

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

<b>TRAVIS LEROY BALL,</b>  <div style="text-align: center;"><b>Movant,</b></div> <div style="text-align: center;">v.</div> <b>UNITED STATES OF AMERICA,</b>  <div style="text-align: center;"><b>Respondent.</b></div> <hr style="width: 40%; margin-left: 0;"/>	: : : : : : : : : : :	<b>Case No. 5:23-cr-55-CAR-CHW-1</b> <b>Case No. 5:25-cv-262-CAR-CHW</b> <b>28 U.S.C. § 2255</b>
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**ORDER AND RECOMMENDATION**

Before the Court is Movant Travis Leroy Ball’s Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. (Doc. 204). For the following reasons, it is **RECOMMENDED** that the motion (Doc. 45) be **DENIED**. It is further **RECOMMENDED** that a certificate of appealability be **DENIED**. Finally, it is **RECOMMENDED** that Movant’s motions for the Court to issue its Report and Recommendation (Docs. 51, 53) be **DISMISSED as moot**.

**BACKGROUND**

On October 24, 2023, Movant was indicted on two counts of Mailing Threatening Communications and two counts of False Personation of an Officer or Employee of the United States. (Doc. 1). With the assistance of counsel, Movant pleaded guilty to one count of Mailing Threatening Communications under 18 U.S.C. § 876(c). (Docs. 24, 25). The plea agreement explained that this count carried a maximum term of five years, a maximum fine of \$250,000.00, and three years supervised supervision. (Doc. 25, pp. 2–3).

As part of the plea agreement, Movant waived his right to 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). Movant 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. 25).

At the change of plea hearing, the Court addressed the appeal waiver contained in the plea agreement, and Movant confirmed that he freely and voluntarily waived his right to appeal his sentence, except for limited circumstances, by pleading guilty. (Doc. 43, pp. 13–14). Movant 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.*, pp. 14–15). The Court also asked whether Movant had discussed his guilty plea with counsel, and Movant responded that he had and was fully satisfied with the advice counsel had given him. (*Id.*, p. 11).

Although he faced a maximum prison sentence of five years or 60 months, the presentence investigation report (PSR) indicated that Movant’s sentencing guideline range was 37 to 46 months based upon a total offense level of 14 and a criminal history category of VI. (Doc. 26, ¶¶ 73–74). Although the base offense level was 12, Movant received a two-level enhancement for the offense involving more than two threats and a three-level enhancement for victims of the offense being governmental employees and the offense being motivated by that status. (*Id.*, ¶¶ 21–23). Movant then received a two-level decrease for acceptance of responsibility and a one-level decrease for entering a plea in a timely manner—creating a total offense level of 12. (*Id.*, ¶¶ 28–30). Movant objected to his criminal history category of VI and argued that it should instead be V. (Doc. 29).

At sentencing, the Court heard Movant’s objection to the PSR. The Court overruled the objection. (Doc. 44, p. 6). Movant’s counsel then requested a downward departure of the sentencing guidelines. (*Id.*, p. 11). Following this, the Government requested the maximum

possible period of incarceration of five years. (*Id.*, p. 16). Next, the Court asked Movant if he had reviewed the PSR, and he responded yes. (*Id.*, p. 16). Movant then addressed the Court and explained that he only sent the threatening letters because somebody threatened him and stated that he was apologetic for sending the letters. (*Id.*, p. 17). Following a recess, the Court determined that, based on Movant’s total offense level and criminal history category, the advisory sentencing range was 37 to 46 months. (*Id.*, p. 20). The Court determined that the guideline range was insufficient based on an individualized assessment of the facts, and the Court varied upwards and sentenced Movant to 60 months imprisonment—the maximum possible under the statute to which Movant pleaded guilty. (*Id.*). Judgment was entered on June 18, 2024. (Doc. 34). Movant did not directly appeal his conviction.

On May 14, 2025, Movant filed a “Motion for Unconditional Discharge.” (Doc. 40). The Court, out of an abundance of caution that Movant’s motion could be construed as a motion for relief under 28 U.S.C. § 2255, ordered Movant to recast his Section 2255 motion within thirty on the proper form. (Doc. 42). On June 10, 2025, Movant, *pro se*, filed a recast Section 2255 motion on the proper form. (Doc. 45). The Government responded on July 25, 2025, arguing that the Court should deny each ground of Movant’s motion. (Doc. 48). As discussed below, Movant’s Section 2255 motion should be denied.

### **DISCUSSION**

Movant, proceeding *pro se*, argues that his sentence should be vacated, set aside, or corrected pursuant to Section 2255 because he had ineffective assistance of counsel, he was subject to malicious prosecution on behalf of the United States Attorney and the United States Magistrate Judge, and his First and Fifth Amendment rights were violated. The record before the Court, shows that Movant is not entitled to relief.

# **I. Movant Has Not Shown Ineffective Assistance of Counsel.**

To prevail on a claim of ineffective assistance of counsel, Movant 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). Movant 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, Movant 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, Movant 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 Movant 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).

In challenging a guilty plea based on ineffective assistance of counsel, Movant must still satisfy the two-part *Strickland* test. *Hill v. Lockhart*, 474 U.S. 52, 58 (1985). In doing so, Movant may only attack the “voluntary and intelligent character of the guilty plea.” *Id.* at 56–57 (citing *Tollett v. Henderson*, 411 U.S. 258, 267 (1973)). Movant may establish deficient performance by demonstrating that counsel's advice was not within the “range of competence demanded of

attorneys in criminal cases.” *McMann v. Richardson*, 397 U.S. 759, 771 (1970). Movant must satisfy the prejudice prong by demonstrating “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; *see also Martin v. United States*, 949 F.3d 662, 667 (11th Cir. 2020). Further, Movant must also “convince the court that a decision to reject the plea bargain would have been rational under the circumstances.” *Padilla v. Kentucky*, 559 U.S. 356, 372 (2010); *see Diveroli v. United States*, 803 F.3d 1258, 1265 (11th Cir. 2015) (affirming denial of motion to vacate because “it would not have been rational for [the movant] to reject his plea bargain”).

Movant’s first argument in support of his ineffective assistance of counsel claim alleges that counsel “never prepared a defense nor reciprocal discovery in this case.” (Doc. 45, p. 7). He also alleges that counsel never raised certain facts or filed certain motions. (*Id.*). As an initial matter, this challenge of ineffective assistance is waived because “a § 2255 movant who entered a valid guilty plea waives any pre-plea ineffective assistance claims that do not concern his decision to enter the plea.” *Baird v. United States*, 445 F. App’x 252, 254 (11th Cir. 2011) (citing *Wilson v. United States*, 962 F.2d 996, 997 (11th Cir. 1992)); *see also United States v. Bonilla*, 579 F.3d 1233, 1240 (11th Cir. 2009) (“Generally, entering a guilty plea waives a defendant’s right to all non-jurisdictional challenges to a conviction.”) (citations omitted). And nowhere in this ground does Movant allege that his counsel’s failure to challenge the indictment impacted his guilty plea. Because Movant does not contend that his plea was involuntary due to his counsel’s failure to challenge the identity in the indictment, this ineffective assistance claim is waived by the guilty plea. *See Shell v. United States*, No. 22-10973, 2023 WL 3338631, at \*1 (11th Cir. May 10, 2023) (“[A]n ineffective assistance of counsel claim raised in a § 2255 motion is waived by a guilty plea

where the movant’s ‘claim of ineffective assistance is not about his decision to plead guilty.’”) (quoting *Wilson*, 962 F.2d at 997).

Even if Movant’s claims were not waived by his guilty plea, Movant’s claims could not succeed because he has not met his burden of showing ineffective assistance of counsel on the basis of failing to file certain motions or bringing up certain facts. Movant has not shown that there was any constitutional violation at any step of the criminal proceeding, and he does not provide any factual support for his conclusory allegations that his counsel was ineffective. He admitted to the factual basis for the charges in his plea agreement and at the change of plea hearing. (Docs. 25, 43). The motions Movant alleges should have been brought by counsel would have lacked merit, and counsel is not ineffective for failing to raise issues that clearly lack merit. *Brownlee v. Haley*, 306 F.3d 1043, 1066 (11th Cir. 2002); *see, e.g., Jackson v. Herring*, 42 F.3d 1350, 1359 (11th Cir. 1995) (explaining that “counsel need not pursue constitutional claims which he reasonably believes to be of questionable merit”). Accordingly, even if Movant had not waived Ground One by pleading guilty, Movant has not shown that his counsel was ineffective in pre-plea proceedings.

## **II. Movant’s Claims in Grounds Two, Three, and Four Are Subject to Procedural Default.**

Movant’s assertions of malicious prosecution in Grounds Two and Three and of constitutional violations in Ground Four are subject to procedural default. “Under the procedural default rule, a defendant generally must advance an available challenge to a criminal conviction or sentence on direct appeal or else the defendant is barred from presenting that claim in a § 2255 proceeding.” *Lynn v. United States*, 365 F.3d 1225, 1234 (11th Cir. 2004) (collecting cases). The procedural default rule “generally applies to all cases, including constitutional claims.” *Id.* (emphasis added). Procedural default may be excused, however, if Movant shows either: (1) cause

and prejudice, or (2) actual innocence. *McKay v. United States*, 657 F.3d 1190, 1196 (11th Cir. 2011) (citing *Lynn*, 265 F.3d at 1234). Cause and prejudice “requires a showing of some external impediment preventing counsel from constructing or raising the claim,” and “the errors . . . worked to Movant’s actual and substantial disadvantage.” *Murray v. Carrier*, 477 U.S. 478, 492 (1986); *United States v. Frady*, 456 U.S. 152, 170 (1982).

As for his failure to raise these grounds on direct appeal, Movant states that he in fact did so. (Doc. 45, pp. 11, 13, 15, 17). A review of the docket contradicts these assertions, because no such appeals were filed in the United States Court of Appeals for the Eleventh Circuit. *See* (Docket). Seemingly, the only support for this discrepancy is found in Movant’s reply to the Government’s response in opposition, where Movant states that he instructed his attorney to file a direct appeal, but the attorney refused to. (Doc. 49, p. 3). This assertion is wholly unsupported and is not included as a ground for relief in Movant’s Section 2255 motion. As such, the Court cannot conclude that he did raise these grounds on direct appeal. And he does not argue in this Section 2255 application any cause for failure to raise these grounds on direct appeal. Because Movant has failed to establish cause for failure to raise his claims earlier, the Court need not consider whether he suffered any prejudice, although Movant has failed in this showing as well.

As for actual innocence, Movant does not allege that he is factually innocent of the charges. Although his malicious prosecution arguments assert that the Government and the Court—specifically the undersigned United States Magistrate Judge— “deliberately came after me” even when “all direct evidence pointed to” another suspect, Movant’s assertions do not raise a claim of

actual, factual innocence.<sup>1</sup> (Doc. 45, pp. 9, 13); *see Bousley v. United States*, 523 U.S. 614, 623 (1998).

The docket reflects that Movant did not file a direct appeal, and no exception to the procedural default rule applies. His claims in Grounds Two, Three, and Four could have been addressed on direct appeal, but Movant failed to do so. “The fact that Movant voluntarily waived his appellate rights is not cause to overcome the procedural defect.” *Troup v. United States*, No. 1:21-CR-0215-SCJ, 2024 WL 4182921, at \*3 (N.D. Ga. Sept. 13, 2024) (citing *Lynn*, 365 F.3d at 1235); *see, e.g., Ware v. United States*, No. 09-60185-CIV, 2009 WL 2567023, at \*5 (S.D. Fla. May 14, 2009) (explaining that the movant was procedurally barred from raising for first time in a Section 2255 motion grounds that he did not raise on direct appeal because “he cannot utilize [S]ection 2255 as a vehicle through which to evade the consequences of the appeal waiver”). Because Movant failed to raise them on direct appeal, his claims of malicious prosecution in Grounds Two and Three and constitutional violations in Ground Four are subject to procedural default.

### **III. Grounds Two, Three, and Four Are Barred by the Valid Collateral Attack Waiver in Movant’s Plea Agreement.**

In his second ground for relief, Movant asserts that he was subject to malicious prosecution by the United States Attorney for the Middle District of Georgia. In support of this argument, Movant provides that the United States Attorney maliciously prosecuted Movant even when evidence pointed to another suspect. (Doc. 45, p. 9). In his third ground for relief, Movant asserts that the undersigned United States Magistrate Judge should never have issued search or arrest

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<sup>1</sup> Any claim of actual innocence is further undermined by Movant’s claim in Ground Four that his constitutional right to freedom of speech was violated by being prosecuted for this crime. (Doc. 45, p. 15).



warrants against Movant. (*Id.*, p. 13). In his final ground for relief, Movant asserts that his constitutional rights to a Miranda Warning and Freedom of Speech were violated. (*Id.*, pp. 15–16). The Government argues that these grounds constitute collateral attacks to his sentence and are barred by the appeal waiver in Movant’s plea agreement. (Doc. 48, pp. 14–17).

Movant’s plea agreement provides in relevant part that Movant “waives any right to collaterally attack [his] conviction and sentence under Title 28, United States Code, Section 2255, or to bring any other collateral attack, except that Defendant shall retain the right to bring a claim of ineffective assistance of counsel.” (Doc. 25, p. 4). Movant initialed each page of the plea agreement and signed his understanding of the agreement on the last page. The question for the Court then is whether Movant made the collateral attack waiver knowingly and voluntarily. *United States v. Hardman*, 778 F.3d 896, 899 (11th Cir. 2014). For the waiver to be enforced, “the government must show either that (1) the district court specifically questioned the defendant about the provision during the plea colloquy, or (2) it is manifestly clear from the record that the defendant fully understood the significance of the waiver.” *Id.* (internal quotations and citation omitted).

While the Court did not specifically question Movant about the collateral attack waiver provision of the plea agreement during the plea colloquy,<sup>2</sup> the record shows that Movant

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<sup>2</sup> Because “[a] collateral attack is an attack on a judgment in a proceeding *other than a direct appeal*,” *Wall v. Kholi*, 562 U.S. 545, 552 (2011), arguably the Court must have specifically questioned Movant about the collateral attack waiver—and not just the appeal waiver—for the “specifically questioned” requirement to have been met. *See, e.g., Demello v. United States*, 623 F. App’x 969, 972 (11th Cir. 2015) (explaining that a defendant “knowingly and voluntarily waived his right to collateral review” after “the district court specifically questioned [the defendant] about the collateral-attack waiver and told him that he was waiving his right to both a direct appeal and ‘an indirect appeal in a post-conviction proceeding’”); *Griffis v. United States*, 746 F. App’x 880, 882 (11th Cir. 2018) (explaining that a defendant’s signed collateral attack waiver was enforceable

understood the significance of the waiver. As an initial matter, Movant initialed the page of the plea agreement which contained the collateral attack waiver language precluding a Section 2255 motion on Ground One. (Doc. 25, p. 4). At the change of plea hearing, the Court questioned Movant about the plea agreement, including the direct appeal waiver located on the same page, and Movant responded that he had fully read the plea agreement, had discussed it with his attorney, understood the terms, and did not have any questions about it. (Doc. 43, pp. 5–6, 11–12, 13–14). Further, the PSR expressly notes that Movant waived any right to collaterally attack his conviction and sentence under Section 2255. (Doc. 31, p. 3). At his sentencing hearing, the Court asked Movant if he had reviewed the PSR, and Movant responded that he had been over it with his attorney, understood what was in the PSR, and did not have any questions regarding it. (Doc. 44, pp. 16–17). Finally, Movant makes no allegation that he did not fully understand that he was waiving his right to collateral attack or that he in any way did not understand the waiver. Therefore, the collateral attack waiver in Movant's plea agreement is valid and precludes Grounds Two, Three, and Four of his Section 2255 motion. *E.g., Demello v. United States*, 623 F. App'x 969, 972 (11th Cir. 2015) (“When a valid sentence-appeal waiver is entered into knowingly and voluntary and contains express language waiving the right to collateral review, it is enforceable and precludes the defendant from collaterally attacking a sentence . . .”).

#### **IV. Movant’s Claims of Malicious Prosecution Are Not Cognizable Under Section 2255.**

Movant is entitled to relief under Section 2255 upon a showing that the Court imposed a sentence that was “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

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when the district court asked the defendant if he understood that he was “giving up [his] right to directly *or in a post-conviction proceeding indirectly* attack [his] sentence”).

maximum authorized by law, or is otherwise subject to collateral attack . . . .” 28 U.S.C. § 2255. “Section 2255 does not provide a remedy for every alleged error in conviction or sentencing.” *Spencer v. United States*, 773 F.3d 1132, 1138 (11th Cir. 2014).

The common-law tort of malicious prosecution is “a violation of the Fourth Amendment and a viable constitutional tort cognizable under § 1983.” *Wood v. Kesler*, 323 F.3d 872, 881 (11th Cir. 2003). The proper remedy for a tort is compensation, not release from incarceration.<sup>3</sup> Movant’s claims of malicious prosecution in Grounds Two and Three are not cognizable on his Section 2255 motion.

#### **V. Movant’s Allegations of Constitutional Violations in Ground Four Are Meritless.**

Finally, Movant’s claims in Ground Four should be denied as meritless. His claim that his *Miranda* rights were violated due to being read the *Miranda* warning does not entitle him to relief. Not only has Movant failed to provide any factual support for this assertion, but the proper remedy for a *Miranda* violation, absent “unusual circumstances, is the exclusion of unwarned statements.” *Vega v. Tekoh*, 597 U.S. 134, 152 (2022). In this case, any potentially inculpatory statements Movant made in response to interrogation, which Movant admits did not occur (Doc. 49, p. 2), would be appropriately addressed in a pre-plea motion. Movant’s guilty plea and conviction are supported fully by the record evidence, and this claim should be denied.

As for his claim that he was simply exercising his First Amendment right to free speech, this argument is meritless because letters that are threatening in nature are not protected speech. “‘True threats’ encompass those statements where the speaker means to communicate a serious

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<sup>3</sup> One of the elements of a malicious prosecution claim is that the proceedings “terminated in the plaintiff accused’s favor.” *Wood*, 323 F.3d at 882. In this case, Movant pleaded guilty and is currently incarcerated. To date, the proceedings have not terminated in his favor.

expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” *Virginia v. Black*, 538 U.S. 343, 359 (2003). “The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats “protect[s] individuals from the fear of violence” and “from the disruption that fear engenders,” in addition to protecting people “from the possibility that the threatened violence will occur.” *Id.* at 359–60. The record evidence, including the stipulated facts in the plea agreement and Movant’s statements during the plea colloquy, refute any First Amendment violation. As such, Movant’s claims in Ground Four should be denied.

#### **VI. Movant is Not Entitled to an Evidentiary Hearing.**

No evidentiary hearing is needed to resolve Movant’s Section 2255 motion. Movant 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 movant 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). Movant 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 Movant’s Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 (Doc. 45) be **DENIED**. It is further **RECOMMENDED** that a certificate of appealability be **DENIED**. Finally, it is **RECOMMENDED** that Movant’s motions that the Court issue its Report and Recommendation (Docs. 51, 53) be **DISMISSED as moot**.

### **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 20th day of March, 2025.

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