

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	EDCR 18-0114-3 JGB EDCR 21-0170-2 JGB EDCV 24-2550 JGB EDCV 24-2552 JGB	Date	October 16, 2025
Title	<i>Carl Bradley Johansson v. United States of America</i>		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE
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MAYNOR GALVEZ

Deputy Clerk

Not Reported

Court Reporter

Attorney(s) Present for Petitioner(s):

Michael Clough

Attorney(s) Present for Defendant(s):

Roger Hsieh
Lindsay Bailey

Proceedings: Order (1) DENYING Motion to Vacate, Set Aside, or Correct Sentence (EDCR 18-0114 Dkt. No. 461; EDCR 21-0170 Dkt. No. 127; EDCV 24-2550 Dkt. No. 1; EDCV 24-2552 Dkt. No. 1); and VACATING October 20, 2025 hearing (IN CHAMBERS)

Before the Court is Defendant/Petitioner Carl Bradley Johansson's ("Defendant") motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. ("Motion," EDCR 18-0114 Dkt. No. 461; EDCR 21-0170 Dkt. No. 127; EDCV 24-2550 Dkt. No. 1; EDCV 24-2552 Dkt. No.1). Upon consideration of the papers filed in support of and in opposition to the motions, the Court **DENIES** the Motion.

I. BACKGROUND

On September 29, 2021, Defendant pleaded guilty to: (1) a conspiracy to violate 49 U.S.C. § 5124 in violation of 18 U.S.C. § 371; (2) a violation of 49 U.S.C. § 5124 (welding without required certifications in violation of 49 C.F.R. § 180.413(a)(1)); (3) a violation of 26 U.S.C. § 7201 (tax evasion); (4) conspiracy to violate 18 U.S.C. § 1344 in violation of 18 U.S.C. § 1349; and (5) a violation of 18 U.S.C. §§ 1344(2) and 3147 (bank fraud while on pre-trial release). (EDCR 18-0114 Dkt. No. 282; EDCR 21-0170 Dkt. No. 47.)

At the change of plea hearing on September 29, 2021 (EDCR 18-0114 Dkt. No. 282; EDCR 21-0170 Dkt. No. 47), Judge Phillips made the following findings after conducting the plea colloquy:

[T]he defendant and his lawyer having told the Court that they have thoroughly discussed all aspects of these charges against the defendant and any defenses that might apply; and the Court having observed the defendant as he answered my questions, and I've had the opportunity to observe his demeanor and manner while he answered questions, as well as his intelligence, and having inquired several times during the proceedings as to whether the defendant feels he is competent to proceed; and the Court also having observed that the defendant does not appear to be under the influence of any medicine, drug, or other substance or factor that would affect his actions or judgment in any manner; the Court finds that the defendant's offer of his plea of guilty to the counts aforementioned in the two Indictments, that the pleas have a factual basis, are free of any coercive influence of any kind, are voluntarily made with full knowledge of the charges against him and the consequences of his guilty pleas, that no promises of any kind have been made to the defendant by anyone, and no coercion or threats of any kind have been exerted upon him in any manner.

("Plea Transcript," at 52-53, EDCR 18-0114 Dkt. No. 390-1). These findings are corroborated by the transcript of the plea colloquy at the change of plea hearing. Defendant stated that he understood the charges against him. (*Id.* at 15, 19.) Defendant's counsel attested that Defendant signed the plea agreement in the presence of Defendant's counsel and that they discussed it "[a]t great length." (*Id.* at 20.) After Defendant was sworn in, he corroborated that he discussed the entirety of the plea agreement with his counsel and confirmed that the contents of the plea agreement covered the entirety of the agreement in Defendant's cases. (*Id.* at 20-22.) Defendant attested that he understood he was pleading guilty to felony charges and the consequences thereof. (*Id.* at 23.) Although Defendant informed Judge Phillips that he felt "a little dizzy," he assured her that he could proceed, that he could think clearly, and confirmed that he had been able to answer her questions. (*Id.* at 24-25.) After Judge Phillips asked the prosecuting attorney to state the maximum statutory sentence for each charge to which Defendant had agreed to plead guilty, Defendant confirmed that he understood the maximum statutory sentences for those charges. (*Id.* at 29-30.) Defendant further confirmed that he understood that the maximum sentence he was facing under those charges was 100 years of imprisonment, a five-year period of supervised release, the greater of either a fine of \$2,750,000 or "twice the gross gain or gross loss resulting from the offense," and a \$500 special assessment fee. (*Id.* at 29, 31-32.) Judge Phillips subsequently asked Defendant if he was "feeling all right." (*Id.* at 33.) Defendant responded: "I'm as good as I felt in the last few months." (*Id.*) Defendant confirmed that he had received no threats or been made any promises besides those contained in the plea agreement. (*Id.* at 34.) He confirmed that he understood the consequences of his guilty plea and responded affirmatively

that he was “competent and able to make the decision to plead guilty” to the charges. (Id. at 35.) He admitted that he committed the acts of which he was accused. (Id. at 37.) He also admitted that the prosecuting attorney would be able to prove each of the facts beyond a reasonable doubt that would be necessary for a conviction if the case went to trial. (Id. at 42.) Defendant confirmed that his medications did not interfere with his ability to “think clearly and understand.” (Id. at 44-46.) After Defendant stated that he suffered from anxiety and depression, Judge Phillip asked again if he could understand the plea colloquy to which Defendant assented. (Id. at 47.) Defendant did not express the need for any psychiatric care. (Id.) Defendant responded in the negative to Judge Phillip’s question as to whether she should not accept his guilty plea for any reason. (Id. at 48.) Defendant’s counsel confirmed that Defendant understood the plea colloquy and the consequences of his guilty plea. (Id. at 49.) Defendant’s counsel attested that a guilty plea was in Defendant’s best interests. (Id. at 50.) Defendant confirmed that he had enough time to review the plea with his counsel and that he was satisfied with his representation. (Id. at 50-51.) Accordingly, Judge Phillips made her findings. (Id. at 51-52.)

On November 6, 2022 Defendant filed a motion to withdraw his guilty plea. (“Motion to Withdraw,” EDCR 18-0114 Dkt. No. 390.) On December 5, 2022 Judge Phillips denied Defendant’s Motion to Withdraw. (EDCR 18-0114 Dkt. No. 414.) Judge Phillips held that Defendant’s plea was not involuntary based on promises made in the plea agreement, that the attached psychiatric report did not place in doubt Defendant’s ability to understand the charges against him or the consequences of his guilty plea, and rejected Defendant’s attempts to assert new facts establishing his innocence. (See id.) On December 5, 2022, Judge Phillips sentenced Defendant to serve 120 months of imprisonment, five years of supervised release, and to pay \$1,252,979.00 in restitution, and the \$500 special assessment fee. (EDCR 18-0114 Dkt. No. 420; EDCR 21-0170 Dkt. No. 110.)

Defendant subsequently appealed his conviction to the Ninth Circuit. (EDCR 18-0114 Dkt. No. 422.) The Ninth Circuit denied Defendant’s appeal on the basis of the valid appeal waiver in Defendant’s plea agreement. (“Ninth Circuit Opinion,” EDCR 18-0114 Dkt. No. 458.)

On November 13, 2024, Defendant filed this Motion. (See Motion.) On March 11, 2025, the government filed an ex parte application authorizing disclosure of certain attorney-client communications. (EDCR 18-0114 Dkt. No. 468; EDCR 21-0170 Dkt. No. 138; EDCV 24-2550 Dkt. No. 7; EDCV 24-2552 Dkt. No. 11.) On March 24, 2025, the Court granted the government’s ex parte application. (EDCR 18-0114 Dkt. No. 470; EDCR 21-0170 Dkt. No. 140; EDCV 24-2550 Dkt. No. 9; EDCV 24-2552 Dkt. No. 13.) On July 24, 2025, Defendant filed a response to interrogatories. (EDCV 24-2550 Dkt. No. 14; EDCV 24-2552 Dkt. No. 18.) The government filed an opposition on September 10, 2025. (“Opposition,” EDCR 18-0114 Dkt. No. 479; EDCR 21-0170 Dkt. No. 149; EDCV 24-2550 Dkt. No. 22; EDCV 24-2552 Dkt. No. 26.) On September 15, 2025, Defendant filed a document entitled “Receipt of Attorney Edward Robinson Interrogatory Questions.” (EDCV 24-2550 Dkt. No. 19; EDCV 24-2552 Dkt. No. 23.) Defendant filed a reply on September 26, 2025. (“Reply,” EDCV 24-2550 Dkt. No. 23; EDCV 24-2552 Dkt. No. 27.)

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II. LEGAL STANDARD

A. Section 2255

28 U.S.C. § 2255 permits a prisoner in federal custody to collaterally attack their sentence upon proper motion on the grounds that “the 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.” 28 U.S.C. § 2255(a). If a court finds that any of the aforementioned grounds for relief exist, the Court must vacate the sentence and either set the judgment aside and discharge the prisoner, resentence them, or grant them a new trial. Id. § 2255(b).

B. Ineffective Assistance of Counsel

In order to successfully establish a claim for ineffective assistance of counsel, Petitioner must demonstrate that: (1) “counsel’s representation fell below an objective standard of reasonableness” and that (2) “any deficiencies in counsel’s performance [were] prejudicial.” Strickland v. Washington, 466 U.S. 668, 688–92 (1984). In assessing the reasonableness of counsel’s representation, a Court must reconstruct the circumstances at the time of counsel’s challenged conduct, presume counsel’s reasonableness, and be “highly deferential” of counsel’s performance. Id. at 669. “With regard to the required showing of prejudice, the proper standard requires the Petitioner to show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id.

III. DISCUSSION

A. Ineffective Assistance of Counsel

Defendant moves to vacate, set aside, or correct his sentence on the grounds he received ineffective assistance of counsel from his trial attorney resulting in an involuntary plea, his attorney retained for his motion to withdraw guilty plea, and his appellate attorney. (See Motion.) At the outset, the Court notes its skepticism of Defendant’s assertions at this stage of his proceedings.

Because the Sixth Amendment of the Constitution guarantees “the right to counsel,” it also guarantees “the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686 (1984) (citing McMann v. Richardson, 397 U.S. 759, 771 n.14 (1970)). To establish

the first prong under Strickland for ineffective assistance of counsel, a petitioner must show that his counsel's performance fell below an objective standard of reasonableness. Id. The reasonableness of counsel's performance must be judged "on the facts of the particular case, viewed as of the time of counsel's conduct." Id. at 690. When deciding a habeas petition, the court should make "every effort" to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Turner v. Calderon, 281 F.3d 851, 876 (9th Cir. 2002) (internal quotations and citation omitted). "Given that the reasonableness of counsel's conduct must be evaluated based on the time it occurred, courts have articulated a rule that ineffective assistance of counsel claims *generally* cannot be predicated on counsel's failure to anticipate changes in the law." United States v. Juliano, 12 F.4th 937, 940 (9th Cir. 2021) (emphasis added). It follows that an ineffective assistance of counsel claim fails when a petitioner merely asserts that his counsel failed to anticipate a later decision. Put another way, "Strickland does not mandate prescience, only objectively reasonable advice under prevailing profession norms." Sophanthavong v. Palmateer, 378 F.3d 859, 870 (9th Cir. 2004); see also Lowry v. Lewis, 21 F.3d 344, 346 (9th Cir. 1994).

Strickland's second prong is actual prejudice. 466 U.S. at 692. Actual prejudice "requires the Petitioner to show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. In light of the presumption of counsel's reasonable assistance, the deference accorded to counsel's performance, and the requisite of dispositive prejudice, "[s]urmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371 (2010). If Defendant fails to establish either component of the Strickland test, the Court "must dismiss the claim." United States v. Sanchez-Cervantes, 282 F.3d 664, 672 (9th Cir. 2002).

Strickland "applies to challenges to guilty pleas based on ineffective assistance of counsel." Hill v. Lockhart, 474 U.S. 52, 58 (1985). In the plea-bargaining context, "the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59. Additionally, Strickland applies to ineffective assistance of appellate counsel. Miller v. Keeney, 882 F.2d 1428, 1433 (9th Cir. 1989).

Defendant raises three grounds for his ineffective assistance of counsel claims. Because Defendant's arguments are either contradicted by his sworn statements in accepting the plea agreement or legally insufficient to support habeas relief, the Court **DENIES** the Motion.

1. Representation in Plea Process

Defendant first argues that his trial counsel Mark Werksman ("Trial Counsel") failed to provide effective assistance of counsel rendering Defendant's guilty plea involuntary and invalid. (Motion at 22-23.) Defendant contends that Trial Counsel engaged in unauthorized

plea negotiations with the government. (Id. at 17.) As a result, and pursuant to Trial Counsel's instructions, Defendant signed, but did not date, the plea agreement as a sign of "good faith" in the plea negotiations with the government. (Id. at 18-19.) Defendant did not intend the signed, but undated, plea agreement to serve as a final plea agreement. (Id.; Reply at 18-19.) Nevertheless, according to Defendant, Trial Counsel co-signed and dated the Plea Agreement. (Mot. at 19.) Defendant did not learn of Trial Counsel's alleged actions until over a month later and just a few days before the Change of Plea hearing. (Id. at 19.) Although Defendant noted the plea agreement contained multiple errors and did not have enough time to review the full plea agreement, Trial Counsel urged Defendant to accept the plea agreement despite Defendant's reluctance. (Id. at 20-22.) Trial Counsel informed Defendant that the testimony of Defendant's co-conspirators would result in Defendant's loss at trial and that the Government would indict his son and wife and seize his sister's property if Defendant did not assent to the plea agreement. (Id. at 21-22.) Defendant asserts that he signed the plea deal based on this information and, because it constituted bad advice, Defendant's guilty plea was involuntary. (Id. at 22.)

Defendant's assertions in his Motion contradict his sworn statements during the plea colloquy. First, Defendant stated that he fully discussed the plea agreement with Trial Counsel and had no further questions about the plea agreement. (Plea Transcript at 21-22). Defendant stated that he signed the agreement in the presence of his counsel, and that the plea agreement covered the full extent of the agreement. (Id. at 22.) Defendant denied that he assented to the agreement as the result of any threats. (Id. at 34.) Defendant admitted that he was guilty of the charges and that the government would be able to meet its burden proving the underlying facts at trial. (Id. at 35, 42.) Defendant did not provide Judge Phillips with any reason why she should not accept Defendant's guilty plea. (Id. at 48.) Defendant finally stated that he had enough time to discuss the plea agreement and his guilty plea with Trial Counsel and that Trial Counsel had fully considered his legal defenses. (Id. at 50.) Thus, Defendant's sworn statements contradict his claim of ineffective assistance of counsel. "[S]tatements made by a criminal defendant contemporaneously with his plea should be accorded great weight" as "[s]olemn declarations made in open court carry a strong presumption of verity." Chizen v. Hunter, 809 F.2d 560, 562 (9th Cir. 1986) (citing Blackledge v. Allison, 431 U.S. 63, 73-74 (1977)). Defendant provides no reason to doubt his statements made at the plea colloquy. In fact, Defendant made many of these arguments at his sentencing hearing. ("Sentencing Transcript," at 33-51, EDCR 18-0114 Dkt. No. 445.) Judge Phillips then noted that Defendant's claims were "belied by the plea colloquy." (Id. at 50.) She also noted that Defendant had mentioned that his biggest mistake in a 1998 criminal case similarly arising out of the death of a welder operating on one of Defendant's oil cargo tanks was mistakenly pleading guilty. (Id. at 51.) Yet, Defendant claimed to have repeated that mistake again in his current cases at the Motion to Withdraw stage and now again makes that claim with this Motion. Then, as now, the Court is unconvinced. (Id.)

Furthermore, Trial Counsel succeeded in simultaneously resolving both of Defendant's criminal cases, recommending a sentence of no more than ten years, preventing the forfeiture

of Defendant's bond, precluding the indictment of Defendant's son, and convincing prosecutors to dismiss several counts. (Opp. at 14.) Although Defendant expresses surprise at receiving a plea agreement from counsel, the California Rules of Professional Conduct require attorneys to "promptly communicate to the lawyer's client . . . all terms and conditions of a proposed plea bargain or other dispositive offer made to the client in a criminal matter." Cal. R. Prof. Conduct 1.4.1(a). Thus, Defendant merely proves that Trial Counsel properly complied with the California Rules of Professional Conduct. These actions all belie Defendant's claim of ineffective assistance of counsel.

Even if Defendant had suffered from ineffective assistance of counsel, the Court finds it unlikely that this ineffective assistance of counsel prejudiced Defendant. Defendant argues that his inability to take his case to trial, where he would have been acquitted, and his lengthy ten-year sentence, demonstrate the prejudice he faced. Under the pre-sentence report, Defendant claims that he should have only faced a sentence of 90 months, and, had Trial Counsel correctly objected to various sentence enhancements, Defendant should have only faced a sentence of 60 months. (Reply at 11-12.) However, the Sentencing Transcript belies Defendant's claims. According to the record, Defendant's counsel requested 57 months of imprisonment, in line with Defendant's requested 60 months. (Sentencing Transcript at 30.) Although the government requested 120 months of imprisonment, Judge Phillips was inclined to sentence Defendant to 240 months "given the extent of the fraud, the harm that was caused," and additional factors. (*Id.* at 21.) Judge Phillips additionally doubted the sentence reduction Defendant received in the presentence report for acceptance of responsibility. (*Id.*) She also doubted whether the criminal history category of 2 accurately reflected Defendant's criminal history and likelihood of recidivism. (*Id.*) The record indicates that Defendant narrowly avoided a more severe sentence. Thus, the Court is persuaded that Defendant likely faced a higher sentence without Trial Counsel and was not prejudiced. Defendant fails to prove that "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill*, 474 U.S. at 59.

2. Representation in Motion to Withdraw Plea of Guilty

Defendant next argues that his counsel Edward Robinson, who represented him for purposes of his Motion to Withdraw, ("Motion Counsel") failed to provide effective assistance of counsel. Defendant claims that Motion Counsel was insufficiently argumentative and adversarial. (Motion at 24.) Defendant's main contention is that Motion Counsel only addressed three of the seven factors in *United States v. Carr*, 740 F.2d 339, 343 (5th Cir. 1984). However, Motion Counsel only cites to *Carr* once in the Motion to Withdraw for the proposition that a finding that the government would be prejudiced by granting the Motion to Withdraw would not automatically defeat the Motion to Withdraw. (Motion to Withdraw at 4.) Defendant seems to believe that Motion Counsel failed to apply binding case law governing his Motion to Withdraw. However, *Carr* holds no precedential authority in the Ninth Circuit as it is a case decided by the Fifth Circuit. Therefore, Defendant fails to persuade the Court that "his

counsel's performance fell below an objective standard of reasonableness" or that Defendant suffered prejudice. Strickland, 466 U.S. at 688, 692.

3. Representation in Appeal

Defendant finally argues that his appellate counsel Rachael A. Robinson ("Appellate Counsel") ineffectively argued the appeal of his Motion to Withdraw. (Mot. at 52.). However, even if Appellate Counsel had made the arguments Defendant claims would have amounted to effective assistance of counsel, Defendant would still not have prevailed as the Ninth Circuit dismissed his appeal on the basis of the valid appeal waiver in Defendant's plea agreement. (See Ninth Circuit Opinion.) In response, Defendant argues only that Appellate Counsel should have argued that his plea was involuntary. (Mot. at 57.) As the government notes, however, Appellate Counsel was limited to the arguments raised in the Motion to Withdraw, which asked Judge Phillips to allow Defendant to withdraw his plea on the "fair and just reason" standard. (See Opp. at 35-36; Motion to Withdraw at 2-4.) "A party normally may not press an argument on appeal that it failed to raise in the district court." One Indus., LLC v. Jim O'Neal Distrib., Inc., 578 F.3d 1154, 1158 (9th Cir. 2009). Furthermore, the standard to revoke a plea for involuntariness on appeal is higher than the "fair and just" standard for a Motion to Withdraw. (Opp. at 35 (citing United States v. Ortega-Ascanio, 376 F.3d 879, 844-845 (9th Cir. 2004).) Accordingly, the Court finds that Appellate Counsel's representation did not fall "below an objective standard of reasonableness." Strickland, 466 U.S. at 688. Even if Appellate Counsel had rendered ineffective assistance of counsel, the Court is not persuaded that Defendant was prejudiced in light of the appeal waiver in the plea agreement and rule that appellate courts will not consider arguments not previously raised. Id. at 692.

In sum, Defendant's Motion is **DENIED**.

B. Certificate of Appealability

When a district court denies relief under Section 2255, a petitioner must obtain a certificate of appealability ("COA") in order to appeal "the final order in a proceeding under section 2255." 28 U.S.C. § 2253(c)(1)(B). "A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." Id. § 2253(c)(2). A "substantial showing" includes "a showing that reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Slack v. McDaniel, 529 U.S. 473, 484 (2000) (internal citations omitted). The COA must "indicate which specific issue or issues satisfy [the substantial] showing" standard. 28 U.S.C. § 2253(c)(3). Otherwise, the Court must "state its reasons why a certificate should not be granted." United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997).

Here, Defendant requests a COA for the first time in his Reply. (Reply at 33-34.) "[R]epley briefs are limited in scope to matters either raised by the opposition or unforeseen at

the time of the original motion.” Stiner v. Brookdale Senior Living, Inc., 665 F. Supp. 3d 1150, 1179 (N.D. Cal. 2023) (internal citations omitted). Thus, the Court need not consider this new request. Even if the Court were to consider it, the Court would deny the COA. Defendant’s sole argument for granting the COA is the conclusory statement that “he has made a substantial showing of the denial of a constitutional right.” (Reply at 33.) However, “[j]udicial scrutiny of counsel’s performance must be highly deferential.” Strickland, 466 U.S. at 689 (1984). Furthermore, the Supreme Court has recognized that the “Strickland’s standard . . . is highly demanding.” Kimmelman v. Morrison, 477 U.S. 365, 382 (1986). Defendant has not met his burden in showing that “reasonable jurists could debate” whether he meets Strickland’s high bar to demonstrate ineffective assistance of counsel and that his Motion should therefore be granted. Slack, 529 U.S. at 484. The Court **DENIES** a Certificate of Appealability on his ineffective assistance of counsel claim.

IV. CONCLUSION

For the reasons above, the Court **DENIES** the Motion. The Court **DENIES** a Certificate of Appealability. The Clerk is **DIRECTED** to close EDCV 24-2550 JGB and EDCV 24-2552 JGB. The hearing scheduled for October 20, 2025 is **VACATED**.

IT IS SO ORDERED.