

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

TIFFANY BROWN,	:	MOTION TO VACATE
Movant,	:	28 U.S.C. § 2255
	:	
	:	CRIMINAL ACTION NO.
v.	:	1:22-CR-359-TWT-JEM-1
	:	
UNITED STATES OF AMERICA,	:	CIVIL ACTION NO.
Respondent.	:	1:25-CV-2703-TWT-JEM

FINAL REPORT AND RECOMMENDATION

Movant, Tiffany Brown, submitted a *pro se* motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. (Doc. 147.) Movant subsequently filed an amended § 2255 motion (Doc. 161) and a supplement (Doc. 162). The matter is before the Court for preliminary review of the § 2255 motions pursuant to Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts. For the reasons stated below, the undersigned **RECOMMENDS** that the § 2255 motions be **DISMISSED WITHOUT PREJUDICE** as premature.

I. DISCUSSION

On January 17, 2025, a jury found Movant guilty of major disaster fraud, wire fraud, theft of government money, and money laundering. (Doc. 112.) On April 18, 2025, Movant filed a notice of appeal. (Doc. 135.) On April 23, 2025, the District Court filed the Judgment and Commitment, sentencing Movant to 144 months of imprisonment, followed by five years of supervised release. (Doc. 140.)

On May 14, 2025, Movant filed her § 2255 motion. (Doc. 147.) On May 27, 2025, Movant filed her amended § 2255 motion (Doc. 161) and a supplement (Doc. 162). In her § 2255 motions, Movant claims that she received ineffective assistance of counsel. (Doc. 147 at 2; Doc. 161 at 3-5.)

Summary dismissal of a § 2255 motion is proper “[i]f it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief” 28 U.S.C. foll. § 2255, Rule 4(b). “[A]bsent extraordinary circumstances, a defendant may not seek collateral relief while [her] direct appeal is pending, as the outcome of the direct appeal may negate the need for habeas relief.” *United States v. Casaran-Rivas*, 311 F. App’x 269, 272 (11th Cir. 2009) (per curiam) (holding that § 2255 motion should be dismissed as premature if movant can pursue direct appeal). “The appropriate course of action for addressing a § 2255 motion filed during the pendency of the direct appeal is to dismiss the § 2255 action without prejudice.” *Blair v. United States*, 527 F. App’x 838, 839 (11th Cir. 2013) (per curiam).

In the present case, Movant filed a notice of appeal, followed by a § 2255 motion and an amended § 2255 motion. Because Movant is pursuing a direct appeal and no extraordinary circumstances exist, Movant’s § 2255 motions should be dismissed without prejudice as premature. Movant may seek § 2255 relief, if necessary, after the conclusion of her direct appeal.

Accordingly, the undersigned **RECOMMENDS** that the § 2255 motions be **DISMISSED WITHOUT PREJUDICE** as premature.

II. CERTIFICATE OF APPEALABILITY

Pursuant to Rule 11(a) of the Rules Governing Section 2255 Cases, “[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. . . . If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2).” Section 2253(c)(2) states that a certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” A substantial showing of the denial of a constitutional right “includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the [§ 2255 motion] 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 quotation marks omitted).

When the district court denies a [§ 2255 motion] on procedural grounds without reaching the prisoner’s underlying constitutional claim . . . a certificate of appealability should issue only when the prisoner shows both that jurists of reason would find it debatable whether the [motion] states a valid claim of the denial of a constitutional right *and* that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

Jimenez v. Quarterman, 555 U.S. 113, 118 n.3 (2009) (citing *Slack*, 529 U.S. at 484) (internal quotation marks omitted).

The undersigned **RECOMMENDS** that a certificate of appealability be **DENIED** because the resolution of the issues presented is not debatable. If the

District Court adopts this recommendation and denies a certificate of appealability, Movant “may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22.” 28 U.S.C. foll. § 2255, Rule 11(a).

III. CONCLUSION

For the reasons stated above, the undersigned **RECOMMENDS** that (1) the § 2255 motions (Docs. 147, 161) be **DISMISSED WITHOUT PREJUDICE** as premature, (2) a certificate of appealability be **DENIED**, and (3) civil action number 1:25-CV-2703-TWT-JEM be **CLOSED**.

The Clerk is **DIRECTED** to terminate the referral of the § 2255 motions to the undersigned.

SO RECOMMENDED, this 16th day of June, 2025.



J. ELIZABETH McBATH
UNITED STATES MAGISTRATE JUDGE