

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

JARVIS HAVIOR,	:	
	:	
Petitioner,	:	
	:	
v.	:	Case No. 5:22-cr-001-MTT-CHW-3
	:	Case No. 5:24-cv-248-MTT-CHW
UNITED STATES OF AMERICA,	:	28 U.S.C. § 2255
	:	
Respondent.	:	
_____	:	

ORDER AND RECOMMENDATION

Before the Court is Petitioner Jarvis Havior’s Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. (Doc. 696). For the following reasons, it is **RECOMMENDED** that the motion (Doc. 696) be **DENIED**. It is further **RECOMMENDED** that a certificate of appealability be **DENIED**.

BACKGROUND

On January 11, 2022, Petitioner was indicted on one count of Conspiracy to Distribute Controlled Substances, six counts of Distribution of Methamphetamine, two counts of Possession of Methamphetamine with Intent to Distribute, two counts of Possession of a Firearm in Furtherance of a Drug Trafficking Crime, one count of Possession of Cocaine with Intent to Distribute, one count of Possession of Cocaine Base with Intent to Distribute, and one count of Maintaining a Drug-Involved Premises. (Doc. 1-2). With the assistance of counsel, Petitioner pled guilty to one count of Possession of Methamphetamine with Intent to Distribute under 21 U.S.C. §§ 841(a)(1) and (b)(1)(A)(viii). (Docs. 394, 395). The plea agreement explained that this count carried a maximum term of life imprisonment, a mandatory minimum term of imprisonment of ten

years, a maximum fine of \$10,000,000, and at least five years of supervised relief. (Doc. 394, p. 2–3).

As part of the plea agreement, Petitioner waived his right to appeal or collaterally attack his conviction and sentence under 28 U.S.C. § 2255, except for such collateral attacks based on a claim of ineffective assistance of counsel. (*Id.*, p. 4). Petitioner initialed each page of his plea agreement and signed it on the final page beneath an acknowledgement that he had discussed the agreement with his attorney, fully understood the agreement, and agreed to its terms. (Doc. 394).

At the change of plea hearing, the Court addressed the appeal and collateral attack waivers contained in the plea agreement, and Petitioner confirmed that he freely and voluntarily waived his right to appeal his sentence, except for limited circumstances by pleading guilty. (Doc. 679, p. 15–16). Petitioner stated that he understood that his sentence may be different than any estimate given to him by counsel and that the Court could impose a harsher sentence than one in the advisory guideline range. (*Id.*, p. 16–17). The Court also asked whether Petitioner had discussed his guilty plea with counsel, and Petitioner responded that he had and was fully satisfied with the advice counsel had given him. (*Id.*, p. 17).

Although he faced a maximum prison sentence of life, the presentence investigation report (PSR) indicated that Petitioner’s sentencing guideline range was 360 months to life based upon a total offense level of 41 and a criminal history category of II. (Doc. 571, ¶¶ 103–04). Petitioner’s base offense level originally was 36, but he received a two-level enhancement for possessing a firearm in connection with the offense, a two-level enhancement for maintaining a premises for purposes of storing or distributing a controlled substance, and a four-level enhancement for his role as an organizer or leader in the criminal activity, for an adjusted offense level of 44. (*Id.*, ¶¶ 57–63). Petitioner then received a three-level downward departure for acceptance of responsibility

and entering the plea in a timely manner, which resulted in a total offense level of 41. (*Id.*, ¶¶ 65–67). Petitioner objected to the maintaining a premises enhancement. (Doc. 571-1).

At sentencing, Petitioner’s counsel renewed the maintaining a premises objection, and the Court overruled the objection. (Doc. 680, p. 3–9). Petitioner’s counsel then raised for the first time an objection to the firearm enhancement. (*Id.*, p. 3, 9). He argued that paragraph 12 of the PSR—which stated that a “.40 caliber handgun was also located in the truck within [Petitioner’s] reach”—was incorrect because Petitioner was found with a .40 caliber magazine, not a handgun. (*Id.*, p. 9; Doc. 571, ¶ 12). The Court then heard testimony from a Government witness who conceded that it was a magazine found in the vehicle. (Doc. 680, p. 15). The witness then testified that when agents searched a hotel room attributed to Petitioner, they found a .40 caliber Glock handgun within. (*Id.*). Petitioner’s counsel argued that there was not enough evidence to establish that the hotel room was Petitioner’s, and that because Petitioner was not in the room when it was searched, the firearm should not be attributable to Petitioner. (*Id.*, p. 20). The Court overruled the objection and found that the firearm enhancement was appropriate. (*Id.*). Petitioner’s counsel also called three witnesses who testified to Petitioner’s character and requested leniency. (*Id.*, 21–27). Finally, Petitioner’s counsel addressed the Court and argued at length that the Court should vary downward “considerably” when sentencing Petitioner. (*Id.*, p. 27–33).

The Court then asked Petitioner if he would like to address the Court. (*Id.*, p. 33). Petitioner stated that he took responsibility for his actions, was apologetic, and requested leniency. (*Id.*, p. 33–34). Next, the Court addressed the Government’s Section 5k1.1 motion which recommended a downward departure from the sentencing guidelines. (*Id.*, p. 34–36). The Court determined that, based on Petitioner’s total offense level and criminal history category, the advisory sentencing range was 360 months to life. (*Id.*, p. 35). The Court sentenced Petitioner to 360 months

imprisonment—the bottom of the advisory guideline range. (*Id.*, p. 36). Judgment was entered on July 14, 2023. (Doc. 603). Petitioner did not directly appeal his conviction.

On July 23, 2024, Petitioner, through counsel, filed this motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. (Doc. 696). On August 26, 2024, Petitioner’s counsel filed a motion to withdraw (Doc. 705), and the Court granted that motion. (Doc. 710). The Government responded to Petitioner’s Section 2255 motion on August 30, 2024. (Doc. 706). As discussed below, Petitioner’s Section 2255 motion should be denied.

DISCUSSION

Petitioner, through counsel, argues that his sentence should be vacated, set aside, or corrected pursuant to Section 2255 because he had ineffective assistance of trial counsel. He argues that: (1) his attorney failed to object to an improper guideline calculation that calculated his converted drug total based on “actual” methamphetamine instead of methamphetamine; and (2) his attorney failed to object to a possession of a firearm sentencing enhancement. (Doc. 696). As explained below, each of these arguments is meritless.

To prevail on a claim of ineffective assistance of counsel, Petitioner must establish by a preponderance of the evidence that (1) his attorney’s performance was deficient, and (2) he was prejudiced by the inadequate performance. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Chandler v. United States*, 218 F.3d 1305, 1312–13 (11th Cir. 2000). Petitioner must prove that his counsel's performance “was unreasonable under prevailing professional norms and that the challenged action was not sound strategy” to establish deficient performance. *Kimmelman v. Morrison*, 477 U.S. 365, 381, 384 (1986) (citing *Strickland*, 466 U.S. 688–89). To show that counsel's performance was unreasonable, Petitioner must establish that no competent counsel

would have taken the action in question. *Van Poyck v. Fla. Dep't of Corrs.*, 290 F.3d 1318, 1322 (11th Cir. 2002) (per curiam); *Chandler*, 218 F.3d at 1315. There is a strong presumption that the challenged action constituted sound trial strategy. *Chateloin v. Singletary*, 89 F.3d 749, 752 (11th Cir. 1996). As for prejudice, Petitioner must show there is a reasonable probability that, but for counsel's inadequate representation, “the result of the proceeding would have been different.” *Meeks v. Moore*, 216 F.3d 951, 960 (11th Cir. 2000) (quoting *Strickland*, 466 U.S. at 694). If Petitioner fails to establish that he was prejudiced by the alleged ineffective assistance, a court need not address the performance prong of the Strickland test. *See Holladay v. Haley*, 209 F.3d 1243, 1248 (11th Cir. 2000).

I. Petitioner Has Not Shown Ineffective Assistance of Counsel.

A. Methamphetamine Guideline Calculation

In the first argument in support of his ineffective assistance of counsel claim, Petitioner alleges that his counsel failed to object to the PSR’s categorization of the seized methamphetamine as methamphetamine (actual). Specifically, Petitioner asserts

Probation’s calculation of Havior’s relevant conduct included 3547.055 grams of “actual” methamphetamine which, per the Guidelines, carried a 20:1 ratio for calculating his converted drug weight, as opposed to methamphetamine, which carried only a 2:1 ratio. The guidelines [sic] offer no legitimate reason for the distinction which in Havior’s case resulted in an additional approximate 63, 847 kilograms in drug quantity (70941.1-7094.11). This added four levels to his base offense level (a 36 v. a 32). Federal courts across the country have rejected the elevated ratio for “actual” methamphetamine, but sentencing counsel failed to object to its use in this case. The resulting miscalculation of his recommended sentence elevated what should have been 235-293 years [sic] (37/II) to 360 years [sic]-Life (41/II).

(Doc. 696, p. 4).

In his plea agreement, Petitioner stipulated to the following:

In total, approximately four (4) kilograms of methamphetamine were seized from [co-defendant] which was located inside the same green Publix bag that Officers observed the Defendant receive after exiting [co-defendant's] vehicle in Stone Mountain.

A DEA laboratory tested the substances seized on April 5, 2021, and determined that the substances were all methamphetamine. One batch had a net weight of 3277 grams with a purity of 92%, pure substance 3014 grams. The second batch contained the attempted retrieval of the suspected methamphetamine from the ground, and was found to be 1018 grams of substance with a substance purity of methamphetamine of 9%, pure substance 91g.

(Doc. 394, p. 11). These two batches were combined in the PSR to be the drugs seized on April 5, 2022, for a methamphetamine (actual) amount of 3,105 grams and a converted drug weight of 62,100 kg. (Doc. 571, ¶ 50). Petitioner argues that his counsel failed to object to the “actual” methamphetamine calculation, and as such, his total converted drug weight was increased by 63,847 kilograms. (Doc. 696, p. 4). Petitioner contends that by not objecting, his counsel was ineffective.

As an initial matter, Petitioner fails to direct the Court to any decision from other federal courts rejecting an “actual” methamphetamine converted drug quantity. Regardless, the Court is subject only to binding precedent from the Court of Appeals of the Eleventh Circuit, and the Eleventh Circuit has not held that the use of the converted drug weight table as applied to “actual” methamphetamine is impermissible. Rather, convictions involving the use of the converted drug table are routinely upheld. *See United States v. Ortiz*, 785 F. App'x 645, 649 (11th Cir. 2019); *United States v. Baez Perez*, 515 F. App'x 866, 868 (11th Cir. 2013) (explaining that a district court did not abuse its discretion when it sentenced a defendant to the low end of the advisory guideline range after calculating that range using the converted drug weight of methamphetamine (actual)).

The drug weight conversion chart is designed for the exact application as used in Petitioner's case, and precedent in the Eleventh Circuit authorizes such an application.

Petitioner has not shown that his counsel was deficient for failing to object to the methamphetamine (actual) converted drug quantity. While his counsel could have argued that the methamphetamine (actual) conversion is against public policy, his failure to make such an argument certainly does not arise to constitutionally deficient performance. *See Pitts v. Cook*, 923 F.2d 1568, 1573–74 (11th Cir. 1991) (“[B]ecause law is not an exact science, an ordinary, reasonable lawyer may fail to recognize or to raise an issue, even when the issue is available, yet still provide constitutionally effective assistance.” (cleaned up)); *see also United States v. Burgess* No. CIV.A. 10-0620-KD-N, 2012 WL 1767550 (S.D. Ala. Apr. 24, 2012), report and recommendation adopted, No. CIV.A. 10-00620-KD, 2012 WL 1767156 (S.D. Ala. May 17, 2012) (“[C]ounsel is not deemed to perform inadequately by failing to raise a novel argument” (citations omitted)). Petitioner has therefore failed to show that his counsel was ineffective for failing to object to the use of the weight of methamphetamine (actual) in calculating an appropriate sentencing guideline range.

B. *Failure to Object to Firearm Enhancement.*

In his second argument in support of his ineffective assistance of counsel claim, Petitioner alleges that his counsel failed to object to a two-level possession of a firearm enhancement. Specifically, Petitioner contends that

Probation recommended – and Havior received – a two point enhancement for possession of a firearm in connection with the offense. PSR para 58. Paragraph 50 of the PSR notes that Havior “is accountable for the firearms he possessed in connection with the drug offense (on April 5, 2021; and those stored with the drugs at 2350 Hurt Street, Milledgeville, Georgia – a/k/a "The Bottom"), and the premises he maintained for purposes of storing and distributing drugs. At sentencing,

however, the government cited a different firearm, one located in a hotel where Havior was staying, as supporting the enhancement. It also cited a firearm possessed during an arrest in Jones County and a magazine found in Havior's possession when he was arrested, neither of which were identified in the PSR. (Doc. 696, p. 5). This argument fails.

In sentencing, “district courts are not bound by the facts and recommendations set forth in a PSI; they may choose not to adopt the facts as recited in the report or not to apply the guidelines in the proposed manner.” *United States v. Plasencia*, 886 F.3d 1336, 1343 (11th Cir. 2018). As discussed below, the Court heard testimony that a firearm was found in a hotel attributed to Petitioner, and that testimony was sufficient to warrant the two-level enhancement. To apply an enhancement, the Government need only prove that a preponderance of the evidence supports the enhancement, and as mentioned below, the Court found that there was “clearly sufficient” evidence to establish the enhancement. (Doc. 680, p. 20); *United States v. Askew*, 193 F.3d 1181, 1183 (11th Cir. 1998); *United States v. Weaver*, No. 22-12943, 2023 WL 5165424, *4 (11th Cir. Aug. 11, 2023).

Turning to his ineffectiveness claim, although Petitioner’s counsel did not initially file an objection to the firearm enhancement in the PSR, the record shows that his counsel raised an objection to that enhancement at sentencing upon the request of Petitioner. (Doc. 680, p. 3). Counsel argued that Petitioner was never in possession of a firearm for two reasons. First, the firearm mentioned in paragraph 12 of the PSR was not truly a firearm but rather a magazine. (*Id.*, p. 9). Second, counsel argued that Petitioner was not responsible for the firearm found in a hotel room in which Petitioner was allegedly staying. (*Id.*). The Court heard testimony from a DEA agent, who conceded that the firearm mentioned in paragraph 12 of the PSR was in fact a firearm magazine and not the firearm itself. (*Id.*, p. 10, 15). Next, the DEA agent testified that search

warrants were issued for several locations in which Petitioner was identified as stashing or selling drugs, and one such location was a hotel. (*Id.*, p. 15). The agent’s testimony established that Petitioner and his girlfriend were residing in the hotel and using the location as a “base camp.” (*Id.*). Upon searching the hotel room, agents located a .40 caliber Glock handgun, the same caliber as the magazine mentioned previously. (*Id.*). Following cross-examination and an argument by Petitioner’s counsel, the Court overruled the firearm enhancement objection and determined that the guideline calculations were correct because “[t]he evidence is clearly sufficient to establish the enhancement.” (*Id.*, p. 16–20).

Contrary to Petitioner’s assertion, the record indicates clearly that his counsel objected to the firearm enhancement. Further, the Court was not bound by the facts and recommendations in the PSR, and the agent’s testimony at the sentencing hearing was sufficient to support the firearm enhancement. As such, Petitioner has failed to show that his counsel was deficient. Therefore, the Court cannot say that Petitioner’s counsel was objectively unreasonable. Accordingly, Petitioner has not shown ineffective assistance of counsel on the basis of his counsel’s failure to object to the sentencing enhancement.

II. Petitioner is Not Entitled to an Evidentiary Hearing.

No evidentiary hearing is needed to resolve Petitioner’s Section 2255 motion. Petitioner has the burden to establish the need for an evidentiary hearing, and the Court is not required to hold an evidentiary hearing where the record makes “manifest the lack of merit of a Section 2255 claim.” *United States v. Lagrone*, 727 F.2d 1037, 1038 (11th Cir. 1984) (citation omitted). As discussed above, “the files and records of the case conclusively show that the prisoner is entitled to no relief.” 28 U.S.C. § 2255(b); *see also Rosin v. United States*, 786 F.3d 873, 877–78 (11th Cir. 2015) (“[A]n evidentiary hearing is unnecessary when the petitioner’s allegations are affirmatively

contradicted by the record.”) (internal quotations and citations omitted). Therefore, no evidentiary hearing is necessary.

CERTIFICATE OF APPEALABILITY

Rule 11(a) of the Rules Governing Section 2255 Proceedings for the United States District Courts provides that “[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” A certificate of appealability may issue only if the applicant makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

If a court denies a collateral motion on the merits, this standard requires a petitioner to “demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Petitioner has not met this standard, and, therefore, a certificate of appealability in this case should be denied.

CONCLUSION

For the reason discussed herein, it is **RECOMMENDED** that Petitioner’s Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 (Doc. 696) be **DENIED**. It is further **RECOMMENDED** that a certificate of appealability be **DENIED**.

OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, **WITHIN FOURTEEN (14) DAYS** after being served with a copy thereof. Any objection is limited in length to **TWENTY (20) PAGES**. See M.D. Ga. L.R. 7.4. The District Judge shall make a de novo determination of those

portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

The parties are further notified that, pursuant to Eleventh Circuit Rule 3-1, “[a] party failing to object to a magistrate judge’s findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court’s order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice.”

SO RECOMMENDED, this 18th day of March, 2025.

s/ Charles H. Weigle
Charles H. Weigle
United States Magistrate Judge