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

UNITED STATES OF AMERICA *v.* HARRESCIA HOPKINS	Criminal Action No. 1:22-CR-284-SEG-CMS

Response to Defendant's Motion to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255

The United States of America, by Ryan K. Buchanan, United States Attorney, and Garrett L. Bradford, Assistant United States Attorney for the Northern District of Georgia, files this Response to Defendant's Motion to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255. (Doc. 46).

Introduction

Defendant Hopkins' motion to vacate should be denied. Her ineffectiveness claims falter on both the performance and prejudice prongs of *Strickland*. Her counsel performed within the range of reasonable competence demanded of him. Nor can Hopkins establish prejudice as required, especially in light of the reasonable sentence imposed by the Court. The existing record is sufficient to reject all of the claims raised here. The Court should therefore deny Hopkins' habeas motion without an evidentiary hearing.

Background

1. Offense Conduct

In 2021, while Hopkins was employed as a Correctional Officer at the United States Penitentiary–Atlanta, the Department of Justice's Office of Inspector General began investigating Hopkins based on allegations from multiple sources that Hopkins was accepting bribes from inmates to smuggle contraband cellular phones, marijuana, and methamphetamine into USP-Atlanta. (Presentence Investigation Report ("PSR") ¶¶ 9, 47-49). During that investigation, the government discovered Hopkins applied for and received two Paycheck Protection Program loans of $19,100 each for a business, Hopkins Towing and Storage, that didn't exist. (PSR ¶ 9, 19-24; Doc. 19-1 ¶ 12). Further investigation revealed that Hopkins had submitted false information about that fake business to a financial institution, including falsified IRS tax documents, to apply for those loans. (*Id.*). Hopkins then spent the proceeds of that fraud on personal expenses, including a Caribbean cruise and other travel, a new Chevrolet Blazer, landscaping for her house, restaurant meals, and retail goods. (Doc. 19-1 ¶ 12(d); PSR ¶¶ 21, 23, 26-27).

2. Course of Proceedings

Based on this activity, Hopkins was indicted on two counts of wire fraud on August 9, 2022. (Doc. 1). Hopkins entered a negotiated guilty plea on December 20, 2022. (Doc. 19-1). Her plea agreement included a written factual basis that Hopkins signed and agreed constituted the facts underlying her conduct. (*Id.* ¶ 12). During the plea hearing, the Court engaged in the following exchanges with Hopkins:

- "Q Ms. Hopkins, has anyone made any promise other than the plea agreement that induced you to plead guilty? A No." (Doc. 25 at 16-17).
- "Q Other than the plea agreement, has anyone threatened or forced you to plead guilty or told you that if you do not plead guilty, further charges will be brought against you or other adverse actions will be taken against you? A No." (*Id.* at 17).
- "Q Ms. Hopkins, do you feel that you have had sufficient time to think about and discuss this matter fully with your lawyer, before entering a plea of guilty today? A Yes." (*Id.* at 18).
- "Q Are you satisfied with the representation of your lawyer in this case? A Yes." (*Id.*).
- "Q Have you had enough time to talk with your lawyer about this plea offer and whether or not you should accept it? A Yes." (*Id.*).
- "Q Have you discussed with your lawyer the charges in the indictment to which you intend to plead guilty? A Yes." (*Id.* at 19).
- "Q. Is your guilty plea voluntary and of your own freewill? A Yes." (*Id.* at 30).

The Court also engaged in a lengthy exchange confirming that Hopkins understood that she was waiving her right to appeal except for certain narrow exceptions. (*Id.* at 26-27).

Following the plea hearing, it came to light that Hopkins was contesting her termination from her job at the Bureau of Prisons through a proceeding before the U.S. Merit Systems Protection Board. (*See* Doc. 31 at 4). In that proceeding, she contended that her guilty plea had been coerced. (*See id.* at 4-5). In light of this revelation, Hopkins' sentencing was continued and the Court held two status conferences at which Hopkins was present while her attorney stated that Hopkins did not wish to withdraw her guilty plea. (*See* Doc. 27; Doc. 28; Doc. 31 at 5-6). Subsequently, on May 25, 2023, the Court held a third status conference to directly question Hopkins about the voluntariness of her plea and whether she desired to withdraw her guilty plea. (Doc. 30; Doc. 31). During that hearing, the Court engaged in the following colloquy with Hopkins:

> Q Is there anything that you would like to say on the record in this court about any allegation that your guilty plea in this case was obtained by coercion, intimidation, or any other unfair tactic?
> A No.
> Q Is there anything you would like to say, either on your own, or through your lawyer, about any factor that unfairly influenced your decision to plead guilty?
> A No.
> Q Has anyone made any promise, other than the plea agreement, that induced you to plead guilty?
> A No.
> Q Was your plea in this case coerced by the United States Attorney's Office?
> A No.
> Q Was it coerced by anyone?
> A No.
> Q Was it voluntarily and intelligently made?
> A Yes.
> Q Other than the plea agreement, has anyone -- let me rephrase that. Has anyone threatened or forced you to plead guilty?
> A No.
> Q Has anyone engaged in any kind of intimidation to get you to plead guilty?
> A No.
> Q Has anyone told you that if you do not plead guilty, further charges will be brought against you or other adverse action will be taken against you?
> A No.
> Q Do you want to withdraw your guilty plea and proceed, instead to a trial in this case?
> A No.
> Q Nave you had a sufficient time to discuss the issues that we were discussing here today with your lawyer?
> A Yes.
> Q Are you prepared to go forward with sentencing in this case?

A Yes.

(Doc. 31 at 8-9).

At sentencing on June 8, 2023, the Court calculated Hopkins' sentencing Guidelines as outlined in the PSR, with a Total Offense Level of 11, Criminal History Category of I, and a Custody Guideline Range of 8-14 months. (*See* PSR at 20; Sentencing Transcript ("Sent. Trans.")[1] at 28). The Court advised Hopkins of her right to speak at the hearing, but Hopkins declined to say anything. (Sent. Trans. at 43-44, 47). The Court applied a two-level downward variance in anticipation of the Zero-Point Offender amendment to the Guidelines and sentenced Hopkins to a term of five months of imprisonment to be followed by two years of supervised release. (Sent. Trans. at 52; Doc. 35). The Court also imposed restitution in the amount of $46,004.04. (Doc. 35; Doc. 36).

Following sentencing, the Court twice granted Hopkins' pro se motions to extend her date to voluntarily surrender to begin serving her custodial sentence. (Doc. 40; Doc. 43). Hopkins was released from BOP custody on February 9, 2024. (*See* https://www.bop.gov/mobile/find_inmate/byname.jsp# (last visited May 28, 2024)).

3. Habeas Claim

On August 14, 2023, Hopkins filed a pro se motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. (Doc. 44). The Court ordered her to file an amended motion with more details about the relief she was seeking, (Doc. 45), which she did on August 31, 2023, (Doc. 46).

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[1] The transcript of the sentencing hearing has not been assigned a docket number yet.

In her motion, Hopkins appears to make three claims of ineffective assistance of counsel by her attorney: (1) her attorney failed to make certain arguments to mitigate her culpability at sentencing, (Doc. 46 at 4 ("My attorney failed to represent me. . . He didn't defend the fact that the loans were forgiven. I did not complete the application myself. I was manipulated. . . ."); (2) she couldn't file an appeal because her "attorney ignored [her] for two weeks after sentencing," (*id.* at 4); and (3) she "was told I had no choice but to plead guilty because they would add charges concerning false allegations made about me . . . ," (*id.* at 5).[2] As a remedy, Hopkins requests that the Court amend her sentence to instead be "probation with an expunged record. I would like to be able to seal my record to continue my journey to be a federal judge. I cannot fix my wrong in custody." (*Id.* at 11-12).

All of her claims are baseless and should fail.

Argument

1. The Defendant Carries a Heavy Burden on His Ineffectiveness Claims, With Habeas Relief Available in Only the Rarest of Cases.

In order to prevail on a claim of ineffective assistance of counsel, a defendant has the burden to prove the two-part test established in *Strickland v. Washington*, 466 U.S. 668 (1984): "(1). . . counsel's representation fell below an objective standard of reasonableness, and (2). . . there is a reasonable probability that, but

[2] The government has made a good faith effort to liberally construe and address all the claims made in Hopkins' pro se motion. To the extent the Court determines there are additional issues presented by the motion that need to be addressed, the government respectfully requests the opportunity to file a supplemental response.

for counsel's unprofessional errors, the result of the proceeding would have been different." *Chandler v. United States*, 218 F.3d 1305, 1312-13 (11th Cir. 2000) (en banc) (internal quotation marks omitted).

To satisfy the first prong, the defendant must show that "counsel's representation fell below an objective standard of reasonableness." *Id.* at 688. In applying this "highly deferential" test, reviewing courts "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689; *see also Lancaster v. Newsome*, 880 F.2d 362, 375 (11th Cir. 1989) (emphasizing "that petitioner was not entitled to error-free representation"). "'Counsel's competence . . . is presumed and the [defendant] must rebut this presumption by proving that his attorney's representation was unreasonable under prevailing professional norms[.]" *Chandler*, 218 F.3d at 1315, n.15 (alterations and emphasis in original)(noting that the "presumption of competence must be disproved by a petitioner"). "Never does the government acquire the burden to show competence, even when some evidence to the contrary might be offered by the petitioner." *Id.* The standard for evaluating counsel's performance is "'reasonableness under prevailing professional norms.'" *Chandler*, 218 F.3d at 1313.

To prove ineffectiveness, a defendant must show that his or her attorney's representation "fell outside the wide range of professionally competent assistance." *Id.* at 1314 (internal quotation marks omitted). "This standard of effectiveness applies equally to both the guilt and the sentencing phases of the trial." *Mills v. Singletary*, 63 F.3d 999, 1020 (11th Cir. 1995); *Strickland*, 466 U.S. at 686-87.

When evaluating an attorney's performance, the court must be highly deferential. *Chandler*, 218 F.3d at 1314. The court "must avoid second-guessing counsel's performance." *Id.* Instead, the court must "indulge [the] strong presumption that counsel's performance was reasonable and that counsel made all significant decisions in the exercise of reasonable professional judgment." *Id.* (internal quotation marks omitted)(alteration in original). Thus, "counsel cannot be adjudged incompetent for performing in a particular way in a case, as long as the approach taken 'might be considered sound trial strategy.'" *Id.* (quoting *Darden v. Wainwright*, 477 U.S. 168 (1986)). "[B]ecause counsel's conduct is presumed reasonable, for a petitioner to show that the conduct was unreasonable, a petitioner must establish that no competent counsel would have taken the action that his counsel did take." *Chandler*, 218 F.3d at 1315; *see White v. Singletary*, 972 F.2d 1218, 1220 (11th Cir. 1992) ("The test has nothing to do with what the best lawyers would have done. Nor is the test even what most good lawyers would have done. We ask only whether some reasonable lawyer at the trial could have acted, in the circumstances, as defense counsel acted at trial."). Moreover, when reviewing counsel's performance, the court "must evaluate the reasonableness of counsel's performance from counsel's perspective at the time," not with the distortion of hindsight. *Id.* at 1316. "The reasonableness of a counsel's performance is an objective inquiry." *Id.* at 1315.

This "strong presumption in favor of competence" places a "heavy" burden on petitioners alleging ineffective counsel, *Fugate v. Head*, 261 F.3d 1206, 1217 (11th Cir. 2001) (citation omitted), and "cases in which habeas petitioners can properly prevail on the ground of ineffective assistance of counsel are few and far between," *Rogers v. Zant*, 13 F.3d 384, 386 (11th Cir. 1994).

To satisfy the second *Strickland* prong and show prejudice, a defendant must show more than simply that counsel's conduct might have had "some conceivable effect on the outcome of the proceeding." *Strickland*, 466 U.S. at 693. "Virtually every act or omission of counsel would meet that test, and not every error that conceivably could have influenced the outcome undermines the reliability of the result of the proceeding." *Id.* (internal citation omitted). Instead, a defendant must show a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694, 2068. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. Prejudice is established only by showing that the result of the proceeding was fundamentally unfair or unreliable. *Lockart v. Fretwell*, 506 U.S. 364, 372 (1993).

"[T]here is no reason for a court deciding an ineffective assistance claim . . . to address both components of the inquiry if the defendant makes an insufficient showing on one." *Strickland*, 466 U.S. at 697; *Chandler*, 218 F.3d at 1312.

2. Hopkins' Guilty Plea Was Voluntary, Not A Product of Coercion

For one of her claims, Hopkins attacks the knowing and voluntary nature of her guilty plea by claiming that her attorney coerced her guilty plea by telling her that she had to plead guilty or else she would have additional charges brought against her. Specifically, she claims, "After I had nothing to give [the government] for their investigation, I was told I had no choice but to plead guilty because they would add charges concerning false allegations made about me. . .

." (Doc. 46 at 5). However, this claim is directly contradicted by the record and Hopkins' own sworn statements in Court.

First, at her plea hearing, after being placed under oath, (Doc. 25 at 3), Hopkins confirmed that she had not been told that she would face additional charges if she didn't plead:

> Q Other than the plea agreement, has anyone threatened or forced you to plead guilty or told you that if you do not plead guilty, further charges will be brought against you or other adverse actions will be taken against you?
> A No.

(*Id.* at 17). Hopkins further explained under oath that she had discussed the plea agreement thoroughly with her attorney, was satisfied with his representation of her, and was entering the plea voluntarily. (*Id.* at 16-19, 30).

Second, Hopkins confirmed this at the May 25, 2023, status conference, when she was again placed under oath, (Doc. 31 at 3), and engaged in the following exchange with the Court:

> Q Has anyone told you that if you do not plead guilty, further charges will be brought against you or other adverse action will be taken against you?
> A No.

(Doc. 31 at 9). Hopkins further denied that there had been any promises or unfair tactics that induced her plea, that there was any coercion or intimidation, or that she wanted to withdraw her guilty plea. (*Id.* at 8-9). Instead, Hopkins confirmed that she had sufficient time to discuss the issues with her attorney, had voluntarily entered her plea, and was ready to go forward with sentencing. (*Id.*).

Third, at sentencing, Hopkins was again given an opportunity to address the Court and could have alerted the Court if her attorney had told her that she had no choice but the plead guilty; instead, she declined to say anything. (Sent. Trans. at 47).

The Eleventh Circuit has "recognized 'a strong presumption that the statements made during [a] colloquy are true.'" *Martin v. United States*, 703 F. App'x 866, 871 (11th Cir. 2017) (*citing United States v. Medlock*, 12 F.3d 185, 187 (11th Cir. 1994)). So has the Supreme 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."). Hopkins' unsupported claims, which are directly contradicted by her own multiple sworn statements, should be denied.

3. Hopkins' Attorney Was Not Ineffective For Refraining From Making Frivolous Mitigation Arguments At Sentencing

In another claim, Hopkins appears to second-guess the arguments her attorney made at sentencing to respond to the issues the government raised. However, the arguments she complains were omitted are either contradicted by the record or inconsequential to the Court's sentencing decision.

Hopkins first claims, "My attorney failed to represent me. When the government mentioned problems at my job." (Doc. 46 at 4). The government believes this is a complaint that Hopkins' attorney did not object to the government giving the Court information about Hopkins smuggling drugs and other contraband into the prison that initially triggered the investigation. (*See* PSR ¶¶ 9, 47-49). However, Hopkins is wrong; her attorney objected to inclusion of that information in the PSR, (*see* PSR ¶ 49), and argued during the sentencing hearing that those allegations should be stricken from the PSR, (Sent. Trans. at 5). The Court ultimately denied that objection, (Sent. Trans. at 5-6).

Hopkins next complains that her attorney "didn't defend the fact that the [PPP] loans were forgiven." (Doc. 46 at 4). However, the fact that the loans were forgiven by the SBA was inconsequential to her sentencing; loan forgiveness was not a way of discharging criminal liability for loans that had been obtained through fraud. Her attorney likely knew that, and knew that discussion of forgiveness was not helpful to his attempts to minimize Hopkins' criminal culpability.[3]

Hopkins complains that her attorney did not try to deflect her personal responsibility for her crimes: "I did not complete the application myself. I was manipulated. I've been convicted based on the actions of someone else." (Doc. 46 at 4). The government believes this is a reference to the initial story she told agents that "she received assistance from a friend of a friend, named Alicia (Last Name Unknown - LNU)," who filed the PPP applications for Hopkins, and "her tax preparer, Janetta," who filed an IRS Schedule C form in 2019 for Hopkins. (PSR ¶¶ 25, 27). However, Hopkins' claims are contradicted by her own statements — in the written factual basis which was part of the plea agreement

[3] Indeed, information about forgiveness of her loans would likely have increased Hopkins' relative culpability because to obtain forgiveness Hopkins had to submit applications in which she falsely certified that the funds were used for allowable business expenses (for a business she admits did not exist). Those false certifications – one for each loan – could have been the basis for two additional counts of wire fraud and would have served as two separate, additional examples of times that Hopkins committed fraud.

that Hopkins herself signed, she agreed that "Defendant electronically signed and submitted" the PPP applications and "submitted a false IRS Schedule C form to support her application."[4] (Doc. 19-1 ¶ 12(a)-(b)). Her attorney cannot be faulted for failing to make arguments that were not accurate. Moreover, even if she did have other people submit the forms on her behalf, her attorney likely wisely recognized that trying to deflect personal responsibility in that manner at sentencing could easily backfire, resulting in her losing credit for acceptance of responsibility or the Court increasing her sentence to reflect her apparent resistance to rehabilitation and need for specific deterrence.

Hopkins similarly complains that "The government lied or assume I bought cars and went on vacation with the money, no one (my attorney) didn't correct them." (Doc. 46 at 4). Again, her current attempt to deny how she used the fraudulent loan proceeds is betrayed by her own signed statements. (Doc. 19-1 ¶ 12(d) ("The Defendant spent the PPP money on personal expenses including a Caribbean cruise and other travel, a down payment and other expenses related to purchasing a new Chevrolet Blazer, landscaping for her house, restaurant meals, and retail goods. Defendant also transferred some of the money to relatives.")). Her denial is also contradicted by uncontested evidence in the case. (PSR ¶¶ 21 & 23 (summarizing a review of charges in Hopkins' personal checking account after the loan proceeds were deposited)). Her current denial is also inconsistent with what she told agents during an interview. (PSR ¶¶ 26-27 (Hopkins admitted that she spent the funds on travel expenses for vacations, her vehicle, credit card

[4] Additionally, agents confirmed that the Schedule C was never filed with the IRS – not by a tax preparer nor by anyone else. (PSR ¶ 24).

debt, and landscaping and projects around her home). Further, Hopkins does not at any point argue that the loan proceeds were spent properly; after all, her business was never operational. (PSR ¶¶ 24-25; Doc. 19-1 ¶ 12(c)).

Finally, Hopkins claims that "When I decided to sue the BOP is when I was indicted. I endured sexual, verbal harassment. Left in a hostile work environment." (Doc. 46 at 4). The government believes Hopkins is saying that her attorney should have argued at sentencing that she endured a hostile work environment while employed at BOP, and that situation should be considered a mitigating factor under the 18 U.S.C. § 3553(a) analysis. However, even assuming *arguendo* that she did have a hostile work environment at BOP—and there is no evidence of that in the record—that would not be a proper consideration for her sentencing because it is unrelated to her repeated commission of loan fraud outside of work. Her attorney was not ineffective for choosing to not make that baseless and irrelevant argument.

4. Hopkins Was Not Prejudiced By Not Appealing

Hopkins appears to claim that her attorney prevented her from appealing her sentence: "My attorney ignored me for two weeks after sentencing where I couldn't file an appeal due to personal reasons with the person who hired." (Doc 46 at 4). First, that claim appears to be inaccurate because later in her motion, in response to the question, "If you did not raise this issue in your direct appeal, explain why," Hopkins states that she did not appeal because "My attorney told me it was pointless."[5] (Doc. 46 at 6). Based on her own admission, her attorney

[5] Hopkins certified and signed the motion under penalty of perjury. (Doc. 46 at 12).

did not ignore her regarding appellate issues and instead advised her that an appeal would not be successful.

However, even ignoring her own statement and assuming Hopkins is accurate that her attorney did not communicate with her for two weeks after sentencing, that complaint does not satisfy the *Strickland* test. The Supreme Court has recognized that it is not necessarily unreasonable for an attorney to not consult with a defendant about whether he or she wants to appeal, especially following a guilty plea, and doubly so when the guilty plea includes an appeal waiver. *See Roe v. Flores-Ortega*, 528 U.S. 470, 480 (2000). Instead, counsel has a constitutionally imposed duty to consult with the defendant about an appeal only when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he or she was interested in appealing. *Id.* Hopkins has not satisfied either prong of this test to prove that it was unreasonable for her attorney to fail to consult her about appealing after she pled guilty, received a low sentence, and waived her right to appeal, and there aren't any apparent nonfrivolous ground for appeal (especially given the appeal waiver). Notably, Hopkins does not at any time claim that she demonstrated to counsel that she was interested in appealing.

Additionally, Hopkins has failed to allege that she was prejudiced by the purported failure to appeal. The Supreme Court requires a defendant "to demonstrate that, but for counsel's deficient conduct, he would have appealed." *Id.* at 486. Hopkins does not at any point state that she wanted to appeal and was prevented from doing so or identify any specific issues she would have appealed despite her appeal waiver. Thus, she has failed to show prejudice.

5. Hopkins Is Not Entitled To A Hearing

"A federal habeas corpus petitioner is entitled to an evidentiary hearing only where the petitioner alleges facts which, if proven, would entitle him to relief." *Futch v. Dugger*, 874 F.2d 1483, 1485 (11th Cir. 1989). A motion filed under § 2255 may be denied without an evidentiary hearing "when 'the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief.'" *Gordon v. United States*, 518 F.3d 1291, 1301 (11th Cir. 2008) (quoting 28 U.S.C. § 2255(b)); *see Cross v. United States*, 893 F.2d 1287, 1292 (11th Cir. 1990); Rules Governing § 2255 Proceedings, Rule 8(a). The existing record in this case establishes conclusively that Hopkins is not entitled to the requested relief because the record and her own sworn statements conclusively show that most of her claims are factually false, and even if her remaining allegations are assumed, *arguendo*, as true, no further factual development is required. Accordingly, no evidentiary hearing is required to dispose of her motion. *See Martin v. United States*, 703 F. App'x 866, 873 (11th Cir. 2017) ("because the record here conclusively establishes that [defendant's] performance was not deficient, an evidentiary hearing was not necessary.").

Conclusion

For the reasons stated above, Hopkins' motion under 18 U.S.C. § 2255 should be denied without an evidentiary hearing.

Respectfully submitted,

RYAN K. BUCHANAN
United States Attorney

/s/GARRETT L. BRADFORD
Assistant United States Attorney
Georgia Bar No. 074374
Garrett.Bradford@usdoj.gov

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Harrescia Hopkins
1509 Conley Way
Conley, GA 30288

June 6, 2024

/s/ GARRETT L. BRADFORD
GARRETT L. BRADFORD
Assistant United States Attorney