

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALETA NECOLE THOMAS,

Defendant.

Case No. 21-CR-239-GKF

**Response in Opposition to Defendant's
Motion to Stay Surrender Date and Motion for Bond
Pending 28 U.S.C. § 2255 Motion (Dkt. # 124)**

The Court should deny Aleta Thomas's requests to delay her surrender date and for bond pending the disposition of her 28 U.S.C § 2255 Motion because she is unable to show exceptional and deserving reasons for delay. Furthermore, Ms. Thomas is unlikely to prevail on her claims that Mr. Ward rendered her ineffective assistance. Even if an investigation reveals that Mr. Ward performed deficiently, Ms. Thomas would be unable to show that Mr. Ward's representation prejudiced her, because she received an eight-level downward variance at sentencing. The overwhelming evidence of Ms. Thomas's guilt, including her own recorded statements to law enforcement and the grand jury testimony, also supports her conviction and sentence. Finally, Ms. Thomas provides no applicable authority for her requests to delay her surrender and for bail; therefore, the Court should deny her

requests to delay her surrender date and for bond pending the disposition of her § 2255 motion.

Ms. Thomas's reliance on *Aronson v. May* is misplaced. In *Aronson*, the Court upheld the denial of bail pending the resolution of a writ of habeas corpus, filed pursuant to 28 U.S.C. § 2241. *Aronson v. May*, 85 S. Ct. 3, 5 (1964). Notably, Mr. Aronson filed a § 2255 motion that was denied before he filed a writ of habeas corpus. *Id.* at *4. Mr. Aronson was tried by a jury, convicted, and sentenced by a federal court. The Supreme Court explained that a “greater showing of special reasons” is required by someone seeking to attack their conviction in a collateral proceeding than an applicant seeking “to attack by writ of habeas corpus an incarceration not resulting from a judicial determination of guilt.” *Id.* at * 5.

Likewise, here, Ms. Thomas's sentence results from a judicial determination of guilt and she seeks to collaterally attack her conviction and sentence. Thus, she is required to show that her circumstance is “exceptional and deserving of special treatment in the interests of justice.” *Id.* She has failed to show such circumstance.

Argument & Authorities

Ms. Thomas is unlikely to prevail on her ineffective assistance of counsel claim.

To demonstrate that her counsel's assistance was so ineffective as to require reversal of her conviction, Ms. Thomas must satisfy both components of the test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *See United States v. Orange*, 447 F.3d 792, 796–97 (10th Cir. 2006). First, she must show that counsel's performance

was deficient, which requires showing that “counsel’s performance fell below an objective standard of reasonableness.” *Id.* at 687-8. Second, Ms. Thomas must show that counsel’s deficient performance prejudiced the defense; i.e., “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. Because Ms. Thomas must prove both prongs of the *Strickland* test to establish her claim, a failure to prove either one is grounds to deny Ms. Thomas’s § 2255 motion.

Before sentencing, Mr. Ward filed an extensive Motion for Sentencing Variance. (*See* Dkt. # 97). In this motion, Mr. Ward thoroughly documented every aspect of Ms. Thomas’s history and characteristics, her leadership position in her community, and her role as a caregiver in her family. (*Id.*). In conjunction with this motion, Mr. Ward also submitted 16-character letters from life-long friends, leaders of Ms. Thomas’s church, and family members. (*See* Dkt. # 97-1). Mr. Ward additionally filed Objections to the Presentence Investigative Report. (*See* Dkt. # 103). Mr. Ward requested additional time to submit more letters of support and to investigate last-minute information as a part of Ms. Thomas’s Motion for Continuance of Sentencing Hearing. (*See* Dkt. # 106). The Court properly denied this request and the sentencing hearing proceeded as scheduled.

Even if pertinent information was not included in the 16-character letters already filed with the Court, Mr. Ward and Ms. Thomas each provided lengthy arguments at the sentencing hearing in favor of a probationary sentence. The Court granted Ms. Thomas’s request for a downward variance and departed downward eight levels. (*See*

Dkt. # 112). The Court sentenced Ms. Thomas to a term of imprisonment of 30 months – a sentence substantially below the advisory guideline range and well below the maximum prison sentence the parties agreed to in the plea agreement (Dkt. # 113).

Now, seven days before she is scheduled to surrender to the Bureau of Prisons, Ms. Thomas contends that Mr. Ward performed deficiently and therefore her surrender should be delayed. (*See* Dkt. ## 124, 125). Specifically, Ms. Thomas alleges that Mr. Ward failed to submit to the Court an estimated 30- to 40-character letters and that this alleged inaction resulted in a harsher sentence than Ms. Thomas might have otherwise received. (*See* Dkt. # 125 at p.5). Even if these letters existed at the time of her sentencing and Mr. Ward submitted them to the Court, they would not have had a significant impact on Ms. Thomas's sentence. Ms. Thomas designed and participated in a lengthy fraud scheme, recruited others to participate in her scheme, and continued to flagrantly violate the law even after she testified before a federal grand jury. At sentencing, she received an eight-level downward departure and received representation that was objectively reasonable. Consequently, she cannot demonstrate that Mr. Ward performed deficiently, or that his allegedly deficient performance prejudiced her.

The overwhelming evidence of Ms. Thomas's guilt supports her conviction and sentence.

Overwhelming evidence supports Ms. Thomas's conviction and sentence for counts three and four of the second superseding indictment. Special agents

conducted a recorded, noncustodial interview of Ms. Thomas at her home. A copy of the recorded interview and a transcription of it are contained in the discovery provided to Ms. Thomas. Ms. Thomas stated that she obtained loans from Tulsa Federal Credit Union, Arvest, Bluevine, and Fundbox. Bluevine and Fundbox are the banks alleged in counts three and four of the second superseding indictment. Further, during her February 19, 2021, grand jury testimony, Ms. Thomas admitted that she received a PPP loan in the amount of approximately \$241,000 from Fundbox for Coming Correct Community Ministries II. Ms. Thomas also admitted that she received \$87,500 from Cross River Bank (Bluevine Capital, Inc.) in her bank account after she submitted a loan application on behalf of Coming Correct Community Ministries. Thus, Ms. Thomas's own grand jury testimony shows that she applied for the loans alleged in counts three and four of the second superseding indictment, to which she entered guilty pleas. Finally, at the change of plea hearing, Ms. Thomas denied using the loan proceeds to gamble at casinos but admitted that the factual statement recited by the prosecutor and contained in her plea agreement was correct.

To the extent that Ms. Thomas and her codefendants now claim that she was uninvolved in her codefendant's loan fraud, the evidence points to the contrary. Ms. Thomas's email messages to the case agent at the time of the offense explain that she recruited and instructed her friends and family members (including the codefendants) to submit loan applications and that she allowed them to use her bank account to deposit these loan proceeds. The unsupported statements of codefendants in this case

do no merit further investigation because these alleged statements contradict Ms. Thomas's own statements and the evidence. Consequently, Ms. Thomas's conviction and sentence are amply supported by evidence of her guilt.

Conclusion

The Court should deny Ms. Thomas's requests to delay her surrender and for bond pending the conclusion of her 2255 Motion because she provides no applicable authority for delay. Further, she is unlikely to prevail on her claims ineffective assistance of counsel. Additionally, the overwhelming evidence of Ms. Thomas's guilt, including her own recorded statements to law enforcement and the grand jury testimony, supports her conviction and sentence.

Respectfully submitted,

CLINTON J. JOHNSON
UNITED STATES ATTORNEY

/s/ Kristin F. Harrington

Kristin F. Harrington, OBA No. 21185
Assistant United States Attorney
110 West Seventh Street, Suite 300
Tulsa, Oklahoma 74119
(918) 382-2785

Certificate of Service

I hereby certify that on the day of July 15, 2022, I served the foregoing document via electronic email, on the following:

Matthew Allen Chivari, Esq.
mchivari@lowtherwalker.com
Counsel for Ms. Thomas

/s/ Kristin F. Harrington

Kristin F. Harrington
Assistant United States Attorney