

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

v.

AMANDA CHRISTIAN

Criminal Action No.

1:20-CR-296-9-JPB-CMS

United States’ Response in Opposition to Defendant’s Motion to Vacate, Set Aside, or Correct her Sentence Under 28 U.S.C. § 2255

The United States of America, by Ryan K. Buchanan, United States Attorney for the Northern District of Georgia, and Tal C. Chaiken and Samir Kaushal, Assistant United States Attorneys, respectfully files this Response in Opposition to Defendant Amanda Christian’s Motion to Vacate, Set Aside, or Correct her Sentence under 28 U.S.C. § 2255 (Doc. 722.) Christian’s claims are based on conclusory allegations that are affirmatively contradicted by the record and that regardless do not warrant relief. The Court should deny Christian’s Motion in its entirety without an evidentiary hearing.

Factual and Procedural Background

A. Factual Background.

Christian participated in a scheme that co-defendant Darrell Thomas orchestrated to obtain fraudulent Paycheck Protection Program (“PPP”) loans. (Presentence Investigation Report (“PSR”), ¶¶ 99–100.) As part of the scheme, Christian fraudulently obtained a \$760,207 PPP loan for her own business, Advertising and Then Some Inc. (“ATS”). (*Id.* ¶¶ 108–109.) She also conspired with Darrell Thomas and others to obtain an \$830,417 fraudulent PPP loan for

Transportation Management Services Inc. (“Transportation Management”) and a \$787,160 fraudulent PPP loan for Mickies Auto and Tires LLC (“Mickies”). (*Id.* ¶¶ 100–101, 103–104, 111–113.)

B. Christian’s Criminal Indictment and Guilty Plea.

A Grand Jury sitting in the Northern District of Georgia returned a first superseding indictment on July 13, 2021, charging Christian and 13 others (Doc. 135) and a second superseding indictment on August 10, 2021 charging Christian and 14 others (Doc. 290). The second superseding indictment charged Christian with five counts of conspiracy to commit bank fraud and/or wire fraud (18 U.S.C. § 1349), two counts of bank fraud (18 U.S.C. § 1344), five counts of wire fraud (18 U.S.C. § 1343), and two counts of making false statements to a financial institution (18 U.S.C. § 1014). (Doc. 290 at 25–29, 40–44, 47–50, 56–61, 63–64.) Christian was released on an unsecured bond. (Doc. 214.) She retained Gabe Banks (“Defense Counsel”) to represent her. (Doc. 347.)

On January 13, 2022, Defense Counsel and attorneys for several co-defendants filed a joint motion to continue the pretrial deadlines, stating that they “have received the government’s initial discovery production” and need more time to review it. (Doc. 411.) The Court thereafter continued the pretrial deadlines. (Doc. 414.) On March 4, 2022, after being notified that Christian wanted to enter a guilty plea, the Court set a change of plea hearing for March 24, 2022 and later reset it to March 23, 2022. (Mar. 4, 2022 docket entry; Mar. 7, 2022 docket entry.)

On March 23, 2022, Christian pled guilty to one count of conspiracy to commit wire fraud. (Doc. 447; Doc. 447-1.) At the change of plea hearing, Christian was sworn and confirmed under oath that she signed and understood the terms of her Plea Agreement, including (1) that she was pleading guilty because she is in fact guilty and (2) that the stipulated loss amount is between \$1,500,000 and \$3,500,000. (Doc. 759 at 3:19, 4:10–5:5, 9:7–14:17.)¹ Christian also acknowledged her understanding of the elements of the offense to which she pleaded guilty and admitted that she “agreed to try to accomplish a common and unlawful plan to commit wire fraud,” that she “knew the unlawful purpose of the plan and willfully joined in it,” and that she “acted with the intent to defraud.” (*Id.* at 15:21–17:11, 21:19–22:19.)

Before formally entering her guilty plea, Christian confirmed that she fully understood the proceeding, had a sufficient opportunity to discuss the case with her attorney, and was satisfied with her attorney’s representation:

The Court: Is there anything that we’ve talked about today that you do not feel that you fully understand?

Christian: No, sir.

The Court: Have you had a sufficient opportunity to talk about your case with your attorney and have your attorney answer any questions that you have before entering your plea?

Christian: Yes, sir.

The Court: Are you satisfied with the representation that your attorney has provided to you?

¹ Page references in transcripts are to the PageID numbers generated by the CM/ECF system, not to the page numbers designated on the transcripts.

Christian: Yes, sir.

(Doc. 759 at 26:21–27:8.)

As part of the Plea Agreement, Christian also affirmed, among other things, that she understood “the elements of each charge that the Government would have to prove to convict [her] at trial,” that she “carefully reviewed every part of [the Plea Agreement] with [her] attorney,” that she understood and voluntarily agreed to the Plea Agreement’s terms, and that she was satisfied with her attorney’s representation. (Doc. 447-1 at 18.)

C. Christian’s Sentencing.

Christian’s sentencing was set for September 13, 2022. After the Probation Office issued the initial PSR, Defense Counsel submitted objections to facts in the PSR and to the PSR’s inclusion of a three-level upward adjustment for an aggravating role in the offense. (PSR at 40.) The Probation Officer maintained its position as to the role adjustment in the final PSR. (*Id.* ¶ 123.)

One week before Christian’s sentencing hearing, Defense Counsel filed a sentencing memorandum. (Doc. 563.) In the sentencing memorandum, Defense Counsel withdrew the objections to the PSR and asked the Court to grant a 3-level downward variance and impose a sentence of 33 months’ imprisonment. (*Id.* at 2–3.) Defense Counsel argued at length that the Section 3553(a) factors demonstrate that a sentence of 33 months’ imprisonment is appropriate. (*Id.* at 4–11.) Defense Counsel also attached records related to Christian’s criminal history (arguing that she had been erroneously assigned one criminal history point) and community service, and several character letters in support of

Christian. (Docs. 563-1 through 563-7.) After hearing arguments from the parties at sentencing, the Court sentenced Christian to 41 months' imprisonment, which represented a one-level downward variance from the low-end of her Guidelines range. (Doc. 760 at 35:18–36:2, 42:17–20.)

Legal Standards

To prevail on a Section 2255 claim based on ineffective assistance of counsel, a defendant must show that “(1) h[er] counsel’s performance was deficient and (2) the deficient performance prejudiced h[er] defense.” *Martin v. United States*, 949 F.3d 662, 667 (11th Cir. 2020) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). There is a “strong presumption” that a defense attorney’s conduct falls within “the range of reasonable professional assistance” and an attorney’s performance “is deficient only if it falls below the wide range of competence demanded of lawyers in criminal cases.” *Osley v. United States*, 751 F.3d 1214, 1222 (11th Cir. 2014). Prejudice requires showing a reasonable probability that, but for the defense attorney’s deficient performance, the result of the proceeding would have been different. *Martin*, 949 F.3d at 667.

A court need not hold an evidentiary hearing if the defendant’s “allegations are patently frivolous, based upon unsupported generalizations, or affirmatively contradicted by the record.” *Winthrop-Redin v. United States*, 767 F.3d 1210, 1216 (11th Cir. 2014) (internal quotation marks and citations omitted); *see also Osley*, 751 F.3d at 1229 (affirming denial of Section 2255 motion without an evidentiary hearing because “a district court is not required to hold a hearing when the petitioner’s claims are clearly contradicted by the record or are patently

frivolous”); 28 U.S.C. § 2255(b) (providing that a court should hold a hearing “[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief”). Rather, courts must hold a hearing only if the defendant alleges reasonably specific, non-conclusory facts that, if true, would entitle her to relief. *See, e.g., Winthrop-Redin*, 767 F.3d at 1216; *Ochoa v. United States*, 45 F.4th 1293, 1300 (11th Cir. 2022).

I. Defense Counsel Did Not Perform Deficiently as to Discovery Because the United States Provided all Discovery to Defense Counsel.

Christian alleges that Defense Counsel was ineffective “because he failed to file a motion of discovery to obtain evidence used to indict the defendant.” (Doc. 722 at 6.) She is mistaken. Defense Counsel did not file a motion for discovery because *the United States provided discovery to Defense Counsel*. (See Aug. 6, 2021 Ltr., attached as Ex. A; Doc. 411 at 2 (“Counsel for the Defendants have received the government’s initial discovery production, which is voluminous (in excess of 50GB and approximately 200,000 digital files) and have been reviewing such voluminous discovery.”).)² It was not ineffective for Defense Counsel not to file a motion to obtain discovery that he already had.

² The Supreme Court has explained that “a guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.” *Tollett v. Henderson*, 411 U.S. 258, 267 (1973). To the extent Christian challenges anything other than the voluntariness of her guilty plea, she has waived that claim through entry of her plea. *See, e.g., Wilson v. United States*, 962 F.2d 996, 997 (11th Cir. 1992) (affirming dismissal of ineffective assistance of counsel claims based on “pre-plea issues”).

To the extent Christian suggests that Defense Counsel did not adequately review the discovery with her before she entered her plea, the record affirmatively shows otherwise. Before entering her guilty plea, Christian confirmed that she “had a sufficient opportunity to talk about [her] case with [her] attorney and have [her] attorney answer any questions” and was “satisfied with the representation that [her] attorney ha[d] provided to [her].” (Doc. 759 at 26:24–27:5.) Where a defendant makes statements under oath during her plea colloquy that contradict her later allegations, those sworn statements “are afforded great weight,” *Martin*, 949 F.3d at 670, and the defendant “bears a heavy burden to show h[er] statements were false.” *Winthrop-Redin*, 767 F.3d at 1217 (citation and quotation marks omitted). Christian has not met her “heavy burden” of showing that her statements at the plea hearing were false. *See, e.g., Ilonzo v. United States*, No. 1:12-CR-276-SCJ-JKL, 2019 WL 4722466, at *3 (N.D. Ga. June 20, 2019) (denying ineffective assistance claim based on alleged failure to review discovery where the defendant “stated at her plea hearing that she ‘had sufficient time to think about and discuss this matter fully’ with her attorney and that she [w]as satisfied with the job that her attorney had done in representing her”), *R&R adopted by* 2019 WL 4689044 (N.D. Ga. Sept. 26, 2019).

Christian likewise has not sufficiently alleged any prejudice. She makes the conclusory assertion that reviewing the discovery (assuming she did not) “would have allowed her to make an informed plea and possibl[y] led her to go to trial.” (Doc. 722 at 7.) She does not, however, identify any discovery that she

is now aware of that would have caused her to proceed to trial rather than entering a guilty plea. *See, e.g., Ilonzo*, 2019 WL 4722466, at *3 (denying ineffective assistance claim based on failing to properly investigate case, where the defendant “entirely fail[ed] to point to what information or evidence that trial counsel purportedly missed that would have made any difference in her decision to plead guilty rather than proceeding to trial”).

II. The Record Contradicts Christian’s Claim that Defense Counsel “Hurriedly Implored” her to Plead Guilty.

Christian contends that Defense Counsel was ineffective “because he hurriedly implored [her] to sign her plea agreement due to the fact that the government would not speak with [her] until after the plea agreement was signed.” (Doc. 722 at 8.) As set forth above, Christian’s allegation that she was rushed into pleading guilty is belied by the record of the plea hearing, in which she confirmed that she had sufficient time to discuss the case with her attorney. Moreover, Christian entered her guilty plea more than eight months after she was initially charged, contradicting her claim that she was rushed to plead guilty. (Doc. 135; Doc. 447.)

Christian also suggests, without explanation, that her plea colloquy violated Rule 11. (Doc. 722 at 8–9.) The thorough Rule 11 colloquy at the plea hearing squarely defeats Christian’s allegation. Where, as here, “the provisions of [Rule 11] were scrupulously followed, the trial judge’s determination that the plea was knowing, intelligent, and voluntarily will only be overturned on a finding that the district court was clearly erroneous.” *United States v. Fairchild*, 803 F.2d 1121, 1123 (11th Cir. 1986).

III. Defense Counsel Was Not Ineffective for Not Challenging the Stipulated Actual Loss Amount.

Christian claims that Defense Counsel was ineffective for not challenging the Court's loss calculation at sentencing. (Doc. 722 at 9-19.) Specifically, she argues that her loss amount should have been calculated using the actual loss amount, not intended loss amount, involved in her offense. (*Id.*) Her argument, again, misunderstands both the facts and the law.

To start, Christian stipulated to the loss amount as part of her Plea Agreement and at her plea hearing:

AUSA: Paragraphs 12 through 15 set forth a series of guidelines stipulation[s]; specifically, that the base offense level is Section 2B1.1, that a 16-level upward adjustment will apply under Section 2B1.1(b)(1)(H) because the amount of loss is between 1.5 million and 3.5 million . . .

AUSA: I do believe I misspoke, your Honor, the plea agreement does set forth that the applicable adjustment is 2B1.1(b)(1)(I). And I think I correctly stated the loss amount of between 1.5 and 3.5 million, but I did reference the wrong subsection. So my apologies to the Court for that.

The Court: Okay. Very well. Sounds like we've got it cleared up now, so thank you.

Ms. Christian, with that correction does that accurately reflect the agreement that you believe you've reached with the government?

Christian: Yes, sir.

(Doc. 759 at 10:6–10, 14:6–17; *see also* Doc. 447-1, ¶ 13.) Thus, an objection to the loss amount at sentencing would have constituted a breach of the Plea Agreement and would have relieved the United States of its obligations under that agreement (for example, to dismiss the remaining charges against Christian, to recommend an adjustment for acceptance of responsibility, and to recommend a sentence at the low end of the Guidelines range). Christian cannot show any ineffectiveness or prejudice based on Defense Counsel’s failure to object to a stipulated term in her plea agreement. *See, e.g., Covington v. United States*, 739 F.3d 1087, 1091 (8th Cir. 2014) (“an objection by counsel to the application of [a guideline stipulated in the plea agreement] would have breached the plea agreement” and “released the government from its obligations under the plea agreement,” such that the defendant could not show prejudice); *Fremont v. United States*, No. 13-CR-20519, 2016 WL 1622607, at *7 (S.D. Fla. Jan. 26, 2016) (“Counsel cannot be deemed deficient for failing to directly attack the . . . loss amount . . . contained in the plea agreement, because this would have breached the plea agreement, and exposed” the defendant to additional liability.).

Christian’s Motion includes a lengthy argument that the loss amount under Section 2B1.1 should include only actual loss, not intended loss. (Doc. 722 at 10–18.) While the United States disagrees with Christian’s legal analysis, her analysis is irrelevant: Christian’s loss amount was determined using only actual loss amount – the amount of three fraudulent PPP loans that were actually funded – not intended loss amount (*e.g.* loan amounts that were sought but not actually approved and/or disbursed). (*See* PSR, ¶¶ 104, 107, 109–110, 112, 114,

115.) Specifically, the loss was calculated based on the \$830,417 loan funded for Transportation Management, the \$760,207 loan funded for ATS, and the \$787,160 loan funded for Mickies. (*Id.*)

Christian appears to be confusing the concepts of “intended loss” and “credits against loss.” Under the commentary to Section 2B1.1, “intended loss” means “the pecuniary harm that the defendant purposely sought to inflict” even if that harm would have been impossible or unlikely to occur. USSG § 2B1.1, comment (n.3(A)(ii)). “Credits against loss,” on the other hand, is a reduction in the loss amount for “money returned . . . by the defendant or other persons acting jointly with the defendant, to the victim before the offense was detected.” USSG § 2B1.1, comment (n.3(E)). Christian suggests that her loss amount should have been reduced by amounts that were eventually returned to the lenders – that is, that a credit should be applied against the actual loss. But she does not identify any evidence supporting that any funds were returned to lenders before the offense was detected. The record shows that she cannot make that showing.

It is undisputed in the PSR that of the \$787,160 PPP loan issued to Mickies, all but \$5,125 was “frozen, and ultimately returned to CDC Small Business Finance because *Woodforest Bank suspected the deposit was fraudulent.*” (PSR, ¶ 112 (emphasis added).) Christian therefore cannot establish that Mickies’ PPP loan funds were returned “by the defendant or other persons acting jointly with the defendant . . . before the offense was detected”; instead, the funds were returned because Mickies’ bank detected the offense and froze the funds. The loss amount

associated with Transportation Management and Mickies is \$1,617,577.³ Thus, even if Christian had properly alleged in non-conclusory fashion that she returned ATS' PPP loan funds to the lender before the offense was detected, her Guidelines level would be the same. USSG § 2B1.1(b)(1)(I) (establishing a 16-level upward adjustment for a loss amount between \$1,500,000 and \$3,500,000). Thus, she cannot show any deficient performance or prejudice.

Finally, Christian suggests in passing that her counsel should have argued that her loss amount should have been calculated based on her personal gain from the offense, which she alleges was \$55,000. (Doc. 722 at 10.) That is not, however, how loss is calculated under Section 2B1.1, and Defense Counsel cannot have performed deficiently in failing to make a meritless objection. *See* USSG § 2B1.1, comment (n.3(B)) ("The court shall use the gain that resulted from the offense as an alternative measure of loss *only if* there is a loss but it reasonably cannot be determined.") (emphasis added); *see United States v. Winfield*, 960 F.2d 970, 974 (11th Cir. 1992) ("[A] lawyer's failure to preserve a meritless issue plainly cannot prejudice a client.").

IV. Defense Counsel Was Not Ineffective For Not Challenging an Element of the Offense to Which Christian Pleaded Guilty.

Christian claims that Defense Counsel was ineffective for "not objecting to the submission of 'intent and willful' element." (Doc. 722 at 19.) Although

³ While the PSR does not describe the circumstances of the return of ATS's PPP loan funds to the lender, an evidentiary hearing would show that ATS did not voluntarily return those funds before the offense was detected. As explained here, however, Christian's Guidelines range would be the same even if ATS had voluntarily returned its PPP loan funds.

Christian's claim is unclear, her discussion appears to focus on the requirement under 18 U.S.C. § 1343 – the object of the conspiracy she pleaded guilty to – that the defendant have an intent to defraud. (Doc. 722 at 19–22.)

“Pleading guilty necessarily admits the commission of the crime,” so a defendant is not free at sentencing to challenge an element of an offense she pleaded guilty to. *Wilson v. United States*, 962 F.2d 996, 997 (11th Cir. 1992). Here, when pleading guilty, Christian admitted that she acted with the intent to defraud:

The Court: Do you admit that you acted with the intent to defraud?

Christian: Yes, sir.

(Doc. 759 at 22:12–14.) And as discussed above (at 3–4), Christian stated that she had a sufficient opportunity to talk about her case with Defense Counsel before entering her guilty plea. Finally, at sentencing, Christian admitted that “when [she] realized that . . . [she] was involved in a fraudulent scheme . . . [she went] through with it anyway.” (Doc. 760 at 17:21–24.) Christian has not identified any ineffectiveness or prejudice related to this issue.

V. Defense Counsel Was Not Ineffective for Withdrawing His Objection to a Role Enhancement.

Christian claims that Defense Counsel was ineffective for withdrawing his objection to the PSR's conclusion that Christian should receive a three-level upward adjustment for her role in the offense. (Doc. 722 at 23.) However, she cannot show deficient performance or prejudice based on the failure to make a meritless objection. *See Winfield*, 960 F.2d at 974.

Under Eleventh Circuit precedent, the recruitment of participants is sufficient to support an aggravating role enhancement. *See United States v. Vasquez*, 486 F. App'x 830, 835 (11th Cir. 2012) (“[W]e have held many times that a defendant’s recruitment of co-conspirators supports a § 3B1.1 enhancement.”); *United States v. Cunningham*, 537 F. App'x 878, 880 (11th Cir. 2013) (upholding three-level upward adjustment where the defendant’s only managerial act was recruiting others to join scheme); *United States v. Ducuara De Saiz*, 511 F. App'x 892, 897 (11th Cir. 2013) (affirming three-level aggravating role enhancement based solely on defendant’s role in “finding and recruiting couriers to transport drugs”); *United States v. Thomas*, 446 F.3d 1348, 1355 n.2 (11th Cir. 2006) (affirming application of aggravating role enhancement based solely on evidence that defendant recruited others). Moreover, supervising another participant is likewise sufficient to warrant a role enhancement. *See United States v. Sosa*, 777 F.3d 1279, 1301 (11th Cir. 2015) (upholding three-level adjustment because “[e]ven if [the defendant] was a supervisor or manager only of [one other participant], that single underling is enough to qualify [the defendant] as a manager or supervisor under the Guidelines”); *United States v. Stroman*, 661 F. App'x 600, 603 (11th Cir. 2016) (upholding three-level upward adjustment and rejecting the defendant’s argument that she simply followed the mastermind’s instructions because the evidence showed that the defendant “specifically directed other codefendants in the tax fraud conspiracy”).

Here, Christian’s own brief alleges facts sufficient to support her aggravating role enhancement. First, she admits that she “refer[red]” another co-

conspirator, Rick McDuffie, into the scheme. (Doc. 722 at 23; *see also* PSR, ¶ 101.) Her recruitment of McDuffie, regardless of the label she gives it, warrants an aggravating role adjustment. Second, while she claims that she “did not hold any sort of sphere of influence over McDuffie,” she later asserts that “she informed . . . McDuffie to not move forward with his loan,” essentially arguing that she *did* provide McDuffie instructions as to the Mickies’ loan. (Doc. 722 at 23–24.) In addition, the undisputed facts in the PSR establish that “Christian directed McDuffie” in connection with Mickies’ loan. (PSR, ¶ 113.)

Because the undisputed facts in the PSR, and Christian’s own current allegations, support the application of a three-level aggravating role adjustment, Christian cannot show that her counsel performed deficiently in withdrawing the objection to the role enhancement. For the same reasons, she cannot show that an objection would have resulted in a lower Guidelines range and accordingly cannot show any prejudice.

VI. Defense Counsel Was Not Ineffective in his Sentencing Argument.

Christian argues that Defense Counsel was ineffective “for failure to argue 3553(a) factors ‘the need to avoid unwarranted sentencing disparities among defendant with similar conduct.’” (Doc. 722 at 25.) Christian’s argument is factually and legally incorrect.⁴

⁴ Christian also contends that Defense Counsel “failed to object to the government’s sentencing recommendation on or before the day of sentencing.” (Doc. 722 at 25.) She is mistaken. Defense Counsel argued for a three-level downward variance in both his sentencing memorandum and at the sentencing hearing. (Doc. 760 at 7:14–17.) The record contradicts Christian’s allegation.

Christian cites cases in which defendants received downward variances or lower sentences than her, apparently suggesting that her counsel should have cited those cases at the sentencing hearing in arguing for the need to avoid unwarranted sentencing disparities. Christian does not discuss any of the circumstances in those cases or explain why her sentence created unwarranted sentencing disparities with any of these individuals. *See United States v. Azmat*, 805 F.3d 1018, 1048 (11th Cir. 2015) (“[T]here can be no ‘unwarranted’ sentencing disparities among codefendants who are not similarly situated.”)

The defendant in *United States v. Crowther* received a downward variance, but the fact that another defendant received a downward variance does not mean that Christian’s sentence created unwarranted sentencing disparities. *See United States v. Crowther*, No. 2:20-cr-114-JES-MRM, Doc. 179 (M.D. Fla. June 29, 2021).⁵ The United States has not been able to find the “Gilroy” case referenced without citation in Christian’s Motion. And Charmaine Redding, who was likewise sentenced as part of Darrell Thomas’s fraudulent scheme, did not receive any downward variance. Unlike Christian, Charmaine Redding was accountable for only one fraudulent PPP loan and did not receive an aggravating role enhancement. Christian’s higher sentence reflected her higher level of culpability and did not create unwarranted sentencing disparities.

⁵ Christian’s citation to *Crowther* mistakenly suggests that it was an Eleventh Circuit decision. It was not. The sentence was imposed in the Middle District of Florida, and the propriety of the downward variance was not at issue on appeal. *See United States v. Crowther*, No. 21-12255, 2023 WL 3813509 (11th Cir. June 5, 2023).

Christian also asserts that if Defense Counsel had argued for sentencing based on the actual loss amount, her Guidelines range would have been lower. (Doc. 722 at 25–26.) As explained above, however, her Guidelines range *was* in fact based on the actual loss amount, and she agreed to that loss amount in her Plea Agreement and at her guilty plea hearing. Defense Counsel was not ineffective for not objecting to the loss amount that Christian had stipulated to as part of her Plea Agreement. *See Connor v. United States*, No. 1:14-CR-217-WSD-AJB, 2017 WL 10299579, at *7–8 (N.D. Ga. Apr. 4, 2017) (where the defendant agreed to a loss amount as part of her plea agreement, the defendant could not show ineffective assistance of counsel because “any objection in contradiction to the agreed on loss amount . . . would have failed”); *Buxton v. United States*, No. 1:09-CR-500-CAP-LTW, 2011 WL 13176723, at *4 n.2 (N.D. Ga. Aug. 11, 2011) (rejecting as meritless a defendant’s claim that his counsel was ineffective for not objecting to a career offender enhancement because the defendant had agreed in his plea agreement that he qualified as a career offender). Christian also has not provided any evidence to show how Defense Counsel could have proven a lower loss amount, and therefore cannot show any prejudice.

Finally, Christian appears to suggest, without explanation, that she would receive a dramatically lower sentence if she were sentenced today. (Doc. 722 at 27.) She cites two cases in which courts granted compassionate release to defendants who had already served lengthy sentences but would have faced much lower Guidelines ranges if sentenced today. (Doc. 722 at 27); *United States v. McCoy*, 981 F.3d 271, 274, 286 (4th Cir. 2020)(affirming grant of compassionate

release to defendants who had already served between 17 and 25 years in prison, where their “sentences would be dramatically shorter – in most cases, by 30 years – than the ones they received” based on statutory and Guidelines changes); *United States v. Elzey*, No. JKB-09-0288, 2022 WL 316717, at *1–4 (D. Md. 2022) (granting compassionate release to a defendant who had served 151 months of a sentence of 262 months, where the defendant’s Guidelines range at sentencing was 262–327 months, but at the time of the Motion, would have been 121–151 months based on changes in the Guidelines). Christian’s case is nothing like the cases she cites and her argument is a non-sequitur.

Conclusion

For these reasons, the United States respectfully requests that the Court deny Christian’s Motion in its entirety without an evidentiary hearing. In addition, the Court should recommend that a certificate of appealability be denied because Christian has not “made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (holding that to satisfy Section 2253(c), “[t]he petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong”).

Dated: November 14, 2023

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