

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

UNITED STATES OF AMERICA	:	
	:	CIVIL ACTION
v.	:	
	:	No. 12-cv-3788
LAWRENCE YOUNG,	:	
	:	
Defendant.	:	CRIMINAL ACTION
	:	
	:	No. 09-cr-152-01
	:	

MEMORANDUM AND ORDER

Joyner, J.

May 31, 2013

This case is now before the Court on Defendant/Petitioner's Habeas Corpus Motions Under 28 U.S.C. § 2255 (ECF Nos. 85, 87). For the reasons set forth below, the Petitioner's Motions are DENIED.

I. BACKGROUND

In December 2009, a jury returned a guilty verdict against the Petitioner, Lawrence Young, of all four counts of an indictment which charged him with conspiracy to distribute controlled substances in violation of 21 U.S.C. § 846, distribution of oxycodone, a controlled substance, in violation of 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(C), and aiding and abetting distribution of controlled substances in violation of 18 U.S.C. § 2. On October 20, 2010, while awaiting sentencing, the Petitioner filed a motion for a new trial pursuant to Federal Rule of Criminal Procedure 33. This Court

denied the motion without a hearing as both meritless and untimely.

On July 6, 2011, this Court sentenced the Petitioner to 120 months imprisonment, a \$400 special assessment, a \$400,000 fine, and 36 months of supervised release. The Court also entered a forfeiture money judgment against the Petitioner in the amount of \$1,270,246.00

Petitioner noticed his appeal of his conviction and sentence to the Third Circuit Court of Appeals on July 11, 2011. In his appeal, the Petitioner argued that: (1) the Government presented insufficient evidence of conspiracy, (2) this Court inadequately instructed the jury on the element of intent, (3) this Court violated the Petitioner's constitutional rights by means of a brief absence from the courtroom during a portion of the jury selection process, and (4) trial counsel provided constitutionally ineffective assistance. The Third Circuit rejected the Petitioner's arguments and affirmed his conviction and sentence on May 31, 2012. See generally United States v. Young, 481 F. App'x 769 (3d Cir. 2012).

Petitioner then petitioned the Supreme Court of the United States for a writ of certiorari. On October 1, 2012, the Supreme Court denied certiorari. Young v. United States, 133 S. Ct. 393 (2012).

Prior to the denial of his petition for certiorari, the Petitioner filed this petition for habeas corpus relief pursuant to 28 U.S.C. § 2255 with this Court on July 3, 2012. In the petition, he asserts a Sixth Amendment ineffective assistance of counsel claim at trial based on a number of purported failings. Specifically, the Petitioner asserts that his trial counsel: (1) failed to conduct adequate pretrial discovery; (2) failed to file a pretrial motion to dismiss, a pretrial motion to suppress statements the Petitioner made to federal agents, or a pretrial memorandum; (3) failed to provide a "meaningful defense" insofar as trial counsel did not pursue any of several alternative strategies and called no fact witnesses during the defense case-in-chief; (4) took various actions without his client's knowledge or consent; (5) failed to object to purportedly erroneous jury instructions; (6) failed to object when this Court declined the jury's request, during deliberations, for a copy of the jury instructions; (7) failed to object when this Court was briefly absent from the courtroom during a portion of the jury selection process; (8) failed to request that this Court strike a law student on the jury panel for cause; (9) failed to move for a mistrial after a spectator was observed speaking with a juror; (10) failed to disclose a disciplinary matter pending against him during the period immediately preceding the trial; (11) failed to

seek admission to practice before this Court pro hac vice; and (12) failed to file a timely Rule 33 motion.

The charges against the Petitioner stemmed from a conspiracy to supply local drug dealers with prescription drugs from the Petitioner's pharmacy. The Government presented evidence that the Petitioner, a pharmacist and owner of the pharmacy, knowingly filled thousands of patently fraudulent prescriptions for certain regular customers. These customers, according to this evidence, presented prescriptions written in the names of multiple patients, from a small number of physicians, for large amounts of addictive prescription drugs, and always paid in cash. The Petitioner's trial counsel defended him on the theory that the Petitioner's subordinates at the pharmacy, not the Petitioner, were engaged in criminal activity and that the Petitioner did not know the prescriptions at issue were fraudulent. The Petitioner's trial counsel also called several character witnesses to testify on the Petitioner's behalf. The jury ultimately found that Petitioner was a member of the conspiracy and found him guilty on all counts.

II. STANDARD

Section 2255 of Title 28 of the United States Code provides an avenue for individuals under federal custody to challenge their sentences. To succeed in such a challenge, the petitioner must demonstrate 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). The Petitioner’s constitutional claim stems from an alleged Sixth Amendment violation. The Supreme Court of the United States has long recognized that the right to counsel under the Sixth Amendment and the Due Process Clauses is crucial to protecting the fundamental constitutional guarantee of a fair trial. See Strickland v. Washington, 466 U.S. 668, 684-85 (1984). In order to establish that counsel’s assistance was indeed ineffective, a petitioner must meet both elements of the two-pronged test established in Strickland. First, a petitioner must establish that counsel not only erred, but that counsel’s errors were considerable enough to undermine the proceedings to such an extent that the outcome cannot be relied upon as fair and just. Id. at 687. Second, it must also be established that counsel’s actions prejudiced the defendant and deprived defendant of a fair and reliable trial. Id. at 687. “Not every ‘error by counsel, even if professionally unreasonable, . . . warrant[s] setting aside the judgment of a criminal proceeding.’” Rainey v. Varner, 603 F.3d 189, 197 (3d Cir. 2010) (quoting Strickland v. Washington, 466 U.S. 668, 691 (1984)). A petitioner must demonstrate that counsel’s error was prejudicial and that there

is a reasonable probability that were it not for the error the outcome of the proceeding would have been different. Id. at 197-98.

III. DISCUSSION

The Petitioner asserts that his Sixth Amendment rights were violated through several instances of deficient performance by his counsel. None of the Petitioner's claims has merit, so we deny him habeas corpus relief. We discuss each of the Petitioner's claims in turn.

A. Failure to Conduct Pretrial Discovery

The Petitioner alleges that his trial counsel provided constitutionally deficient assistance because he did not avail himself of the opportunity, offered by the Government, to inspect the underlying data from the National Drug Intelligence Center ("NDIC"), summaries of which data the Government had already disclosed in discovery. The Petitioner claims that this failure prejudiced him because "[t]here is no telling whether this data was corrupted, but it should have been forensically tested for this possibility. In addition, the accuracy of the summary charts should have been reviewed against the raw data, but it was also not." (Pet'r Br. at 4.)

Assuming without deciding that trial counsel's failure to take these steps was sufficient error, the Petitioner's speculative assertion that this data might have been corrupted

cannot establish sufficient prejudice for Strickland purposes. See D’Amario v. United States, 403 F. Supp. 2d 361, 372 (D.N.J. 2005) (citing Duncan v. Morton, 256 F.3d 189, 201-[2]02 (3d Cir. 2001); Lewis v. Mazurkiewicz, 915 F.2d 106, 113 (3d Cir. 1990)). Without any evidence as to what an investigation into the underlying NDIC data would have revealed, the Petitioner cannot establish sufficient prejudice to warrant habeas relief on this issue. See id. (“Prejudice resulting from ineffective assistance of counsel cannot be based on mere speculation as to what witnesses might have said.”).

B. Failure to File Pretrial Motions

The Petitioner claims that his trial counsel was constitutionally ineffective because he failed to file two pretrial motions, one challenging 21 C.F.R. § 1306.4 as unconstitutionally vague as applied to the Petitioner, and the other to suppress statements the Petitioner made to federal agents without first receiving the warnings mandated by Miranda v. Arizona, 384 U.S. 466 (1966). (Pet’r Br. at 4-5.) The Petitioner also faults his trial counsel for failing to file a pretrial memorandum. Id.

As to the first motion the Petitioner faults his counsel for not filing, the Petitioner cites no authority which could have led this Court to conclude that 21 C.F.R. § 1306.4 is void for vagueness. Ample authority exists for the opposite proposition.

See, e.g., United States v. Hayes, 595 F.2d 258, 260-61 (5th Cir. 1979); United States v. Birbragher, 576 F. Supp. 2d 1000, 1013-14 (S.D. Iowa 2008) (collecting cases). Accordingly, it is readily apparent that trial counsel did not err by failing to file a motion to dismiss or other motion arguing that 21 C.F.R. § 1306.4 is unconstitutionally void for vagueness.

As to the second motion the Petitioner faults his trial counsel for not making, the Petitioner has failed to argue any basis upon which this Court could conclude that the Petitioner was in custody such that Miranda applied. See, e.g., Beckwith v. United States, 425 U.S. 341, 346-48 (1976). Nor may the Court, upon examination of the Petitioner's affidavit in which he discusses the interview, conclude that any such basis exists. (See Pet'r Ex. D (the "Young Aff."), ¶¶ 45-50.) On this record, it is equally apparent that trial counsel did not err by failing to file a motion to suppress on Miranda grounds.

Finally, as to the Petitioner's assertion that his trial counsel was constitutionally ineffective because he failed to file a pretrial memorandum, the Petitioner has identified no authority which legally mandates such a filing and has not articulated any prejudice flowing from such a failure. Moreover, as the Government properly notes, the Petitioner's trial counsel outlined the theory of the defense adequately in his opening statement. Trial counsel did not err by not filing a pretrial

memorandum, and, even were there error, such error caused the Petitioner no prejudice.

C. Failure to Provide a "Meaningful Defense"

The Petitioner argues that his trial counsel could have "learned there was a clear defense - one that was not presented by [trial counsel]." (Pet'r Br. at 5.) None of the steps he faults his trial counsel for not taking overcome the strong presumption that counsel's strategy "falls within the wide range of reasonable professional assistance," Strickland, 466 U.S. at 689, so we reject the argument.

The Petitioner enumerates several potential trial strategies which, he contends, would have succeeded where his trial counsel's strategy failed. (See Pet'r Br. at 5-16.) In most cases, the Petitioner presents no evidence that the witnesses he faults trial counsel for not calling or examining on certain topics could have offered helpful evidence, leaving this Court to speculate about whether the evidence the Petitioner faults his trial counsel for not presenting exists at all or what, precisely) it might have shown. See D'Amario, 403 F. Supp. 2d at 372 ("Prejudice resulting from ineffective assistance of counsel cannot be based on mere speculation as to what witnesses might have said."). As to the few purported shortcomings in trial counsel's strategy which the Petitioner does support, the evidence he presents does not establish that trial counsel's

strategic decisions not to present or emphasize such evidence resulted from anything other than “reasonable professional judgment.” See Strickland, 466 U.S. at 690; (see also Gov’t Response Ex. A. (the “Crisonino Aff.”) ¶¶ 8-12).¹

A § 2255 motion is a safety net that ensures, among other things, that all defendants are provided with their Sixth Amendment right to counsel. It does not, however, provide petitioners with an opportunity to second-guess counsel’s sound trial strategy in an attempt to secure a second bite at the apple. The Petitioner’s trial counsel did not fail to put on a defense at all but, instead, merely chose to use a strategy which differs from the one the Petitioner now urges. Therefore, the Petitioner’s argument that his attorney was ineffective because of his alleged failure to present a “meaningful defense” lacks any merit.

D. Acting Adversely Without Petitioner’s Knowledge or Consent

The Petitioner next argues that his trial counsel took several actions adverse to his interests without his knowledge or

¹ One of the bases for the Petitioner’s argument on this point is that his trial counsel advised him not to testify. (Pet’r Br. at 12; Young Aff. ¶¶ 51-55.) The evidence shows that the Petitioner’s trial counsel had a reasonable, articulable basis for giving this advice (Crisonino Aff. ¶¶ 8-12), so we conclude that this advice does not constitute ineffective assistance of counsel. Notably, the Petitioner does not argue that his trial counsel, in effect, denied him his right to testify; even if the Petitioner did advance this argument, he would still have to show sufficient prejudice to satisfy the Strickland standard. See Palmer v. Hendricks, 592 F.3d 386, 396-400 (3d Cir. 2010). On this record, we conclude that, even assuming that the Petitioner’s trial counsel unreasonably advised him not to testify, the Petitioner has not shown sufficient prejudice.

consent. (Pet'r Br. at 16-18.) Specifically, he argues that his trial counsel decided to consent to this Court's brief absence during jury selection and made certain of his decisions related to his proposed jury instructions without the Petitioner's knowledge or consent. Id. We reject the argument.

"An attorney undoubtedly has a duty to consult with the client regarding important decisions, including questions of overarching defense strategy. . . . That obligation, however, does not require counsel to obtain the defendant's consent to every tactical decision." Florida v. Nixon, 543 U.S. 175, 187 (2004) (internal citations and quotations omitted). Only decisions as momentous as "whether to plead guilty, waive a jury, testify in his or her own behalf, or take an appeal" require the express consent of the accused. See Jones v. Barnes, 463 U.S. 745, 751 (1983).

Here, trial counsel's decision to consent to this Court's brief absence from the bench during jury selection, his decision to delay the filing of his proposed jury instructions, and his proposal of a certain jury instruction without supporting authority, did not rise to the level of such fundamental decisions that required his client's knowledge or consent. The Petitioner's argument on this point lacks any merit.

E. Failure to Object to Jury Instructions

The Petitioner also contends that he received ineffective assistance of counsel when his trial counsel did not object to this Court's jury instructions. Specifically, he claims that this Court improperly instructed the jury that it need only conclude that the Petitioner knew or intended to distribute controlled substances in order to find him guilty of the charged crimes. (Pet'r Br. at 18-21.) The Petitioner raised the argument that the jury instructions were defective on direct appeal, and the Court of Appeals rejected it. See Young, 481 F. App'x at 772. We similarly reject his claim on collateral review that trial counsel was ineffective for failing to raise such an objection.

The Court of Appeals, in rejecting the Petitioner's argument about flawed jury instructions on direct review, stated that the instructions,

considered in their entirety, adequately communicated to the jurors that in order to convict [the Petitioner] of conspiracy, they had to find that [the Petitioner] possessed both knowledge and intent to illegally distribute controlled substances. The District Court's instruction distinguishing between valid and invalid prescriptions made it clear that a conviction here required more than the sale of a controlled substance.

Young, 481 F. App'x at 772. The Court of Appeals further concluded that any error in the instructions caused the Petitioner insufficient prejudice to warrant reversal of the convictions. Id.

Like the Court of Appeals, we similarly see no likelihood that the objection the Petitioner faults his trial counsel for not making would have had any merit, let alone succeeded, and the Petitioner points us to no authority upon which we could conclude otherwise. We further conclude that, even if the objection would have had merit, the Petitioner has not presented any evidence that he suffered sufficient prejudice for the lack of such an objection to warrant relief pursuant to Strickland. On this record, the failure to object to the jury charge does not warrant habeas relief.

F. Failure to Object When Jury Was Denied a Copy of Instructions

The Petitioner next argues that his trial counsel denied him effective assistance when he failed to object to this Court's decision not to provide, upon the jury's written request, a copy of its instructions to the jury. (Pet'r Br. at 21-22.) Instead, the Court told the jury that, should the jurors ask for instruction on a particular question or reinstruction on any specific issue covered in the jury instructions, the Court would do so. (Pet'r Ex. P (the "Dec. 2, 2009 Charge & Verdict Tr."), at 57:17-60:20.) The Court denies habeas relief on this basis.

The Petitioner has not offered any plausible legal theory or cited any authority to support his claim that such an objection

would have had any merit, so we reject this argument.² See id. Moreover, even if we assumed that such an objection would have had any merit, the fact that the jury never asked for the clarification which the Court offered to provide, if necessary, tends convincingly to show that no prejudice inured to the Petitioner from the jury lacking a copy of the instructions during its deliberations. The Petitioner has presented no evidence upon which the Court might rely to draw any other conclusion. Accordingly, the Petitioner has not established that his claim merits habeas relief on this basis.

G. Failure to Object to the Court's Brief Absence

On collateral review, the Petitioner again presses his claim for relief based on this Court's brief absence from jury selection following completion of the voir dire of the jury panel. (Pet'r Br. at 22-23.) Having raised the claim that this absence violated his constitutional rights on direct review, he now raises the argument that his counsel's failure to object warrants collateral relief. See id. This claim is wholly without merit.

The Court of Appeals, in rejecting the Petitioner's argument about this Court's brief absence on direct review, stated that

² To the extent that the Petitioner claims that his counsel rendered ineffective assistance by failing to strike a law student juror from the jury panel based on the same juror's signing of the jury's request for the instructions as "your lawyer," we consider the claim duplicative of the Petitioner's separately raised claim regarding the law student juror and address it infra.

"[the Petitioner] makes no showing that there is a reasonable probability that the District Judge's brief absence affected the outcome of the trial." Young, 481 F. App'x at 773. The same is true of the Petitioner's submissions on collateral review, so, even assuming that he has established that the absence was error, he has not established sufficient prejudice for Strickland purposes. Relief is not warranted on this basis.

H. Failure to Strike Law Student from Jury Panel

The Petitioner next argues that his trial counsel rendered ineffective assistance of counsel when he failed to request that Juror No. 7, a recent graduate of the University of Pennsylvania Law School, be stricken from the panel for cause because of his legal training and because he attended law school with two of this Court's law clerks. (Pet'r Br. at 23-24.) This argument is wholly without merit and borders on the frivolous.

First, the Petitioner has not established that any attempt to strike Juror No. 7 for cause would have had any merit. "There is no prohibition against attorneys serving on jury panels in U.S. district courts." Daut v. United States, 405 F.2d 312, 315 (9th Cir. 1968). The Petitioner has cited no authority to the contrary, so the Petitioner has presented no basis upon which we could conclude that trial counsel acted unreasonably when he did not challenge Juror No. 7 because of his status as a recent law school graduate.

Further, Juror No. 7, upon questioning in open court, stated that he had not discussed the trial with this Court's law clerks and that their presence did not affect his ability to be fair and impartial. (Pet'r Ex. O (the "Dec. 2, 2009 Trial Tr."), at 190:25-193:19.) The Petitioner has not presented any evidence suggesting that Juror No. 7 was untruthful or harbored some secret, undisclosed actual bias. See United States v. Mangiardi, 173 F. Supp. 2d 292, 301 (M.D. Pa. 2001) (discussing requirements for showing actual juror bias). Nor has the Petitioner put forth any evidence that the matter of Juror No. 7 at his trial constituted one of the "extreme and exceptional circumstances that leave serious question whether the trial court subjected the defendant to manifestly unjust procedures resulting in a miscarriage of justice" necessary to invoke the implied bias doctrine. See id. at 302 (internal quotations omitted). Accordingly, we cannot conclude that trial counsel acted unreasonably when he did not challenge Juror No. 7 because of his acquaintance with this Court's law clerks.

Second, even assuming that trial counsel acted unreasonably in failing to challenge Juror No. 7, the Petitioner has not presented any evidence to establish that Juror No. 7's presence on the panel prejudiced him. Again, the Petitioner has presented no evidence that Juror No. 7 harbored any actual or implied bias toward him or otherwise resulted in any unfairness in the conduct

of the trial. The Petitioner rests on the claim, unsupported by evidence, that Juror No. 7 was "influential" and the fact that, as jury foreperson, he signed a request from the jury to this Court "your lawyer."³ Neither claim shows the actual or implied bias necessary to entitle the Petitioner to relief on this basis, and Juror No. 7's testimony, presumed truthful, that he harbored no such bias demonstrates otherwise. See Mangiardi, 173 F. Supp. 2d at 301 ("Jurors are presumed to answer voir dire questions truthfully. . . . In a § 2255 motion-as at trial-the defendant bears the burden to prove actual bias.") (internal citations omitted). Habeas relief is not proper on this basis.

I. Failure to Move for Mistrial

The Petitioner next argues that his trial counsel denied him effective representation when trial counsel failed to move for a mistrial after trial counsel informed the Court that he had observed a spectator speaking with one of the jurors in the hallway outside the courtroom. (Pet'r Br. at 25.) This argument is meritless.

The Petitioner has not established that his counsel acted unreasonably by bringing the matter to the Court's attention instead of moving for a mistrial. Of course, "[i]n a criminal

³ The transcript is not clear as to whether Juror No. 7 signed the note "Your Foreperson" or "your lawyer." (Dec. 2, 2009 Charge & Verdict Tr. at 57:17-58:1.) For purposes of this motion, the Court construes the ambiguity in the Petitioner's favor and assumes that Juror No. 7 signed the note "your lawyer."

case, any private communication, contact, or tampering directly or indirectly, with a juror during a trial about the matter pending before the jury is, for obvious reasons, deemed presumptively prejudicial.” Remmer v. United States, 347 U.S. 227, 229 (1954) (emphasis added). “The matter pending before the jury is the guilt or innocence of the defendant[],” and communications between a juror and a third-party about other topics do not give rise to a presumption of prejudice. See United States v. Boscia, 573 F.2d 827, 831 (3d Cir.), cert. denied, 436 U.S. 911 (1978).

Here, the Petitioner has not submitted any evidence suggesting that the court spectator communicated with the juror about the matter pending before the Court. Indeed, the trial transcript, which reflects that the Petitioner’s trial counsel brought the communication to the Court’s attention and that the Court admonished the spectator not to communicate with the juror during breaks, suggests that trial counsel determined that the spectator was a relative of the juror. (See Dec. 2, 2009 Trial Tr. at 90:13-91:25.) The Petitioner has offered no evidence to suggest that the spectator was affiliated with the Government or anyone else involved in the trial or that the spectator communicated inappropriate information to the juror.

Therefore, on this record, no evidence suggests that the spectator and the juror discussed the matter pending before the

Court, and the sparse record on the matter tends to suggest the opposite, so no presumption of prejudice arises. See Boscia, 573 F.2d at 831. The Petitioner has therefore submitted no record evidence that his trial counsel acted unreasonably by acting as he did instead of moving for a mistrial after discovering the juror speaking with the spectator. Habeas relief on this basis is not proper.

J. Failure to Disclose Pending Ethics Matter

The Petitioner next argues that his trial counsel failed to disclose that, during the pretrial phase of this matter, trial counsel faced disciplinary proceedings in New Jersey based on his neglect of a client's criminal appeal. (Pet'r Br. at 25-28; see generally Pet'r Ex. I.) The Petitioner appears to argue that this failure denied him effective representation of counsel. We reject the argument.

Although disciplinary proceedings against members of the bar are serious, and courts should not condone ethical lapses,

where breaches of professional responsibility are unrelated to the representation of the defendant, courts have not regarded the imposition of sanctions as relevant to the adequacy of an attorney's representation and have not given disbarment orders retroactive effect for Sixth Amendment purposes.

Vance v. Lehman, 64 F.3d 119, 123-24 (3d Cir. 1995).⁴

Accordingly, trial counsel's ethical lapses or pending ethics charges will only justify habeas relief on this basis if the Petitioner can show that the attorney's conduct of the defense fell below the constitutional requirements and prejudiced the petitioner. See id.

Here, the Petitioner has made no such showing. He has presented no competent evidence that the pending ethics charges resulted in his trial counsel providing a sufficiently substandard defense to warrant relief; indeed, the Petitioner only makes the same arguments rejected above to attempt to show that his trial counsel's performance fell below the constitutional standard.⁵ And even if we assumed that his trial counsel provided substandard assistance, the Petitioner has also

⁴ Of course, here, trial counsel received only a public reprimand from the New Jersey bar authorities and was neither suspended nor disbarred. (See Pet'r Ex. I, at 11-12.)

⁵ To the extent that the Petitioner argues that the failure to disclose the ethics investigation obviates the need to show prejudice, we are not persuaded. Indeed, the Court of Appeals has stated of counsel to a criminal defendant facing pending disciplinary action, "[w]here, as here, the professional misconduct charge and the criminal defense are wholly unrelated, nothing done or foregone in the criminal defense can effect (sic) the result in the ethics proceedings[,] and we perceive no actual conflict between the lawyer and his client. If anything, we believe a lawyer under fire for past misconduct is likely to be highly motivated to give the best professional representation possible." Vance, 64 F.3d at 125. Moreover, we note that the disciplinary proceedings against trial counsel were not resolved until March 2010, months after trial in this matter ended. (See Pet'r Ex. I, at 11-12.) And only at that time, not earlier, did trial counsel incur any obligation to inform the Clerk of this Court about the discipline which the New Jersey bar authorities imposed upon him. See E.D. Pa. L.R. Civ. P. 83.6, Rule II.

presented no evidence that any such conduct prejudiced him.

Habeas relief is not warranted on this basis.

K. Failure to Seek Pro Hac Vice Admission

The Petitioner also argues that his trial counsel rendered ineffective assistance of counsel because he was never admitted to practice in this Court pro hac vice. (Pet'r Br. at 28-30.) The Court of Appeals has long rejected this argument. See United States v. Costanzo, 740 F.2d 251, 258 (3d Cir. 1984) ("As long as one is represented by an attorney who could have been admitted pro hac vice at the beginning of the trial, the failure to be formally admitted does not raise sixth amendment concerns."); see also Kieser v. People of State of N.Y., 56 F.3d 16, 17 (2d Cir. 1995) ("Where the attorney has duly qualified and been admitted to practice in another jurisdiction but fails either to seek admission pro hac vice or to follow local court rules, the violation is a technical defect that does not represent a Sixth Amendment violation."). The Petitioner has not argued that his counsel was ineligible for pro hac vice admission at the time of the trial, nor, based on the record before us, could we conclude that such an argument would have any merit. Accordingly, no constitutional violation occurred, and the Petitioner is not entitled to relief on this basis.

L. Failure to File Timely Rule 33 Motion

Finally, the Petitioner argues that trial counsel rendered ineffective assistance when he failed to file a timely motion for a new trial pursuant to Federal Rule of Civil Procedure 33. (Pet'r Br. at 30.) This argument is also meritless.

For the purposes of deciding this motion, we assume without deciding that the failure to file the motion for a new trial within the prescribed deadline was an unreasonable professional lapse and satisfied the first Strickland prong. In order to establish the requisite prejudice, the Petitioner would have to show that "[t]here is at least a reasonable probability under these circumstances that . . . [the petitioner] would have been granted a new trial by the trial court or on appeal." Flores v. Demskie, 215 F.3d 293, 305 (2d Cir. 2000); see also United States v. Hilliard, 392 F.3d 981, 986 (8th Cir. 2004) (Strickland prejudice based on failure to file new trial motion requires a showing the existence of "an appropriate basis for granting [the petitioner's] new trial motion had it been timely filed"); United States v. Moran, 393 F.3d 1, 11 (1st Cir. 2004) ("Each defendant must independently demonstrate that . . . an objectively reasonable district court would likely have granted a new trial.").

No such reasonable probability of a different outcome exists here. The Rule 33 motion which the Petitioner ultimately did file made exclusively meritless arguments which he subsequently

asserted again in this habeas corpus petition and which we have already rejected above. (See generally Br. in Supp. of Def.'s Mot. for New Trial.) Moreover, this Court rejected the Petitioner's motion for a new trial on the merits, in addition to rejecting it for untimeliness. See United States v. Young, No. 2:09-cr-152-1, ECF No. 64 (E.D. Pa. June 30, 2011) (order denying motion for new trial). Because the motion for a new trial which the Petitioner faults his trial counsel for not making was meritless and had no reasonable probability of being granted, the Petitioner cannot establish that the failure to file the motion in a timely fashion prejudiced him sufficiently for Strickland purposes. Habeas corpus relief on this basis is inappropriate.

IV. EVIDENTIARY HEARING

"Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto." 28 U.S.C. § 2255(b). Based on the analysis above, we conclude that the motion, files, and records of this matter conclusively show that the Petitioner is not entitled to relief on any of his claims of ineffective assistance of counsel. Accordingly, we dispose of the petition without need for an evidentiary hearing.

V. CERTIFICATE OF APPEALABILITY

Finally, the Court must determine whether a certificate of appealability should issue. See Third Circuit Local Appellate Rule 22.2. A certificate of appealability is appropriate only if the petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The petitioner must "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). In this case, we conclude that reasonable jurists could not find the resolution of Petitioners's Strickland claim debatable or wrong. Accordingly, the Court will not grant the Petitioner a certificate of appealability with respect to his ineffective assistance of counsel claims.

VI. CONCLUSION

As discussed above, the Petitioner has no viable claim for ineffective assistance of counsel on any of the grounds raised. Therefore, the Petitioner's request for habeas relief is denied. An order follows.

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

UNITED STATES OF AMERICA	:	
	:	CIVIL ACTION
v.	:	
	:	No. 12-cv-3788
LAWRENCE YOUNG,	:	
	:	
Defendant.	:	CRIMINAL ACTION
	:	
	:	No. 09-cr-152-01
	:	

ORDER

AND NOW, this 31st day of May, 2013, upon consideration of the Petitioner's Habeas Corpus Motion Under 28 U.S.C. § 2255 (ECF Nos. 85, 87), and responses thereto, it is hereby ORDERED, for the reasons contained in the attached Memorandum, that the Motion is DENIED. Further, this Court will not issue a certificate of appealability, as, for the reasons contained in this Memorandum, the Petitioner has not made a substantial showing of the denial of a constitutional right.

BY THE COURT:

s/J. Curtis Joyner
J. CURTIS JOYNER, J.