

**UNITED STATES DISTRICT COURT  
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 Under 28 U.S.C. § 2255**

The Court should deny Aleta Thomas's § 2255 Motion (Dkt. # 148) because Mr. Ward effectively advocated on behalf of Ms. Thomas throughout his representation of her and during Ms. Thomas's sentencing hearing. Mr. Ward filed all available character letters along with an extensive sentencing memo (Dkt. ## 97, 97-1) prior to her sentencing on June 7, 2022. At this hearing, Mr. Ward successfully secured an eight-level downward variance on behalf of Ms. Thomas. (Sent. Tr. at 35). Further, Mr. Ward prudently requested additional time to investigate, collect, and format 20 additional email messages that Ms. Thomas forwarded to him on May 31, 2022, just days before her sentencing hearing. Finally, any alleged deficiencies did not prejudice Ms. Thomas because the content of the additional email messages was cumulative to the 16 letters already filed with the Court and potentially damaged Ms. Thomas's ability to argue for acceptance of responsibility.

### **Relevant Facts**

Shortly after Congress enacted the Paycheck Protection Program (“PPP”) to alleviate the economic fallout caused by the COVID-19 pandemic, Ms. Thomas devised a scheme to profit from the PPP by preparing fake payroll documents, forging bank statements, and creating fake federal tax return documents, and submitting fraudulent PPP loan applications to banks. Ms. Thomas later recruited ten other people into the scheme. Altogether, they applied for 33 fraudulent loans from banks and unlawfully obtained \$795,158.50 in loan proceeds. (PSR at ¶ 14).

*After a federal grand jury indicted Ms. Thomas, the Court appointed Keith Ward to represent her.*

The grand jury indicted Ms. Thomas with four counts of making a false statement to a bank, and the Court appointed Keith Ward to represent Ms. Thomas. (Dkt. ## 2, 8). The grand jury continued its investigation and, after receiving evidence that Ms. Thomas continued to violate the law even after she testified before the grand jury and recruited ten other people into her scheme, the grand jury returned two subsequent indictments. (Dkt. ## 17, 48).

On December 7, 2021, Ms. Thomas pleaded guilty to counts three and four of the second superseding indictment, pursuant to a Plea Agreement Pursuant to Federal Rules of Criminal Procedure 11(c)(1)(C). (Dkt. # 78; Plea Tr. at 13). As a part of this plea agreement, the parties stipulated that the appropriate punishment in this case was a term of imprisonment not greater than 48 months. (Dkt. #78). This maximum

negotiated term of imprisonment was lower than the term of imprisonment of 57-71 months calculated in the PSR. (PSR ¶¶ 48). At the change of plea hearing, the Court scheduled Ms. Thomas's sentencing for May 25, 2022. (*Id.* at 14).

Before sentencing, on May 16, 2022, Mr. Ward filed a 25-page Motion for Nonguideline Sentence (Variance) and included 16 character letters. (Dkt. ## 97, 97-1). Mr. Ward also filed five objections to the PSR. (Dkt. #98). On May 20, 2022, the Court rescheduled Ms. Thomas's sentencing from May 25 to June 7, 2022.

On June 2, 2022, Mr. Ward filed a Motion for Continuance of Sentencing (Dkt. # 106) so that he could investigate, collect, and format 20 additional email messages that Ms. Thomas sent Mr. Ward on May 31, 2022. (Dkt. # 106, p. 1). The Government objected to the continuance based upon a prior continuance and the 16-character letters already filed with the Court. (Dkt. # 109).

The Court denied Ms. Thomas's request and the Court held Ms. Thomas's sentencing on June 7, 2022. (Dkt. # 111). At the sentencing hearing, the Court listened to an extensive statement by Ms. Thomas (Sent. Tr. at 19-25) and the arguments of counsel. (Sent. Tr. at 16 – 19; 25 – 32). During her allocution, Ms. Thomas stated she took responsibility for her actions. (Sent. Tr. at 21). After a short recess, the Court announced it had reviewed numerous letters of support filed on behalf of Ms. Thomas. (Sent. Tr. at 34). The Court then accepted the plea agreement and partially granted Ms. Thomas's request for a downward variance. The eight-level downward variance resulted in a guideline range of 27-33 months. (Sent. Tr. at 35).

The Court sentenced Ms. Thomas to a term of 30 months imprisonment, with both counts three and four to run concurrently, and ordered Ms. Thomas to self-report to a Federal Bureau of Prisons facility. (Sent. Tr. at 37). Ms. Thomas later filed multiple motions to delay her self-surrender date (Dkt ## 124, 130, 136). Eventually, the United States Marshals Service arrested Ms. Thomas after she failed to self-report to prison. (Dkt ## 140, 146, 147).

*Ms. Thomas moved to vacate her conviction, claiming she received ineffective assistance of counsel.*

Ms. Thomas has filed a § 2255 Motion seeking to vacate her conviction. (Dkt. #125). She lists two grounds in her motion. The Court ordered the government to respond. (Dkt. # 148). Ms. Thomas later filed a motion to withdraw Ground Two of her § 2255 Motion and the Court granted this request. (Dkt. ## 157, 158). The Court found that Ms. Thomas had waived her attorney-client privilege with Mr. Ward, and he could respond to Ms. Thomas's remaining claim. (Dkt. # 159).

## **Argument**

### **I. Applicable Standards**

To demonstrate 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). First, she must show that her counsel's performance was deficient, which requires showing that "counsel's performance fell below an objective standard of reasonableness." *Id.* at 687-8. "Judicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a

defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Id.* at 689. Thus, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *Id.*

Second, Ms. Thomas must show that her 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 demonstrate both *Strickland* prongs to establish his claim, a failure to prove either one is dispositive." *United States v. Orange*, 447 F.3d 792, 796-97 (10th Cir. 2006). "The performance component need not be addressed first. 'If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed.'" *Smith v. Robbins*, 528 U.S. 259, 286 n. 14 (2000) (quoting *Strickland*).

Here, Ms. Thomas's ineffective assistance claim fails because Mr. Ward advocated effectively for Ms. Thomas at her sentencing, and secured an eight-level downward variance. Further, Ms. Thomas was not prejudiced by the alleged failure to submit additional email messages to the Court because Mr. Ward had already

presented the Court with 16-character letters. The additional email messages would have been cumulative and could have damaged Ms. Thomas's ability to argue for acceptance of responsibility.

## **II. Mr. Ward advocated reasonably by filing all available, formatted letters with the Court.**

Mr. Ward reasonably and appropriately filed all available mitigation evidence with the court in advance of Ms. Thomas's sentencing date. The Tenth Circuit has ruled that in determining whether a defendant was prejudiced by the failure to present mitigation evidence at sentencing the Tenth Circuit "will not consider omitted evidence in a vacuum." *Wilson v. Trammell*, 706 F.2d 1286, 1305 (10th Cir. 2013). Instead, the Tenth Circuit has directed reviewing courts to consider *all* the relevant evidence and the government's response to what the evidence would have been. *United States v. Barnett*, 985 F.3d 1203, 1222-23 (10th Cir. 2021).

Here, Mr. Ward presented all available mitigation evidence to the Court including the 16-character letters Ms. Thomas sent to him in April 2022 along with an extensive sentencing motion. (Dkt. ## 97, 97-1). These 16 letters include statements of support from every aspect of her life – from friends, family members, her adopted children, and the ministers at Ms. Thomas's church. These letters were informative and shed light on Ms. Thomas's good acts in the community. Mr. Ward also filed five objections to the PSR. (Dkt. # 98). At sentencing, Mr. Ward and Ms.

Thomas made extensive statements to the Court in support of a lenient sentence and the Court acknowledged reading the 16 character letters. (Sent. Tr. at 34)

Further, Mr. Ward prudently requested additional time to investigate, collect, and format approximately 20 additional email messages that Ms. Thomas had forwarded to Mr. Ward on May 31, 2022, just days before her sentencing hearing. (Dkt. # 106, p. 1; Affidavit ¶ 9). After the Government filed its objection to this motion, the Court denied Ms. Thomas's request for a continuance of her sentencing. (Dkt. # 111). To be clear, Mr. Ward did not possess an additional 30 or 40 letters that he declined to submit to the Court. Instead, Mr. Ward possessed email messages from Ms. Thomas that included screenshots and piecemeal messages. (Affidavit ¶ 9). These email messages required further investigation and formatting. Because of Ms. Thomas's late delivery of these email messages, Mr. Ward was unable to interview the alleged authors of these email messages and format these messages. (*Id.*). Thus, it was Ms. Thomas's failure, and not Mr. Ward's, that prevented the Court from reviewing these messages at sentencing. Therefore, Ms. Thomas has failed to prove Mr. Ward withheld mitigation evidence from the Court and that Mr. Ward's representation was deficient.

### **III. Ms. Thomas failed to prove prejudice from Mr. Ward's alleged failure to present the Court with additional letters of support.**

Ms. Thomas has failed to prove how the submission of these alleged letters of support *might* have resulted in the Court granting her a more lenient sentence than

the one the Court imposed. It is Ms. Thomas's burden to prove that, but for Mr. Ward's alleged error, the result of her sentencing hearing would have been different. *Strickland* 466 U.S. at 694. Other courts have considered the failure to present character witnesses and letters at a sentencing hearing. For example, in *Hausier v. United States* the Court evaluated whether trial counsel performed deficiently at a sentencing hearing where the petitioner claimed counsel failed to present character witnesses and letters. 2012 WL 5306295, at \*6 (N.D. Ill. Oct. 26, 2012). The court in *Hausier* ruled the petitioner failed to prove the requisite prejudice under the second prong of *Strickland* because the petition failed to allege how the witness testimony, or the contents of the letters, could have affected the petitioner's sentence. *Id.*

Ms. Thomas has not only failed to explain what these approximately 20 email messages stated, but Ms. Thomas has completely failed to prove she was prejudiced by Mr. Ward's inability to investigate, collect, and format the additional letters. Indeed, following a lengthy sentencing hearing and after delivering arguments in favor of his client's sentencing motion, Mr. Ward successfully advocated for an eight-level downward variance.

As Mr. Ward explained in his affidavit, the approximately 20 email messages Ms. Thomas sent him contained piecemeal information that required further investigation and formatting. (Affidavit ¶ 9). Even if Mr. Ward had obtained a continuance of the sentencing, the content of these 20 email messages was cumulative of the letters of support Mr. Ward already had submitted to the Court;

the new email messages supported no new arguments. *Id.* Additionally, Mr. Ward exercised his professional judgment in not presenting the Court with additional email messages protesting Ms. Thomas's guilt. *Id.* Therefore, Ms. Thomas has failed to demonstrate how Mr. Ward's alleged failures to obtain a continuance of her sentencing and present additional email messages resulted in her receiving a harsher sentence than she received. This is especially true considering the eight-level downward variance Mr. Ward secured on his client's behalf.

### **Compliance with Rule 5**

In compliance with Rule 5 of the Rules Governing Section 2255 Proceedings for the United States District Courts, the government states that Ms. Thomas has not used any other available federal remedies and has not been given an evidentiary hearing.

### **Conclusion**

The Court should deny Ms. Thomas's § 2255 motion because Mr. Ward effectively advocated for Ms. Thomas at her sentencing and throughout his representation of her. Mr. Ward provided the Court with all known and available character letters at the time of the sentencing hearing. Mr. Ward requested a continuance of the sentencing hearing to investigate, collect, and formal additional email messages Ms. Thomas submitted to him just days before her sentencing. Ms.

Thomas's § 2255 Motion also fails because Ms. Thomas fails to prove she was prejudiced by Mr. Ward's representation which in fact resulted in Ms. Thomas receiving an eight-level downward variance.

Respectfully submitted,  
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**CERTIFICATE OF SERVICE**

I certify that on November 1, 2022, I electronically transmitted the foregoing to the Clerk of the Court using the ECF System for filing and that, a true and correct copy of the foregoing was served by first-class mail, postage prepaid, to the following who is not an ECF registrant:

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