

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Criminal Case No. 23-cr-00074-NYW

Civil Case No. 23-cv-03024-NYW

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

v.

DEJANE REANIECE LATTANY,

Defendant-Movant.

UNITED STATES' RESPONSE TO AMENDED MOTION TO VACATE

The United States submits this further response to DeJane Reanice Lattany's amended motion to vacate, which this court has construed as a supplement to her original motion. Nothing Lattany has added entitles to her relief, so her motion should still be denied.

Lattany claims that her counsel was ineffective in three additional respects. To establish ineffective assistance, a defendant must show both that counsel's performance "fell below an objective standard of reasonableness" and that she was prejudiced as a result. *Hill v. Lockhart*, 474 U.S. 52, 57 (1985). "If it is easier to dispose" of an ineffectiveness claim based on a "lack of sufficient prejudice," the court may do so. *Strickland v. Washington*, 466 U.S. 668, 697 (1984).

1. Lattany's first additional claim is that her counsel told her to put her home in a foreign trust so that the government could not take it, but then "offered" her home to the government. Doc. 62 at 1-2. Lattany appears to refer to her agreement to forfeit property located at 11125 Quintero Court in Commerce City, Colorado. Doc. 13 at 2.

But if Lattany claims that forfeiture of her home was unlawful, it is unlikely that her claim can be raised in a § 2255 motion. After all, § 2255(a) permits a “prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the grounds that the sentence was imposed” in violation of the law to move “to vacate, set aside, or correct the sentence.” If forfeiture of Lattany’s home were unlawful, her remedy would not be release from custody, but rather the restoration of her property rights. For that reason, courts have generally held that forfeiture and restitution claims are not cognizable in a § 2255 motion. *United States v. Bergman*, 2012 WL 1358514, at *2 (D. Colo. Apr. 19, 2012) (collecting cases).

Regardless, Lattany cannot establish prejudice under conventional ineffectiveness analysis. Criminal forfeiture is an aspect of sentencing. *Libretti v. United States*, 516 U.S. 29, 38-39 (1995). And to establish prejudice when it comes to sentencing, a defendant must show a reasonable probability of a different sentence but for counsel’s errors. *United States v. Becker*, 109 F. App’x 264, 269 (10th Cir. 2004) (unpublished). That means Lattany must show a reasonable probability that but for her counsel’s errors her house would not have been forfeited.¹

She cannot. She has never disputed that the house was purchased with proceeds she obtained under the scheme to defraud to which she pleaded guilty. So her house was property “which constitutes or is derived from proceeds traceable a violation” of the wire-fraud statute and was therefore forfeitable under the applicable statutes. 18 U.S.C. § 981(a)(1)(C); *see also* 18 U.S.C. §§ 1956(c)(7)(A), 1961(1); 28 U.S.C. § 2461(c). Indeed, Judge Moore recently

¹ As an aside, it is unclear whether counsel’s supposed ineffectiveness lay in his supposed advice to put the home into a foreign trust to shield it from forfeiture (which would raise all sorts of questions about his professional conduct) or his supposed advice to agree to forfeiture in the plea agreement. Either way, her claim fails.

determined that the home was subject to civil forfeiture under the same statutes at issue in the criminal case. Doc. 98, *United States v. 11125 Quintero Court, Commerce City, Colorado, 80022*, No. 22-cv-01351-RM (D. Colo. May 9, 2025). Any ruse to transfer the house to a foreign trust would make no difference. The United States' right, title, and interest in the home vested "upon commission of the act giving rise to forfeiture." 18 U.S.C. § 981(f).

2. Lattany next claims that her counsel was ineffective because he advised her that, if she pleaded guilty, she would not go to jail based on downward departures for being a first-time offender and being safety-valve eligible. Doc. 62 at 2.

But, as the government explained in its first response, a defendant is not prejudiced by "erroneous advice" when she is "correctly informed" by the district court or other sources. *Schumacher v. Ortiz*, 406 F. App'x 290, 293 (10th Cir. 2010) (unpublished). And, as the government also explained, Lattany was advised that there were no promises except those in the plea agreement, that the guidelines range in that agreement was an estimate that could end up higher and was advisory anyway, and that no particular sentence was guaranteed. Doc. 13 at 15, 18; Doc. 14 at 7; Doc. 61-1 at 20. Thus, counsel's supposed advise could not have prejudiced Lattany. *See United States v. Silva*, 430 F.3d 1096, 1099 (10th Cir. 2005).

Moreover, insofar as Lattany now asserts that she would have gone to trial in the federal case but for counsel's erroneous advice, Doc. 62 at 2, her assertion is conclusory and thus insufficient to establish prejudice, *United States v. Dominguez*, 998 F.3d 1094, 1111 (10th Cir. 2021). Given the benefits she received in the plea agreement, Lattany still has not shown that the "decision to reject the plea would have been rational under the circumstances." *Id.* (cleaned up). Not just that, any putative criminal-history or safety-valve departures would have also been

available after a trial and so would not have made the difference in her choice to forgo one.

Moreover, the downward adjustment for zero-point offenders (which Lattany appears to be referring to) was not even effective until November 1, 2024 (after she was sentenced).

U.S.S.G. § 4C1.1. And no departure would have resulted in a guidelines recommendation of no imprisonment much less have bound the court to follow the guidelines.

3. Finally, Lattany says that counsel was ineffective because he did not show her the presentence report and hence she could not object to it. Doc. 62 at 2. Here, again, Lattany cannot establish prejudice. She does not say what objections she would have raised nor does she establish a reasonable probability that any objections would have resulted in a different sentence. *Becker*, 109 F. App'x at 269. That is especially true since the report noted that Lattany was interviewed “and agreed to the stipulated facts outlined in” her plea agreement. Doc. 22 ¶ 40. Plus, at sentencing, Lattany’s counsel affirmed that he had discussed the report with her. Ex. 1 at 4. This court can accept counsel’s representations as an officer of the court. *Blackledge v. Allison*, 431 U.S. 63, 74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Not to mention, Lattany did not protest, even though the court had told her she could consult with her counsel at any time if need be. Ex. 1. at 3.

CONCLUSION

The court should deny Lattany’s motion.

Dated: May 15, 2025

Respectfully submitted,

J. BISHOP GREWELL
Acting United States Attorney

By: s/ Rajiv Mohan
Rajiv Mohan
Assistant U.S. Attorney
U.S. Attorney's Office
1801 California Street, Suite 1600
Denver, CO 80202
Telephone: 303-454-0100
Fax: 303-454-0406
E-mail: Rajiv.Mohan@usdoj.gov

Attorney for Government

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2025 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. I also certify that a copy will be placed in the U.S. Mail, postage pre-paid and addressed to the following:

Dejane Lattany
Reg. No. 51090-510
FMC Carswell
P.O. Box 27137
Forth Worth, TX 76127

s/ Kayla Keiter
Kayla Keiter
U.S. Attorney's Office