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

BRITNEY MOON-COOK,	:	MOTION TO VACATE
BOP Reg. No. 81404509,	:	28 U.S.C. § 2255
Movant pro se,	:	
	:	CRIMINAL ACTION NO.
v.	:	4:22-CR-0016-WMR-WEJ
	:	
UNITED STATES OF AMERICA,	:	CIVIL ACTION NO.
Respondent.	:	4:24-CV-0036-WMR-WEJ

FINAL REPORT AND RECOMMENDATION

Movant, Britney Moon-Cook, a federal prisoner currently confined at the Federal Correctional Institution in Aliceville, Alabama, has filed a pro se 28 U.S.C. § 2255 Motion to vacate challenging her 2023 guilty plea conviction and sentence in this Court for one count of conspiring to possess with intent to distribute methamphetamine, in violation of 21 U.S.C. §§ 846, 841(b)(1)(A), and 851. (Mot. [27] 1; J. [19] 1.) The matter is before the Court on the § 2255 Motion and the government's Answer-Response. For the reasons stated below, **IT IS RECOMMENDED** that the § 2255 Motion be **DENIED** and that **no certificate of appealability issue**.

I. PROCEDURAL HISTORY

On July 7, 2022, movant was charged by information with conspiring to possess with intent to distribute at least 500 grams of a mixture or substance containing methamphetamine, in violation of 21 U.S.C. §§ 841(b)(1)(A), 846, and 851 ("Count 1"). (Information [13] 1.) On August 25, 2022, movant pled guilty to Count 1 pursuant to a written plea agreement. (See dkt. [15]; Plea Agreement [15-1].) In the plea agreement, movant agreed to plead guilty to Count 1, carrying a mandatory-minimum term of 15 years' imprisonment, and a maximum of life imprisonment. (Plea Agreement [15-1] 3-4.) In exchange, the government agreed to jointly recommend a mandatory-minimum 180-month sentence, to not pursue further enhancement of the mandatory-minimum sentence by filing two additional 21 U.S.C. § 851 notices, and to bring no additional charges. (Id. at 3-5, 7-8.) In the plea agreement, the parties stipulated that the jointly undertaken criminal activity involved 868 grams of methamphetamine (actual). (Id. at 5.) The plea agreement also contained a "limited waiver of appeal" providing that movant waived the right to appeal or collaterally attack her conviction and sentence on any ground, except that (1) movant may appeal an upward departure or variance above the sentencing guideline range as calculated by the District Court, (2) claims of ineffective assistance of counsel are excepted from the waiver, and/or (3) movant

may file a cross-appeal if the government appealed the sentence imposed. (Id. at 12.) Both movant and her counsel signed the plea agreement. (Id. at 13-15.)

At the August 25, 2022, change-of-plea hearing, movant testified that she fully understood and had signed the plea agreement, that the plea agreement accurately reflected her agreement with the government, that no one had made any other promises not contained in the plea agreement to induce her guilty plea, and that no one had threatened or coerced her into signing the plea agreement. (Tr. [30] 4-5, 20-24.) Movant further testified that she understood that the District Court was not bound by the recommendations in the plea agreement, that she was subject to a mandatory-minimum sentence of 15 years' imprisonment, and that the District Court could impose any sentence up to and including the statutory maximum penalty of life imprisonment. (Id. at 21, 35-37.) Movant testified that she had discussed her case and the plea agreement with her attorney, and that she was satisfied with her attorney's representation. (Id. at 24-26.)

The government read into the record the factual basis for Movant's guilty plea. (Tr. 26-28, 30-34.) Specifically, Movant's co-conspirator David Miller sold two ounces (56.699 grams) of a substance that field-tested positive for methamphetamine to a confidential informant on October 27, 2021, at a convenience store in Polk County, Georgia, and arranged to sell four ounces of

methamphetamine to a confidential informant at the convenience store on December 2, 2021. (Id. at 26-27.) Miller was arrested when he arrived at the scene for the second controlled buy, and a search of his vehicle revealed five ounces (141.748 grams) of a substance that field-tested positive for methamphetamine and a firearm. (Id. at 27.) Miller informed law enforcement officers that he had been supplied the methamphetamine by movant. (Id.) Miller agreed to call movant and ask her to meet him at the methamphetamine supply. (Id.) Movant agreed to meet Miller at the convenience store and then travel to the methamphetamine supply. (Id.) Just prior to her arrival on the scene, law enforcement officers conducted a traffic stop on movant and explained the information that they had obtained against her. (Id. at 27-28.) Movant waived her Miranda[1] rights and informed agents that she had additional methamphetamine at a stash house in Rome, Georgia. (Id. at 28.) A search of the stash house revealed an additional 670 grams of a substance that field-tested positive for methamphetamine. (Id. at 28.) The two ounces and five ounces of methamphetamine sold or seized from Miller, plus the 670 grams of methamphetamine found at the stash house, totaled the 868 grams of methamphetamine (actual) referenced in the plea agreement. (Id. at 31.) Movant

[1] Miranda v. Arizona, 384 U.S. 436 (1966).

testified that the factual basis was true and correct, and that she was, in fact, guilty of Count 1 of the information. (Id. at 34.) Accordingly, the District Court accepted Movant's guilty plea. (Id. at 42-43.)

Prior to sentencing, a U.S. Probation Officer prepared a Final Presentence Investigation Report ("PSR"). The PSR's factual summary provided that the suspected methamphetamine sold by Miller on October 27, 2021, was laboratory tested and determined to be 55.52 grams of methamphetamine hydrocholoride with a purity of 96 percent, equaling 53.29 grams of methamphetamine (actual). (PSR ¶ 11.) The suspected methamphetamine seized from Miller's vehicle on December 1, 2021,[2] was laboratory tested and determined to be 137.30 grams of methamphetamine hydrochloride with a purity of 90 percent, equaling 123.57 grams of methamphetamine (actual). (Id. ¶ 14.) The suspected methamphetamine found at the stash house was laboratory tested and determined to be 354.3 grams of methamphetamine hydrochloride with a purity of 89 percent, equaling 315.3 grams of methamphetamine (actual). (Id. ¶ 18.) The PSR further provided that

[2] The factual basis read into the record at the August 25, 2022, change-of-plea hearing places these events on December 2, 2021, however, the PSR places them on December 1, 2021. (Compare Tr. [30] 26, with PSR ¶¶ 12-17.)

movant reported to law enforcement officers that she had picked up one kilogram of methamphetamine in Atlanta on a previous occasion. (Id. ¶ 17.)

Based on the 492.16 grams of methamphetamine (actual) obtained from Miller and the stash house, and the 1,000 grams of methamphetamine that movant admitted picking up in Atlanta, totaling 11,843.2 kilograms of converted drug weight ("CDW"), the PSR determined that movant was subject to a base offense level of 34 under U.S.S.G. § 2D1.1. (PSR ¶ 23.) In a footnote, the probation officer noted that it was "unclear to the probation officer how the parties arrived at 868 grams of methamphetamine (actual)" as provided in the plea agreement, but that "both calculations place the defendant in the same base offense level under U.S.S.G. § 2D1.1." (Id. at 2 n.2.) The PSR applied a two-level enhancement to movant's offense level under U.S.S.G. § 2D1.1(b)(1) for possession of a dangerous weapon, noting that Miller possessed a firearm when he was arrested on December 1, 2021, in connection with the distribution of methamphetamine, and that Miller reported that the gun belonged to movant and that he was supposed to take it back to movant. (Id. ¶¶ 13, 15, 24.) The PSR also applied a three-level reduction under U.S.S.G. §§ 3E1.1(a) and (b) for acceptance of responsibility, resulting in a total offense level of 33. (Id. ¶¶ 30, 31.) The PSR determined that movant was not a career offender within the meaning of U.S.S.G. § 4B1.1. (Id. ¶ 45.) Based on a

total offense level of 33, and a criminal history category of VI, the PSR determined that movant was subject to a guideline range of 235 to 293 months' imprisonment. (Id. at 16; ¶ 44.) Neither the government nor the defense submitted written objections to the PSR. (See id. at 18.)

At movant's sentencing hearing on February 7, 2023, the District Court adopted the sentencing guideline calculations in the PSR. (Tr. [29] 4-5.) Neither party objected to the guideline calculations. (Id. at 4.) Consistent with the plea agreement, the parties jointly recommended a mandatory-minimum 180-month sentence. (See id. at 5-9.) Following allocution, the District Court sentenced movant to 180 months' imprisonment, to be followed by 10 years' supervised release. (Id. at 15.)

The instant § 2255 Motion followed.

II. 28 U.S.C. § 2255 MOTION

A federal prisoner may file a motion to vacate her sentence "upon the ground 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). "[T]o obtain collateral relief a

prisoner must clear a significantly higher hurdle than would exist on direct appeal." United States v. Frady, 456 U.S. 152, 166 (1982) (footnote omitted).

The Sixth Amendment right to counsel includes the right to the effective assistance of competent counsel. McMann v. Richardson, 397 U.S. 759, 771 & n.14 (1970). To make a successful claim of ineffective assistance of counsel, a defendant must show that (1) her counsel's performance was deficient, and (2) the deficient performance prejudiced her defense. Strickland v. Washington, 466 U.S. 668, 687 (1984). Counsel's performance is deficient only if it falls below the wide range of competence demanded of attorneys in criminal cases. See Strickland, 466 U.S. at 687-88. Prejudice occurs when there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. In her § 2255 Motion, movant raises four claims of ineffective assistance of counsel.[3]

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[3] The Court liberally construes movant's assertions that "counsel failed" in the enumerated ways to raise claims of ineffective assistance of counsel. (See Mot. [27] 4-9); Bingham v. Thomas, 654 F.3d 1171, 1175 (11th Cir. 2011) (explaining that the Court holds pro se pleadings to a less stringent standard than pleadings drafted by lawyers). To the extent that movant also attempts to raise corresponding claims that the district court sentenced her based on inaccurate/incomplete information, miscalculated her advisory guideline range, miscalculated the drug quantity attributable to movant, or any other substantive

A. Ground 1

In Ground 1, movant alleges that her counsel was ineffective for failing to address and resolve unspecified issues with the PSR, and for failing to provide movant with a copy of the complete PSR. (Mot. [27] 4.) Movant states that she did not see the entire PSR until after sentencing. (Id.)

The government responds that movant does not specify what objections should have been made to the PSR or what additional information should have been provided. (Resp. [31] 14.) The government also responds that counsel performed reasonably by submitting a sentencing memorandum and letters on movant's behalf and argues generally that she cannot show prejudice where the sentence she received was substantially below her calculated guideline range and the potential 25-year mandatory-minimum sentence had the government filed additional notices of prior convictions under 21 U.S.C. § 851. (Id. at 14-16, 18.)

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claims of trial court error, the Court agrees with the government that any such claims are procedurally barred because Movant failed to raise them on direct appeal, and, alternatively, are barred by the valid collateral attack waiver in her plea agreement. See United States v. Montano, 398 F.3d 1276, 1279-80 (11th Cir. 2005) ("Generally, if a challenge to a conviction or sentence is not made on direct appeal, it will be procedurally barred in a § 2255 challenge.") (citation omitted); United States v. Bushert, 997 F.2d 1343, 1351 (11th Cir. 1993) (stating that a collateral attack waiver will be enforced in it was made knowingly and voluntarily).

A movant is not entitled to federal habeas relief "when [her] claims are merely conclusory allegations unsupported by specifics." Tejada v. Dugger, 941 F.2d 1551, 1559 (11th Cir. 1991). Similarly, bare, conclusory allegations of ineffective assistance of counsel are insufficient to satisfy the Strickland test. Wilson v. United States, 962 F.2d 996, 998 (11th Cir. 1992).

Here, movant's Ground 1 does not identify what "objections" counsel should have raised to the PSR. (See Mot. [27] 4.) Additionally, while movant asserts without elaboration that the information on record about her personal history was "insufficient," she does not identify what information should have been provided, or how she was prejudiced by its absence. (See id.) Nor does movant identify what objections could have been raised or how she was prejudiced thereby if she had seen the "entirety" of the PSR earlier. (See id.) As a result, movant's Ground 1 is wholly conclusory and does not warrant relief. See Tejada, 941 F.2d at 1559; Wilson, 962 F.3d at 998. In any event, movant cannot show prejudice where she received a mandatory-minimum sentence. See United States v. Marsh, 548 F. Supp. 2d 1295, 1302 (N.D. Fla. 2008) (explaining that, to establish prejudice in the sentencing context, a movant must show a reasonable probability that "but for" counsel's deficient performance she would likely have received a lesser sentence).

B. Ground 2

In Ground 2, movant contends that her counsel was ineffective for failing to challenge the drug quantity and purity determinations in the PSR. (Mot. [27] 5.) Movant asserts that the probation officer noted in the PSR that it was "unclear" how the drug quantity stipulation in the plea agreement was determined, and that her counsel had a "duty to figure this out." (Id.) Movant emphasizes that no substances were seized directly from her possession to be attributed to her. (Id.)

The government responds that the plea agreement's drug quantity stipulation was explained at movant's change-of-plea hearing, where movant admitted the correctness of the government's factual basis and agreed that she was responsible for the methamphetamine in Miller's possession and at the stash house. (Resp. [31] 14-15.) Further, the government notes that movant cannot show prejudice because both the drug quantity listed in the plea agreement and the drug quantity listed in the PSR put movant at the same base offense level under U.S.S.G. § 2D1.1, and the discrepancy did not impact her guidelines calculation. (Id.)

Here, movant's Ground 2 turns on the apparent discrepancy between the drug quantity stipulation in the plea agreement, which held movant responsible for 868 grams of methamphetamine (actual), and the drug quantity determination in the PSR, which held movant responsible for 492.16 grams of methamphetamine

(actual) and 1,000 grams of methamphetamine. (Compare Plea Agreement [15-1] 5, with PSR ¶¶ 11, 14, 17-18, 23.) The factual basis that movant admitted at her change-of-plea hearing supported the plea agreement's stipulation that she was responsible for 868 grams of methamphetamine actual. (See Tr. [30] 27-34.) Movant has not shown that her testimony during the plea colloquy was false. See Blackledge v. Allison, 431 U.S. 63, 74 (1977) (noting that the representations of the defendant at the plea hearing, as well as any findings made by the judge accepting the plea, "constitute a formidable barrier in any subsequent collateral proceedings"); United States v. Medlock, 12 F.3d 185, 187 (11th Cir. 1994) (explaining that courts apply a "strong presumption" that statements made by a defendant during the plea colloquy are true). As explained by the District Court at the change-of-plea hearing, movant was properly held responsible for jointly undertaken criminal activity in support of the charged conspiracy and for substances in the constructive possession of herself and her co-conspirator. (See Tr. [30] 32-33); United States v. Ismond, 993 F.2d 1498, 1499 (11th Cir. 1993) ("For sentencing purposes a member of a drug conspiracy is liable for [her] own acts and the acts of others in furtherance of the activity that the defendant agreed to undertake and that are reasonably foreseeable in connection with that activity.").

Further, both the plea agreement's and the PSR's drug quantity determinations resulted in the same base offense level of 34 under U.S.S.G. § 2D1.1. See U.S.S.G. § 2D1.1. As a result, movant has not shown that her counsel's performance was deficient for failing to investigate and object to the PSR's drug quantity determination, or that she was prejudiced where she received a mandatory-minimum 180-month sentence that was substantially below her guideline range of 235 to 293 months' imprisonment. See Marsh, 548 F. Supp. 2d at 1302. Movant is not entitled to relief on Ground 2.

C. Ground 3

In Ground 3, movant argues that her counsel was ineffective for failing to challenge the PSR's application of a two-level enhancement under U.S.S.G. § 2D1.1(b)(1) for possession of a weapon. (Mot. [27] 7.) Movant contends that there was no reasonable way for her to know that Miller would be in possession of a firearm when he was arrested, particularly because she was not present when he was arrested. (Id.)

The government responds that the uncontroverted facts in the PSR state that the firearm belonged to movant. (Resp. [31] 17.) The government also notes that movant's objection is contradicted by the conduct she admitted at her change-of-plea hearing. (Id.) As a result, the government argues that counsel was not

ineffective for failing to object to the two-level enhancement and that movant cannot show prejudice where the sentence she received was substantially below her calculated guideline range, even without the § 2D1.1(b)(1) enhancement, and far below the potential mandatory-minimum sentence had the government sought additional enhancements pursuant to 21 U.S.C. § 851. (Id. at 14-17.)

Here, the factual basis that movant admitted at her change-of-plea hearing included that a firearm was seized from Miller's vehicle along with five ounces of methamphetamine when Miller was arrested for distributing methamphetamine supplied by movant. (Tr. [30] 27, 34.) The Eleventh Circuit repeatedly has held that the recovery of a firearm in close proximity to drugs supports a nexus between the firearm and the controlled substance offense. See, e.g., United States v. Molina, 443 F.3d 824, 829 (11th Cir. 2006) ("The nexus between the gun and the drug operation can be established by … proximity to the drugs or drug profits[.]") (quotation and alterations omitted); United States v. Louisuis, 294 F. App'x 573, 577 (11th Cir. 2008) (per curiam) ("[T]he recovery of the firearms in close proximity to drugs show a nexus between the possession and the drug trafficking offense."). Further, as noted above, movant was responsible for the reasonably foreseeable acts of her co-conspirator in furtherance of the agreed-upon conspiracy. See Ismond, 993 F.2d at 1499. In a drug conspiracy case, it was reasonably

foreseeable that Miller would have a firearm "'available for utilization' as part of the drug conspiracy" and that the firearm's "purpose was to 'defend those drugs.'" See Hemingway v. United States, No. 8:07-cr-391-T-17MAP, 2013 WL 12364962, at *2 (M.D. Fla. Jan. 10, 2013). Thus, because the § 2D1.1(b)(1) enhancement was supported by movant's own admitted conduct, her counsel did not perform deficiently for failing to raise a meritless objection.

Further, even if the § 2D1.1(b)(1) enhancement had not been applied, movant would have been subject to a guideline range of 188 to 235 months' imprisonment based on a base offense level of 31 and a criminal history category of VI. The 180-month mandatory-minimum sentence that movant received was below her guideline range, even without the § 2D1.1(b)(1) enhancement. As a result, movant cannot show prejudice. See Marsh, 548 F. Supp. 2d at 1302. Ground 3 does not warrant relief.

D. Ground 4

In Ground 4, movant asserts that her counsel was ineffective for failing to renegotiate the sentencing recommendation in her plea agreement after it was determined that she was not subject to the career offender guideline. (Mot. [27] 8.) Movant contends that she entered into the plea agreement with a joint

recommendation for a 180-month sentence based on earlier advice that she would likely be subject to an enhanced sentence as a career offender. (Id.)

The government responds that movant cannot show deficient performance or prejudice because she benefited from a joint recommendation for a statutory minimum sentence, which she in fact received, that was substantially below her calculated guideline range without the career offender enhancement, and far below the potential mandatory-minimum sentence had the government sought additional enhancements pursuant to 21 U.S.C. § 851. (Resp. [31] 16-17.)

Here, movant has not shown that her counsel was ineffective for failing to renegotiate the plea agreement after she was found not to be a career offender in light of the Eleventh Circuit's decision in United States v. Dupree, 57 F.4th 1269 (11th Cir. 2023). As this Court has repeatedly noted, given the fact that the government had filed a notice of a qualifying prior conviction under 21 U.S.C. § 851, movant received the least possible sentence that she could have received at law. See 21 U.S.C. § 841(b)(1)(A). The sentence that movant received was significantly below her guideline range of 235 to 293 months, and vastly below the potential 25-year mandatory-minimum sentence to which she would have been subject if the government had filed two additional notices under § 851. Under these circumstances, movant cannot show prejudice, or that it would have been rational

to reject the plea agreement. See Diveroli v. United States, 803 F.3d 1258, 1263 (11th Cir. 2015) ("[A] petitioner must convince the court that a decision to reject the plea bargain would have been rational under the circumstances."). Movant's Ground 4 does not warrant relief.

Accordingly, because none of the grounds presented warrant relief, **IT IS RECOMMENDED** that the § 2255 Motion be **DENIED**.

III. CERTIFICATE OF APPEALABILITY

Pursuant to Rule 11(a) of the Rules Governing Section 2255 Proceedings, "[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 … the [motion to vacate] 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). Because reasonable jurists would not debate the resolution of the issues presented, **IT IS FURTHER**

RECOMMENDED that a COA be **DENIED**. See id. If the District Court adopts this recommendation and denies a COA, movant is advised that she "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).

IV. CONCLUSION

For the reasons stated above, **IT IS RECOMMENDED** that the 28 U.S.C. § 2255 Motion [27] be **DENIED** and that **no certificate of appealability issue**.

The Clerk of Court is **DIRECTED** to terminate the referral to the undersigned United States Magistrate Judge.

SO RECOMMENDED, this 5th day of November, 2024.

Walter E. Johnson

WALTER E. JOHNSON
UNITED STATES MAGISTRATE JUDGE