

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)	Criminal Action
	)	No. 08-cr-00278
	)	
vs.	)	Civil Action
	)	No. 09-cv-5044
DEBRA G. SNOW	)	

\* \* \*

APPEARANCES:

SETH WEBER, ESQUIRE  
Assistant United States Attorney  
On behalf of the United States of America

DEBRA G. SNOW  
Pro Se

\* \* \*

O P I N I O N

JAMES KNOLL GARDNER,  
United States District Judge

This matter is before the court on the pro se Motion to Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody ("petition") filed November 3, 2009 pursuant to 28 U.S.C. § 2255 by defendant Debra G. Snow. On March 19, 2010, the Government's Motion to Dismiss Petition Under 28 U.S.C. § 2255 was filed.

For the following reasons, I grant the Government's Motion to Dismiss Petition Under 28 U.S.C. § 2255, I dismiss defendant's Motion to Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody, and I deny a certificate of appealability.

PROCEDURAL HISTORY

On May 16, 2008, defendant was charged in a six-count Information with three counts of wire fraud in violation of 18 U.S.C. § 1343 (Counts One, Two and Three) and three counts of willfully filing false income tax returns in violation of 26 U.S.C. § 7206(1) (Counts Four, Five and Six). The charges arose from a scheme whereby defendant misappropriated money from her employer, JRNA Inc., doing business as "Unclaimed Freight", for her own personal use.

Counts One, Two and Three charged defendant with three wire transfers of funds via the internet and/or a debit card. Counts Four, Five and Six arose from defendant's failure to report additional taxable income on her federal income tax returns for calendar years 2004, 2005 and 2006, which income resulted from the significant amounts of income she embezzled.

Defendant waived prosecution by indictment, and consented to proceeding by way of Information.<sup>1</sup> On July 31, 2008, she appeared before me for an initial appearance and arraignment on the Information, and entered a plea of guilty to all six charges, pursuant to a formal written Guilty Plea Agreement. At the July 31, 2008 hearing, I approved the Guilty Plea Agreement and accepted defendant's plea.

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<sup>1</sup> See Waiver of Indictment dated July 31, 2008, which appears on the docket of this matter as Document 10.

Defendant's sentencing commenced on March 20, 2009 and was completed on May 8, 2009 before me. Defendant was sentenced to 33 months imprisonment, three years supervised release, \$600.00 special assessment, and \$409,740.31 in restitution.

At all relevant times, defendant was represented by retained counsel, Robert G. Leino, Esquire. Defendant did not appeal her conviction or sentence.

Defendant filed the within petition on November 3, 2009, but did not use this court's current standard form which includes required warnings regarding the applicable statute of limitations and the filing of second or successive habeas corpus petitions. By Memorandum dated November 16, 2009, defendant was advised of those warnings. By Notice of Intention to Proceed dated November 23, 2009 and filed December 2, 2009, defendant indicated her wish to proceed with her petition.

On March 19, 2010, the government responded to the petition by moving to dismiss it, based on the waiver of collateral appeal rights set forth in defendant's Guilty Plea Agreement. Hence this Opinion.

#### CONTENTIONS OF THE PARTIES

##### Defendant's Contentions

Defendant's petition includes five grounds for relief. The gravamen of defendant's petition is that she would like to serve the balance of her term of incarceration through home

confinement. Initially, defendant contends that she was denied effective assistance of counsel for two reasons. First, she asserts that her plea agreement improperly failed to take into account the settlement of a civil lawsuit: "Plea agreement points were based on the \$310,000.00 and did not take into account \$264,000.00 credit the amount which was paid to JRNA, Inc. in a civil suit docket #07-cv-1995, dated January 19, 2008."<sup>2</sup>

This contention apparently refers to paragraph 9(a) of the Guilty Plea Agreement, which states that "The parties agree and stipulate that the total loss involved in these charges as a result of the defendant's fraudulent scheme is approximately \$310,940.00 for Sentencing Guideline purposes under Guideline Sections 2B1.1(a)(1) and (b)(1)(G), resulting in a Base Offense Level of 19." Defendant suggests that this stipulation was the result of ineffective assistance and avers that "A plea to lesser amount of \$46,940.31 would have reduced the points to 12 which would have had a minimum of 10-16 months of incarceration and possibility of home confinement and/or supervised release."<sup>3</sup>

Second, defendant contends that Attorney Leino was ineffective in failing to request a "split sentence" including home confinement so that defendant could work and make payments

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<sup>2</sup> Petition, page 5.

<sup>3</sup> Petition, page 5.

toward her restitution obligation.

Defendant's third ground for relief asserts that "[p]risons, in general, are overcrowded" in violation of the Eighth Amendment to the United States Constitution, and also avers that "society should not be burdened with the cost of the defendant's imprisonment". Defendant argues that amending her sentence to include home detention would correct both issues, and would allow defendant to make restitution payments.

Defendant's fourth contention, similarly, is that the victims' right to restitution in this case would be better served if she were serving a term of home confinement and working.

Finally, defendant avers that Attorney Leino failed to raise any of these contentions. She also contends that the Presentence Investigation Report in this case did not properly reflect that she was compensated with room and board for working at her boyfriend's business, and that "the business proceeds went to pay bill[s] for both of us."<sup>4</sup> She contends that because of Attorney Leino's ineffectiveness, these facts were not properly considered at sentencing.

#### Contentions of the Government

The government contends that defendant's petition should be denied because, by the terms of her guilty plea agreement, defendant waived the right to appeal or collaterally challenge her conviction or sentence in this matter except in

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<sup>4</sup> Petition, page 11.

certain, limited circumstances which do not apply here. The government avers that defendant knowingly entered a valid guilty plea, which included appellate waiver provisions, and that there is no circumstance amounting to a miscarriage of justice which would invalidate the waiver.

Regarding defendant's ineffectiveness argument about loss to victims, the government asserts that Attorney Leino did argue at sentencing that defendant should receive credit for restitution already paid to the victim, and that defendant did, in fact, receive such credit toward her restitution obligation. In any event, the government avers that this issue is a routine claim for collateral relief which is foreclosed by the plea agreement, and does not constitute a miscarriage of justice.

Accordingly, the government contends that the petition is barred by the collateral-appeal waiver in defendant's Guilty Plea Agreement, and should be dismissed.

#### STANDARD OF REVIEW

Section 2255 of Title 28 of the United States Code provides federal prisoners with a vehicle for challenging an unlawfully imposed sentence. Section 2255 provides:

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released 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 a sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to

collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

28 U.S.C. § 2255.

A motion to vacate sentence under § 2255 "is addressed to the sound discretion of the court." United States v. Williams, 615 F.2d 585, 591 (3d Cir. 1980). A petitioner may prevail on a § 2255 habeas claim only by demonstrating that an error of law was constitutional, jurisdictional, "a fundamental defect which inherently results in a complete miscarriage of justice", or an "omission inconsistent with the rudimentary demands of fair procedure". Hill v. United States, 368 U.S. 424, 428, 82 S.Ct. 468, 471, 7 L.Ed.2d 417, 421 (1962).

#### DISCUSSION

Defendant's written Guilty Plea Agreement dated February 28, 2008 and filed August 1, 2008 as Exhibit A to the Government's Guilty Plea Memorandum (Document 13) provides, in pertinent part:

In exchange for the undertakings made by the government in entering this plea agreement, the defendant voluntarily and expressly waives all rights to appeal or collaterally attack the defendant's conviction, sentence, or any other matter relating to this prosecution, whether such a right to appeal or collateral attack arises

under 18 U.S.C. § 3742, 28 U.S.C. § 1291,

28 U.S.C. § 2255, or any other provision of law.<sup>5</sup>

Notwithstanding this waiver provision, by the terms of her plea agreement defendant retained the right to file an unfettered direct appeal to the United States Court of Appeals for the Third Circuit if the government filed a direct appeal. In the event the government did not file a direct appeal, defendant retained the right to file a direct appeal under three circumstances: if (1) defendant's sentence on any count of conviction exceeds the statutory maximum for that count; (2) the sentencing judge erroneously departed upward pursuant to the Sentencing Guidelines; or (3) the sentencing judge, exercising the court's discretion pursuant to United States v. Booker, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005), imposed an unreasonable sentence above the final Sentencing Guideline range determined by the court.<sup>6</sup>

Defendant does not contend that any of these exceptions apply. Rather, her motion sets forth only the grounds discussed above, namely, her ineffective assistance of counsel claims, and her assertion that prisons are generally overcrowded, thereby violating her Eighth Amendment rights. However, defendant waived her claim of ineffective assistance of counsel in the appellate waiver provision in her Guilty Plea Agreement, and her prison

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<sup>5</sup> Guilty Plea Agreement, paragraph 10.

<sup>6</sup> Guilty Plea Agreement, paragraph 10(b).

conditions argument does not allege facts which rise to the level of a constitutional violation.

#### Waiver of Appellate Rights

Waivers of appellate and collateral attack rights are generally valid if entered into "knowingly and voluntarily." United States v. Mabry, 536 F.3d 231, 237 (3d Cir. 2008); United States v. Khattak, 273 F.3d 557, 562 (3d Cir. 2001). Such waivers should be strictly construed. Khattak, 273 F.3d at 562. Moreover, policy considerations suggest that a defendant who has waived her post-conviction rights should not be permitted to disavow the agreement.

"[I]f a defendant who has participated in a waiver proceeding is then allowed, without exception, to change his mind whenever he chooses, the doctrine of waiver will be rendered purposeless. Moreover, such an indulgence would be bad judicial policy resulting in frequent hearings and the expenditure of untold judicial resources." Fahy v. Horn, 516 F.3d 169, 187 (3d Cir. 2008).

#### Plea Colloquy

It is the role of the sentencing judge to make certain that defendant fully understands the rights which she is giving up in her plea agreement. Khattak, 273 F.3d at 563; see also Fed.R.Crim.P. 11(b)(1)(N). In this case, at defendant's July 31, 2008 guilty plea hearing, I concluded that defendant was fully

alert, competent, and capable of entering an informed guilty plea; and that her guilty pleas were knowing and voluntary and supported by an independent basis in fact.<sup>7</sup> I based those findings, in part, on the following relevant portions of the extensive guilty plea colloquy which I conducted.

The record of the guilty plea hearing reveals that, at my request, government counsel summarized the terms of the Guilty Plea Agreement.<sup>8</sup> Defendant expressly confirmed that the summary was correct and complete.<sup>9</sup> I advised defendant of the maximum punishments, including the maximum possible aggregate punishments, and she stated she understood each of them.<sup>10</sup>

Moreover, I advised defendant extensively regarding all of the appeal rights she would be waiving under the terms of her plea agreement, and all of the constitutional trial rights she would waive by pleading guilty.<sup>11</sup> Defendant stated that she understood each of them.<sup>12</sup>

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<sup>7</sup> Notes of Testimony of the arraignment and change of plea hearing conducted on July 31, 2008 before me in Allentown, Pennsylvania, styled "Arrest and Guilty Plea Hearing Before the Honorable James Knoll Gardner[,] United States District Judge" ("N.T."), at 80.

<sup>8</sup> N.T. at 28-36.

<sup>9</sup> N.T. at 36.

<sup>10</sup> N.T. at 44-46.

<sup>11</sup> N.T. at 52-69.

<sup>12</sup> N.T. at 53-69.

Relevant to the within motion, I explained to defendant the nature of a collateral appeal, and that a defendant ordinarily can take a collateral appeal.<sup>13</sup> Defendant indicated that she understood.<sup>14</sup>

Additionally, I advised defendant as follows:

THE COURT: ...In [your guilty plea] agreement, you give up entirely your right to file a collateral appeal. So, even if my sentence or your imprisonment violates your Federal constitutional rights, you cannot file a collateral appeal. Even if your attorney is providing you ineffective assistance as your lawyer - you've told me that he is effective, but if for some reason he becomes ineffective in your case, you cannot file a collateral appeal on that basis because, as I have said, you have given up your right to file any collateral appeal in your guilty plea agreement.

Do you understand that?

THE DEFENDANT: I understand, your Honor.<sup>15</sup>

Thus, defendant stated under oath that she understood that by the terms of her Guilty Plea Agreement, her right to file a collateral appeal, such as this, would be waived. I conclude, therefore, that defendant entered her appellate waiver knowingly and fully understood the consequences of having done so.

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<sup>13</sup> N.T. at 52-53.

<sup>14</sup> N.T. at 53.

<sup>15</sup> N.T. at 57-58.

Voluntariness of the Plea

Regarding the voluntariness of defendant's guilty plea and Guilty Plea Agreement, defendant responded as follows:

THE COURT: And when you signed the [Guilty Plea Agreement] did you understand everything that was in it?

THE DEFENDANT: Yes, I did.

THE COURT: Did you sign it voluntarily and of your own free will?

THE DEFENDANT: Yes, I did, your Honor.

THE COURT: Did anyone use any force or threats or violence or intimidation or coercion, or other undue or improper influence, to get you to plead guilty?

THE DEFENDANT: No, your Honor.

THE COURT: Or to sign this agreement?

THE DEFENDANT: No, your Honor.

. . .

THE COURT: Did anyone tell you what to say today or put words in your mouth, so to speak?

THE DEFENDANT: No, your honor.

THE COURT: Do you understand that you are entering a plea to six felonies and you will be adjudged guilty of those felonies?...Do you understand those things?

THE DEFENDANT: Yes, your Honor.<sup>16</sup>

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<sup>16</sup> N.T. at 72-75.

At the guilty plea hearing, government counsel summarized in detail the factual basis for each count of the Information.<sup>17</sup> Defendant acknowledged that government counsel correctly and completely summarized the facts as they applied to her, and acknowledged that she did in fact do those things.<sup>18</sup>

I summarized the elements of each of the four offenses to which defendant was pleading guilty.<sup>19</sup> Defendant acknowledged that those elements correctly described what she did on the occasion of each of those offenses.<sup>20</sup>

Concerning defendant's admission of guilt, defendant responded as follows:

THE COURT: ...[D]o you fully admit to all of those facts?

THE DEFENDANT: Yes, I do, your Honor.

THE COURT: ...[I]s it now your decision to enter a plea formally to all six of these charges?

THE DEFENDANT: Yes, your Honor.<sup>21</sup>

Finally, the following colloquy occurred between me, defense counsel (Robert G. Leino, Esquire), and government counsel (Assistant United States Attorney Seth Weber).

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<sup>17</sup> N.T. at 67-70.

<sup>18</sup> N.T. at 76.

<sup>19</sup> N.T. at 69-71.

<sup>20</sup> N.T. at 71-72.

<sup>21</sup> N.T. at 76.

THE COURT: Does either counsel request to add, delete, subtract or correct anything in the colloquy?

MR. WEBER: Not from the government, your Honor.

MR. LEINO: No, your Honor.

THE COURT: Do each counsel agree that I have correctly advised the Defendant of her rights, of the rights she will be giving up by virtue of her guilty plea agreement, of the elements of the offenses, of the maximum punishments to which she is subject, and all of the other information I provided her in this colloquy?

MR. WEBER: Yes, your Honor.

MR. LEINO: Yes, your Honor.<sup>22</sup>

Accordingly, I accepted defendant's guilty pleas and approved her Guilty Plea Agreement.<sup>23</sup> Moreover, I concluded that defendant had entered each of her six guilty pleas knowingly and voluntarily.<sup>24</sup> Defendant has presented no factual or legal basis for any conclusion to the contrary, and based on the record of this matter and considering defendant's petition, I incorporate those conclusions here.

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<sup>22</sup> N.T. at 78-79.

<sup>23</sup> N.T. at 79.

<sup>24</sup> N.T. at 80.

### Miscarriage of Justice

Even if a waiver of appellate and collateral attack rights were knowing and voluntary, an error amounting to a "miscarriage of justice" may invalidate it. Khattak, 273 F.3d at 563. However, a miscarriage of justice rendering a waiver of appellate and collateral attack rights unenforceable is "something grave and out of the ordinary". Mabry, 536 F.3d at 239.

To determine whether a miscarriage of justice has occurred, courts in this Circuit consider the following factors:

[T]he clarity of the error, its gravity, its character (e.g., whether it concerns a fact issue, a sentencing guideline, or a statutory maximum), the impact of the error on the defendant, the impact of correcting the error on the government, and the extent to which the defendant acquiesced in the result.

Id. at 242-243 (citing United States v. Teeter, 257 F.3d 14, 25-26 (1st Cir. 2001)).

"Critical to this analysis is whether a defendant seeks to raise any substantial, non-frivolous issues and whether the issues implicate fundamental rights or constitutional principles." United States v. Ballard, 2009 WL 637384, at \*7 (E.D.Pa. March 11, 2009)(DuBois, S.J.)(citing Mabry, 536 F.3d at 243). As an initial matter, I note that defendant's contention that she could more effectively pay her restitution obligation if she were working, rather than incarcerated does not implicate fundamental rights or constitutional principles.

Therefore, that contention does not amount to a miscarriage of justice that warrants invalidation of her appellate and collateral attack rights.

Ineffective Assistance of Counsel

Although the Third Circuit has expressly declined to " earmark specific situations" in which enforcement of a waiver would amount to a "miscarriage of justice", see Khattak, 273 F.3d at 563, courts in this Circuit have held that enforcement of a waiver that is itself based upon ineffective assistance of counsel may result in a miscarriage of justice. United States v. Akbar, 181 Fed.Appx. 283, 286 (3d Cir. 2006); see also United States v. Robinson, 2004 WL 1169112, at \*3 (E.D.Pa. April 30, 2004)(Baylson, J.)(collecting cases). An ineffective assistance of counsel argument "survives only with respect to those discrete claims which related directly to the negotiation of the waiver." Ballard, 2009 WL 637384, at \*4 (quoting Jones v. United States, 167 F.3d 1142, 1145 (7th Cir. 1998)).

In this case, defendant has alleged no error amounting to a miscarriage of justice which would invalidate her appellate waiver. Defendant does not contend that "something grave and out of the ordinary" has occurred which renders her waiver unenforceable. See Mabry, 536 F.3d at 239. Rather, she essentially contends that she would like to finish her term of incarceration via home detention, arguing that home detention

would permit her to work and make payments toward her restitution obligation. In support of this request, defendant avers that her counsel did not adequately represent to the court that she had settled a civil lawsuit with victim JRNA, Inc., and did not request a term of home detention.

Although ineffective assistance of counsel may rise to the level of a miscarriage of justice in some instances, defendant here does not aver that her counsel was ineffective in negotiating the appellate waiver of the plea agreement. See Ballard, 2009 WL 637384, at \*4. On the contrary, at her guilty plea hearing, defendant averred that she and Attorney Leino had discussed the guilty plea agreement, including the rights she would be giving up by pleading guilty.<sup>25</sup>

Additionally, defendant stated on the record that she was satisfied with Attorney Leino's services in this case, and that Attorney Leino had given her effective assistance.<sup>26</sup>

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<sup>25</sup> N.T. at 25-27. Defendant's petition could be construed as suggesting that Attorney Leino was ineffective in negotiating the stipulation set forth in paragraph 9(a) of the Guilty Plea Agreement, which provides that the total loss involved in the charges, for purposes of calculating the applicable Sentencing Guideline range, is approximately \$310,940.00. According to the stipulation, that amount of loss results in a Base Offense Level of 19.

Defendant suggests that the loss amount should be reduced by the amount she paid in a civil lawsuit, which she avers would result in a reduced "points" level (presumably referring to the Base Offense Level) of 12, which defendant contends would offer the possibility of home confinement and a sentencing guideline range of 10-16 months. (Petition, page 5.) Nevertheless, even to the extent the petition submits that Attorney Leino was ineffective in negotiating that stipulation portion of the plea agreement, I cannot conclude that defendant is arguing that her counsel was ineffective in negotiating the waiver itself. See Ballard, supra.

<sup>26</sup> N.T. at 27.

THE COURT: So far, has your attorney done everything for you that you have wanted him to do in this case?

THE DEFENDANT: Yes, he has, your Honor.

THE COURT: Are you satisfied with the services of Mr. Leino?

THE DEFENDANT: Yes, I am.

THE COURT: Are you satisfied that he has given you effective assistance as your lawyer in this case?

THE DEFENDANT: Yes, your Honor.<sup>27</sup>

Therefore, I am unable to conclude that any issue alleged by defendant rises to the level of a miscarriage of justice which would invalidate her appellate waiver. Khattak, supra. Accordingly, because defendant's appellate waiver is valid and enforceable, I grant the government's motion to dismiss, and I dismiss defendant's petition to the extent that it alleges claims for ineffective assistance of counsel.

#### Prison Conditions

Defendant also contends that prisons, "in general, are overcrowded" and that it is "It is against defendants 8th amendment rights to be imprisoned in a facility with inadequate space."<sup>28</sup> Ordinarily, a challenge to conditions of confinement are more properly raised in a civil rights action pursuant to 42 U.S.C. § 1983, not in a habeas proceeding. See Leamer v.

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<sup>27</sup> N.T. at 27.

<sup>28</sup> Petition, page 8.

Fauver, 288 F.3d 532, 542 (3d Cir. 2002).

“Although both § 1983 and habeas corpus allow prisoners to challenge unconstitutional conduct by state officers, the two are not coextensive either in purpose or effect.” Leamer, 288 F.3d at 540. A habeas corpus petition is the appropriate vehicle for challenging “the validity of the continued conviction or the fact or length of the sentence”. Leamer, 288 F.3d at 542. However, “when the challenge is to a condition of confinement such that a finding in plaintiff’s favor would not alter his sentence or undo his conviction, an action under § 1983 is appropriate.” Id.

Here, defendant avers that “correcting” her sentence to include home detention would rectify the overcrowding issue. Therefore, I construe this ground for relief as implicating the length of her sentence, and therefore it is properly brought in a habeas petition. See Leamer, 288 F.3d at 542.

However, defendant fails to allege facts which rise to the level of a violation of the Eighth Amendment’s prohibition on cruel and unusual punishment. “The critical issue for Eighth Amendment purposes is not the number of prisoners who share facilities; rather, it is whether the alleged overcrowding has somehow harmed the prisoner.” Lindsey v. Shaffer, 2011 WL 47739, at \*1 (3d Cir. Feb. 11, 2011)(citing Rhodes v. Chapman, 452 U.S. 337, 347-350, 101 S.Ct. 2392, 2399-2401, 69 L.Ed.2d 59, 69-71 (1981)).

Here, defendant does not allege that she has been somehow

harm by prison overcrowding. Indeed, she does not even specifically contend that she is currently housed in an overcrowded facility. Rather, she avers that prisons are overcrowded "in general". Although she asserts that it is unconstitutional for her to be imprisoned "in a facility with inadequate space", she has alleged no facts from which I can conclude that she is subject to overcrowded conditions which have caused her harm.

Thus, defendant's assertion that prisons are generally overcrowded does not implicate fundamental rights or constitutional principles. Ballard, 2009 WL 637384, at \*7. Therefore, I conclude that defendant's prison conditions argument does not amount to a miscarriage of justice. See Khattak, 273 F.3d at 563; Mabry, 536 F.3d at 239. Accordingly, it is subject to her appellate and collateral attack waiver, and I dismiss the petition in that regard.

#### Certificate of Appealability

The Rules for the Third Circuit Court of Appeals require that "[a]t the time a final order denying a petition under 28 U.S.C. § 2254 or § 2255 is issued, the district judge will make a determination as to whether a certificate of appealability should issue." Third Cir. Loc. App. R. 22.2. A certificate of appealability shall issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28

U.S.C. § 2253(c)(2).

Here, jurists of reason would not debate the conclusion that defendant's petition fails to state a valid claim of the denial of a constitutional right. See Slack v. McDaniel,

529 U.S. 473, 484, 120 S.Ct. 1595, 1603, 146 L.Ed.2d 542, 554 (2000).

Accordingly, a certificate of appealability is denied.

#### CONCLUSION

For all the foregoing reasons, I grant Government's Motion to Dismiss Petition Under 28 U.S.C. § 2255, and I dismiss defendant's Motion to Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody. Moreover, a certificate of appealability is denied.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)	Criminal Action
	)	No. 08-cr-00278
	)	
vs.	)	Civil Action
	)	No. 09-cv-5044
DEBRA G. SNOW	)	

O R D E R

NOW, this 9th day of June, 2011, upon consideration of the following motions:

- (1) Motion to Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody filed November 3, 2009 by defendant Debra G. Snow pro se; and
- (2) Government's Motion to Dismiss Petition Under 28 U.S.C. § 2255 filed March 19, 2010;

and for the reasons articulated in the accompanying Opinion,

IT IS ORDERED that the Government's Motion to Dismiss Petition Under 28 U.S.C. § 2255 is granted.

IT IS FURTHER ORDERED that the Motion to Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody is dismissed.

IT IS FURTHER ORDERED that a certificate of appealability is denied.

IT IS FURTHER ORDERED that the Clerk of Court shall mark this matter closed for statistical purposes.

BY THE COURT:

/s/ James Knoll Gardner  
James Knoll Gardner  
United States District Judge