant's motion.

BACKGROUND

On November 10, 2021, a jury convicted Defendant of four counts: (1) producing child pornography, (2) committing that offense while being required to register as a sex offender, (3) possessing child pornography, and (4) sex trafficking of a child.¹ Based on those convictions, the Court sentenced Defendant to fifty years on Count One, ten years on Count Two, twenty years on Count Three, and life imprisonment on Count Four.² Defendant then appealed his conviction for Count Four.³ The Fifth Circuit affirmed.⁴

Defendant now moves to vacate, set aside, or correct his sentence under § 2255, arguing this Court did not have jurisdiction to sentence him and that he suffered from

¹ Doc. 127.

² Doc. 159.

³ Doc. 161.

⁴ Doc. 170.

ineffective assistance of counsel because his trial counsel and appellate counsel failed to argue various points.⁵ The issues are fully briefed and ripe for adjudication.

LEGAL STANDARD

I. Habeas petitions under 28 U.S.C. § 2255.

Under 28 U.S.C. § 2255(a), a prisoner may move “to vacate, set aside or correct” a federal court’s sentence if that sentence was imposed “in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack.” “A defendant can challenge a final conviction, but only on issues of constitutional or jurisdictional magnitude.”⁶ “[T]o obtain collateral relief a prisoner must clear a significantly higher hurdle than would exist on direct appeal.”⁷

II. Ineffective assistance of counsel in violation of the Sixth Amendment.

Ineffective assistance of counsel, which Defendant raises here, is one such “issue of constitutional magnitude.”⁸ As laid out by the Supreme Court in *Strickland v. Washington*, to prevail on an ineffective assistance of counsel claim, a convicted defendant must show (1) that defense counsel’s performance was deficient and (2) that the deficient performance

⁵ Doc. 171.

⁶ *United States v. Willis*, 273 F.3d 592, 595 (5th Cir. 2001).

⁷ *United States v. Frady*, 102 S. Ct. 1584, 1593 (1982).

⁸ See *United States v. Conley*, 349 F.3d 837, 839 n.1 (5th Cir. 2003) (“[A] claim for ineffective assistance of counsel is properly made in a § 2255 motion because it raises an issue of constitutional magnitude and, as a general rule, cannot be raised on direct appeal.”) (internal quotation marks omitted).

prejudiced the defendant.⁹ The movant must establish *both* prongs by the preponderance of the evidence.¹⁰

For the first, deficient performance prong, the movant must show that their “counsel’s performance fell below an objective level of reasonableness.”¹¹ Yet courts are not to scrutinize counsel’s performance based on adverse outcomes or hindsight.¹² Indeed, reviewing courts “must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.”¹³ Likewise, under the second, prejudice prong, the movant must show that but for counsel’s alleged deficient performance, there is a “reasonable probability” that the outcome would have been more favorable to the movant.¹⁴

DISCUSSION

Defendant’s arguments fall into two broad categories. The first is his argument that this Court did not have jurisdiction to sentence him. The second category contains his litany of ineffective assistance of counsel claims against both his trial and appellate counsel. The Court handles each in turn.

I. This Court did have jurisdiction to sentence Defendant.

A federal district court’s subject matter jurisdiction over a criminal case is determined by looking at the indictment.¹⁵ “To confer subject matter jurisdiction upon a federal court,

⁹ 466 U.S. 668, 687 (1984).

¹⁰ See *Wright v. United States*, 624 F.2d 557, 558 (5th Cir. 1980) (“In a section 2255 motion, a petitioner has the burden of sustaining his contentions by a preponderance of the evidence.”); see also *United States v. Bass*, 310 F.3d 321 (5th Cir. 2002) (“Such a claim fails unless the defendant establishes *both* deficient performance and prejudice.”) (emphasis in original).

¹¹ *Strickland*, 466 U.S. at 687–89.

¹² *Id.* at 690.

¹³ *Id.*

¹⁴ *Id.* at 694–95.

¹⁵ *United States v. Scruggs*, 691 F.3d 660, 668 (5th Cir. 2012).

an indictment need only charge a defendant with an offense against the United States in language similar to that used by the relevant statute.”¹⁶ Thus, this most simple analysis would be a side-by-side of the language for each count found in Defendant’s superseding indictment and the relevant statutes.

A. Count One: Sexual exploitation of children.

Superseding Indictment (Doc. 55)	18 U.S.C. § 2251(a)
That on or about October 4, 2020, in the Western District of Texas, the Defendant, MARTIN RENTERIA, did employ, use, persuade, induce, entice, and coerce a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, using materials that have been mailed, shipped, and transported in and affecting interstate and foreign commerce by any means, including by computer, in violation of Title 18, United States Code, §§ 2251(a), 2251(e), and 3559(e).	(a) Any person who <u>employs</u>, <u>uses</u>, persuades, induces, entices, or coerces any minor to engage in ... any sexually explicit conduct for the purpose of producing any visual depiction of such conduct ... using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer.

B. Count Two: Penalties for registered sex offenders.

Superseding Indictment (Doc. 55)	18 U.S.C. § 2260A
That on or about October 4, 2020, in the Western District of Texas, the Defendant, MARTIN RENTERIA, an individual required by Federal or other law to register as a sex offender, committed a felony offense involving a minor under Title 18, United States Code, § 2251(a), all in violation of Title 18, United States Code § 2260A.	Whoever, being required by Federal or other law to register as a <u>sex</u> offender, commits a felony offense involving a minor under section ..., 2251.

¹⁶ *United States v. Jacquez-Beltran*, 326 F.3d 661, 662 n. 1 (5th Cir.2003) (per curiam).

C. Count Three: Certain activities relating to materials involving sexual exploitation of minors.

Superseding Indictment (Doc. 55)	18 U.S.C. § 2252(a)(4)
That on or about October 27, 2020, in the Western District of Texas, the Defendant, MARTIN RENTERIA, did knowingly possess a visual depiction of a prepubescent minor engaging in sexually explicit conduct, which had been mailed, shipped and transported in interstate and foreign commerce; was produced using materials which had been shipped and transported in interstate and foreign commerce; the production of which involved the use of prepubescent minors engaging in sexually explicit conduct, in violation of Title 18, United States Code, § 2252(a)(4) and 18 U.S.C. § 2252(b)(2).	(4) knowingly possesses... any visual depiction that has been mailed, or has been shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported, by any means including by computer, if— (i) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and (ii) such visual depiction is of such conduct; shall be punished as provided in subsection (b) of this section.

D. Count Four: Sex trafficking of children by force, fraud, or coercion.

Superseding Indictment (Doc. 55)	18 U.S.C. § 1591(a)
From on or about September 1, 2020, through on or about October 27, 2020, within the Western District of Texas, in and affecting interstate commerce, the defendant, MARTIN RENTERIA, did knowingly recruit, entice, harbor, transport, provide, obtain, maintain, solicit, and patronize MINOR 1, a person under the age of 14 years old, having had a reasonable opportunity to observe MINOR 1 and knowing and in reckless disregard that MINOR 1 was under the age of 18 years old and knowing and in reckless	(a) Whoever knowingly (1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or (2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1), knowing, or, except where the act constituting the violation of paragraph (1) is advertising, in reckless disregard of the fact, that means of force, threats of

disregard that MINOR 1 would be caused to engage in a commercial sex act and knowing and in reckless disregard that force, threats of force, fraud, and coercion, and any combination of such means, would be used to cause MINOR 1 to engage in a commercial sex act.

All in violation of Title 18, United States Code, Sections 1591(a)(1), (b)(1), and (c).

force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

As seen in the tables above, a side-by-side analysis reveals that the language from each count found in Defendant's superseding indictment is almost identical to the statutory language. And that's all that's required "to confer subject matter jurisdiction upon a federal court."¹⁷ Thus, Defendant's jurisdictional challenge fails.

II. Defendant's ineffective assistance of counsel claims.

Next, the Court moves to Defendant's ineffective assistance of counsel claims. On this front, Defendant levies three claims against his trial counsel and two against his appellate counsel.

A. Defendant's trial counsel was not ineffective.

Defendant's claims against his trial counsel hinge on the idea that counsel failed to argue that (1) his arrest was not supported by probable cause, (2) the October 2020 search warrant was based on a false statement, and (3) the November 2020 search warrant was facially deficient.¹⁸ Yet even a quick review of the record reveals that these arguments are meritless or unsupported by the record.

¹⁷ *Id*

¹⁸ Doc. 171 at 22, 31–32, 40–42.

For example, Defendant's claim that counsel failed to argue that his arrest was not supported by probable cause is just not true.¹⁹ Indeed, as the record shows, trial counsel moved to "suppress the fruits of [Defendant's] illegal arrest, including: the discovery of Renteria's cell phone, any of its contents, and any evidence obtained therefrom."²⁰ So there is no support for this claim.

What's more, Defendant's second assertion that trial counsel did not argue that the October 2020 search warrant was based on a false statement is also not based in fact.²¹ Defendant believes the "false statement" in the affidavit used to obtain the October 2020 search warrant was a statement that Defendant's cell phone was located inside his home, even though it had been seized during his arrest.²² But that's not what the affidavit says. Rather, the affidavit states the search would be for "electronics to include but not limited to cell phone, tablets and other devices to record sex acts, child pornography, and other images depicting child pornography."²³ In other words, any other phones in Defendant's home.²⁴ Thus, this claim also doesn't match reality.²⁵

Lastly, Defendant believes his trial counsel should have argued that the November 2020 search warrant was facially deficient because it described Defendant's phone only as a "Black Samsung cell phone SM."²⁶ Yet that would've been a frivolous argument to make. The Fourth Amendment requires that an item to be seized be described "with sufficient

¹⁹ *Id.* at 22.

²⁰ Doc. 24 at 1.

²¹ Doc. 171 at 31–32.

²² *Id.*

²³ Doc. 39-2 at 1 (sealed).

²⁴ This makes sense because it's quite common for those creating or possessing child pornography to have more than one phone in their possession.

²⁵ Trial counsel's motion to suppress also covered evidence obtained from Defendant's cell phone.

²⁶ Doc. 171 at 40–42; Doc. 39-3 at 1 (sealed).

particularity so as to leave nothing to the discretion of the officer executing the warrant.”²⁷ Here, the warrant sought to search the contents of Defendant’s cell phone, which was already in law enforcement’s possession.²⁸ In fact, the warrant even described the location of the phone to be the “City of Midland Police and Communication Center.”²⁹ So a description of a single phone—already in law enforcement’s possession at the police department—is one that leaves nothing to discretion.

In sum, the record actively contradicts each of Defendant’s ineffective assistance claims against his trial counsel, which means all the arguments that Defendant thinks his counsel “should have made”—not counting the one argument counsel did in fact make—would have been meritless. And counsel’s “failure” to make meritless arguments cannot form the basis for an ineffective assistance of counsel claim.³⁰ As a result, Defendant’s ineffective assistance of counsel claims against his trial counsel must fail.³¹

B. Defendant’s appellate counsel was not ineffective.

Defendant’s remaining ineffective assistance of counsel claims fault his appellate counsel for not challenging (1) the denial of Defendant’s suppression motion and (2) the sufficiency of the evidence on the commerce element for Count Four.³² Yet both these claims were (and still are) meritless.

²⁷ *United States v. Allen*, 625 F.3d 830, 835 (5th Cir. 2010) (cleaned up).

²⁸ Doc. 50 at 22.

²⁹ Doc. 39-3 1 (sealed).

³⁰ See, e.g., *Williams v. Collins*, 16 F.3d 626, 634–35 (5th Cir. 1994); see also *United States v. Bass*, 310 F.3d 321 (5th Cir. 2002) (“Such a claim fails unless the defendant establishes *both* deficient performance and prejudice.”) (emphasis in original).

³¹ See *United States v. Bass*, 310 F.3d 321 (5th Cir. 2002) (“Such a claim fails unless the defendant establishes both deficient performance and prejudice.”) (emphasis in original).

³² Doc. 171 at 47, 62.

For example, most of Defendant's arguments on the denial of his suppression motion would have been foreclosed by the Fifth Circuit's opinion in *United States v. Lamas*.³³ Indeed, *Lamas* revolves around facts similar to this case, and, just like this Court did when it denied Defendant's suppression motion, the *Lamas* court held that the inevitable discovery doctrine applied.³⁴

What's more, Defendant's belief that there was insufficient evidence for a jury to find he committed a "commercial sex act" under Count Four is offensive. Just like the jury who convicted Defendant, this Court was also present at Defendant's trial. And at trial, Defendant's minor victim testified that Defendant offered him money in exchange for performing sexual acts on Defendant.³⁵ That's spot-on for a commercial sex act.³⁶ Likewise, as Defendant's appellate counsel points out in his affidavit, because this insufficiency argument was so against the weight of the evidence presented at trial, if raised on appeal, it would have damaged the one argument against Count Four that appellate counsel did make.³⁷

So in sum, Defendant's argument is that counsel should have made meritless arguments. But again, "failure to raise a meritless argument [] cannot form the basis of a successful ineffective assistance of counsel claim because the result of the proceeding would

³³ 930 F.2d 1099 (5th Cir. 1991).

³⁴ *Id.* at 1103; Doc. 67 at 14.

³⁵ Doc. 150 at 114–15.

³⁶ The Court's instructions to the jury defined "commercial sex act" as "any sex act, on account of which anything of value is given to or received by any person." Doc. 121 at 14.

³⁷ Doc. 175-2 at 7.

not have been different had the attorney raised the issue.”³⁸ Thus, Defendant’s ineffective assistance of counsel claims against both trial and appellate counsel must fail.³⁹

III. A certificate of appealability should be denied.

The Federal Rules of Appellate Procedure provide that an appeal may not proceed unless a certificate of appealability (COA) is issued under 28 U.S.C. § 2253.⁴⁰ Rule 11 of the Rules Governing § 2255 Proceedings requires the Court to “issue or deny a certificate of appealability when it enters a final order adverse to the applicant.”⁴¹ This Court may only issue a COA if “the applicant has made a substantial showing of the denial of a constitutional right.”⁴² Defendant can satisfy this standard by showing “that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists of reason could conclude the issues presented are adequate to deserve encouragement to proceed further.”⁴³

A district court may deny a COA sua sponte without requiring further briefing or argument.⁴⁴ The Court believes Defendant has not made a showing that reasonable jurists would question the reasoning found in this Court’s denial. Accordingly, the Court denies a COA.

³⁸ See *Williams v. Collins*, 16 F.3d 626, 634–35 (5th Cir. 1994).

³⁹ See *United States v. Bass*, 310 F.3d 321 (5th Cir. 2002) (“Such a claim fails unless the defendant establishes both deficient performance and prejudice.”) (emphasis in original).

⁴⁰ See FED. R. APP. P. 22(b).

⁴¹ Rules Governing § 2255 Proceedings in the United States District Courts, Rule 11(a) (December 1, 2009).

⁴² 28 U.S.C. § 2253(c)(2).

⁴³ *Miller-El v. Cockrell*, 537 U.S. 322, 326 (2003) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

⁴⁴ See *Alexander v. Johnson*, 211 F.3d 898, 898 (5th Cir. 2000).

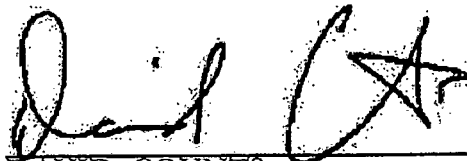
CONCLUSION

It is therefore **ORDERED** that Defendant's Motion to Vacate, Set Aside, or Correct his sentence under § 2255 be **DENIED**. (Doc. 171).⁴⁵

It is also **ORDERED** that a certificate of appealability be **DENIED**.

It is so **ORDERED**.

SIGNED this 14th day of May, 2024.

A handwritten signature in black ink, appearing to read 'David Counts', with a large, stylized star-like flourish to the right.

DAVID COUNTS
UNITED STATES DISTRICT JUDGE

⁴⁵ The Court finds that an evidentiary hearing on Defendant's motion is not necessary because Defendant's claims are meritless, unsupported generalizations, or affirmatively contradicted by the record. *See United States v. Guerra*, 588 F.2d 519, 521 (5th Cir. 1979), *cert. denied*, 450 U.S. 934 (1981) ("A hearing is not required on patently frivolous claims or those which are based upon unsupported generalizations. Nor is a hearing required where Movant's allegations are affirmatively contradicted by the record.").

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