

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

UNITED STATES OF AMERICA :  
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 :  
 v. : CRIMINAL NO. 13-84  
 : CIVIL NO. 14-6201  
 :  
 MIQUEAS SANTANA :

**MEMORANDUM**

**SURRICK, J.**

**FEBRUARY 16, 2017**

Presently before the Court is Petitioner's *Pro Se* Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, Or Correct Sentence By a Person in Federal Custody (ECF No. 33.) For the following reasons, the Motion will be denied.

**I. BACKGROUND**

On March 22, 2013, Petitioner Miqueas Santana entered a plea of guilty to one count of misapplication and embezzlement in violation of 18 U.S.C. § 657, and one count of money laundering in violation of 18 U.S.C. § 1957. Petitioner now seeks to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 on the grounds that his attorney, Alan Morris Feldman, Esq., was ineffective both prior to and after he entered into a plea agreement with the Government.

**A. Factual Background**

Prior to June 2011, Santana was a member of the Board of Directors of the Borinquen Federal Credit Union ("BFCU"). Santana maintained multiple personal and business accounts at BFCU. Between 2009 and 2011, Defendant withdrew more from his BFCU accounts than he had deposited resulting in a deficit of \$528,798.29. This loss amount was stipulated to in

Santana's Plea Agreement. Santana purchased real estate, wrote nearly \$150,000 in checks, repaid outstanding loans with embezzled BFCU funds, and allowed business vendors to withdraw money from these already overdrawn accounts. The National Credit Union Administration ("NCUA") insured BFCU. In June 2011, NCUA took over BFCU. Prior to that time, Petitioner's deficits of over half a million dollars had been hidden from previous NCUA audits.

Federal agents interviewed Santana on October 21, 2011. After this interview, Santana retained attorney Alan Morris Feldman, Esq. In addition to being an attorney, Feldman is an accountant and a former Special Agent with the Internal Revenue Service.<sup>1</sup> Shortly after retaining Feldman, Santana received a proffer letter from the Government. Feldman accompanied Santana to proffer sessions with the Government on November 4, 2011, and January 18, 2012. Santana entered into a plea agreement on October 17, 2012.

## **B. Procedural History**

In his Guilty Plea Agreement, Santana agreed to waive indictment and plead guilty to an Information charging one count of misapplication and embezzlement, and to one count of engaging in monetary transactions in property derived from specified unlawful activity. His guilty plea was entered on March 22, 2013 and was sentenced by this Court on October 24, 2013. Santana timely filed the instant Motion to Vacate, Set Aside, or Correct Sentence, pursuant to 28 U.S.C. § 2255. The Government filed a response. In his § 2255 Motion, Santana alleges ineffective assistance of counsel at both the guilty plea and sentencing phases of this matter.

## **II. LEGAL STANDARD**

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<sup>1</sup> At the sentencing hearing Feldman advised the Court that he was an attorney, an accountant and that he had been a special agent. His legal biography indicates that he was a Special Agent with the Criminal Investigation Division of the Internal Revenue Service.

Ineffective assistance of counsel claims may be raised for the first time in § 2255 motions. *Massaro v. United States*, 538 U.S. 500, 509 (2003). To make out an ineffective assistance claim, a claimant must establish that “but for counsel’s unprofessional errors, there is a reasonable probability that the result of the proceeding would have been different.” *Medina v. Diguglielmo*, 461 F.3d 417, 430 (3d Cir. 2006) (quotations omitted). Although not insurmountable, this is a high bar. “A court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance . . . .” *Strickland v. Washington*, 466 U.S. 668, 689 (1984); *see also Harrington v. Richter*, 562 U.S. 86, 105 (2011). The deference is particularly strong with respect to counsel’s strategic choices, e.g., those involving juror selection, witness selection, how to conduct cross-examinations, and which motions to file. *Virgin Islands v. Weatherwax*, 77 F.3d 1425, 1433-34 (3d Cir. 1996). Even if a petitioner establishes that an attorney’s error was professionally unreasonable, he must also demonstrate a reasonable probability that, but for that error, the outcome of the proceeding would have been different. *Strickland*, 466 U.S. at 694.

*Strickland*, the seminal Supreme Court decision addressing ineffective assistance claims, instructs that:

A convicted defendant’s claim that counsel’s assistance was so defective as to require reversal of a conviction . . . has two components. First, the defendant must show that counsel’s performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the “counsel” guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.

*Id.* at 687.

The Third Circuit has held that parties analyzing ineffective assistance claims under the two-part *Strickland* inquiry should first analyze whether Counsel’s allegedly deficient conduct in fact prejudiced the petitioner. *United States v. McCoy*, 410 F.3d 124, 132 n.6 (3d Cir. 2005) (citing *McAleese v. Mazurkiewicz*, 1 F.3d 159, 170 (3d Cir. 1993) (emphasis added)); *Glenn v. Wynder*, 743 F.3d 402, 409-10 (3d Cir. 2014). The prejudice standard, however, “is not ‘stringent.’” *Branch v. Sweeney*, 758 F.3d 226, 238 (3d Cir. 2014) (internal quotation marks and citation omitted); *see also Jermyn v. Horn*, 266 F.3d 257, 282 (3d Cir. 2001) (noting that the prejudice standard under *Strickland* is “less demanding than the preponderance standard”). In fact, there is case law in which courts have determined that counsel may have been ineffective, but nevertheless relief was denied due to the claimant’s failure to establish the prejudice prong under *Strickland*. *See, e.g., Medina*, 461 F.3d at 430-32 (holding that defense counsel’s ineffectiveness in failing to seek a competency petition for a testifying 12-year-old was not prejudicial since the claimant did not establish that a competency evaluation would have created a different result at trial).

### **III. DISCUSSION**

Santana contends that Feldman was ineffective in three ways. First, that Feldman improperly encouraged Santana to waive indictment and plead guilty. Second, that prior to Santana’s plea hearing, Feldman committed error by failing to review Santana’s and the Government’s business records, and failing to provide Santana with adequate advice during a pre-plea meeting with the United States Attorney’s Office. Santana claims that after he entered his guilty plea, Feldman should have employed an expert forensic accountant to determine the loss amount and any tax issues in order to challenge the Government’s loss calculation. Finally, Santana claims that after he entered his guilty plea, Feldman should have accompanied him to his

meeting with his Probation Officer (“P.O. Widemir”) prior to the preparation of P.O. Widemir’s pre-sentence report.

Santana’s ineffective assistance claims are completely meritless. One need only read Santana’s extensive under oath guilty plea colloquy to know that Santana’s plea of guilty was knowingly, voluntarily, and intelligently entered. Santana is a businessman with three years of college education. He was on the Board of Directors of the BFCU, the credit union that he defrauded. During the guilty plea colloquy, he advised the Court that his attorney had given him effective representation, he admitted the facts that were the basis for the Criminal Information to which he pleaded guilty, he acknowledged that he fully understood all of the rights that he was giving up, and he indicated that he did not need any more time to speak with his attorney. The suggestion that his plea was not voluntarily and intelligently entered because he was represented by ineffective counsel is ludicrous.

Courts in this District have recognized that “[s]olemn declarations made in open court carry a strong presumption of verity.” *Gould v. Walsh*, No. 10-3370, 2011 WL 3156705, at \*8 (E.D. Pa. June 24, 2011), *report and recommendation adopted*, No. 10-3370, 2011 WL 3157025 (E.D. Pa. July 27, 2011) (citing *Zillich v. Redi*, 36 F.3d 317, 320 (3d Cir. 1994)). Indeed, federal courts generally maintain a stringent standard for finding that a plea is not knowingly and intelligently entered. *See United States v. McDaniel*, No. 15-9361, 2016 WL 6082569, at \*3 (D. Md. Oct. 18, 2016) (quoting *United States v. Bowman*, 348 F.3d 408, 417 (4th Cir. 2003) (“The Rule 11 colloquy is designed to provide a structure to protect the defendant against making an uninformed and involuntary decision to plead guilty and to protect the public from an unjust judgment of guilty when a public trial has not been conducted.”)).

Santana argues that he reluctantly agreed to waive the Indictment and pled guilty. Santana contends that his plea was not knowing and voluntary because Feldman misadvised him about issues associated with pleading guilty versus going to trial. Santana attempts to minimize the veracity of his statements at his plea hearing with regard to both his satisfaction with Feldman's representation and his level of understanding of the charges levied against him. His argument is unpersuasive. Santana claims that Counsel's advice constituted conduct falling below the objective standards of reasonableness. Notwithstanding his empty allegations, Santana's plea colloquy during which he acknowledged full responsibility for his criminal conduct clearly demonstrates that his decision to plead guilty was knowing, intelligent, and voluntary. He demonstrated that he was fully competent, understood the ramifications of his decision to plead guilty, had reviewed his options with his attorney, and was satisfied with the quality of representation that his attorney had provided.

Santana's ineffective assistance claims with regard to Feldman's conduct before and after his plea are based on a series of conclusory claims. It is axiomatic that "a claim of ineffective assistance must identify the specific error(s) counsel has made. Conclusory allegations are not sufficient to support a motion under section 2255." *Bradica v. United States*, No. 12-1444, 2013 WL 454911, at \*4 (W.D. Pa. Feb. 6, 2013) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977)); *see also United States v. Thomas*, 221 F.3d 430, 437 (3d Cir. 2000) ("vague and conclusory allegations contained in a § 2255 petition may be disposed of without further investigation by the District Court."); *Zettlemyer v. Fulcomer*, 923 F.2d 284, 298 (3d Cir. 1991) (a petitioner "cannot meet his burden to show that counsel made errors so serious that his representation fell below an objective standard of reasonableness based on vague and conclusory allegations that

some unspecified and speculative testimony might have established his defense. Rather, he must set forth facts to support his contention.” (citation omitted)).

Santana alleges that Feldman was ineffective prior to Santana’s plea when, in September 2012, approximately one month after Santana retained him, Feldman failed to adequately assist Santana during a meeting at the United States Attorney’s Office that Feldman identified as “routine.” Santana alleges that at this meeting he answered a series of questions without having the benefit of any preparation or advice from his attorney either prior to or during this meeting, and answered these questions to the best of his ability and recollection. Santana claims that the meeting concluded without Feldman offering any assistance to him. Santana further alleges that when he and Feldman next spoke, Feldman relayed that he had not yet reviewed the critical case documents, but that he had negotiated a plea agreement for Santana. Santana claims that after Feldman communicated to Santana the Government’s plea offer, Santana was uncertain how to proceed. He contends that Feldman informed him that the Government’s case was strong, and that he should accept the plea agreement to avoid a potentially lengthy prison sentence. He contends that on Feldman’s instruction, he signed the plea documents, and approximately four months later, on February 13, 2013, entered his guilty plea.

Santana also argues that prior to his plea, Feldman was ineffective when he failed to review Santana’s business records in the Government’s custody. He makes this accusation notwithstanding the fact that at the sentencing hearing Feldman advised the Court that he had reviewed some of the business records that were in the Government’s custody, and that he had discussed the Government’s business loss figure with Santana, who had agreed to stipulate to that loss figure. Aside from these bald allegations, Santana offers no evidence to establish that Feldman’s assistance in reviewing Santana’s financial records would have impacted his decision

to plead guilty, or would have affected the length of his sentence. The claims are simply conclusory and unsubstantiated.

Next, Santana argues that Feldman's representation after the plea was ineffective. He claims that Feldman should have hired an expert forensic accountant to assist in calculating the Government's \$528,798.29 loss valuation, arguing that defense counsel could not have made an adequate investigation without the assistance of such a professional. The only support he provides for this contention is that a forensic accountant would have been able to provide the help Feldman needed and could have discovered mitigating factors in Santana's. The Government contends that, in contesting Feldman's failure to hire a forensic accountant to certify the \$528,798.29 loss amount, Santana neglects to allege any anticipated deficit, nor does he establish what additional insight a forensic accountant might provide. Moreover, while Santana certainly *asserts* claims that hiring a forensic accountant would have been necessary for a more effective defense, he does not explain *why* an adequate investigation without a forensic accountant was not possible, or specifically *how* the absence of a forensic accountant so prejudiced him as to alter the outcome. Instead, Santana simply makes conclusory accusations that lack any substantiation in fact and any corroborating evidence from the record. Moreover, as noted above, Feldman is not only a lawyer, but he is also an accountant and a former IRS Agent. Santana is a businessman with three years of college. He was a director of the credit union that suffered the loss and it was his transactions that created the loss. He did not need a forensic accountant to tell him that he had stolen more than a half a million dollars from the credit union.

Santana also contends that Feldman was ineffective for failing to accompany Santana to his interview with P.O. Widemir. Santana asserts that Feldman explained his rationale for not

accompanying Santana to this meeting, on the basis that his presence was not necessary and that Santana would do fine without counsel. Feldman later attended a meeting with P.O. Widemir at Widemir's request. Santana fails to tell us how Feldman's presence at the meeting with the probation officer would have made any difference.

After a thorough review of this record, we are compelled to conclude that Feldman reasonably and effectively represented Santana at all stages of this litigation. The evidence against Santana was overwhelming. To the extent that anything that Feldman did may have been inadequate, Santana has failed to establish that he suffered any tangible harm or prejudice as a result of that shortcoming.

The sentencing guidelines here provided for a sentence of 70 to 87 months. The Government requested a sentence within the sentencing guidelines. Feldman requested a downward variance based upon Santana's attempts to cooperate with the Government, Santana's lack of a criminal record, and based upon Santana's many good works in the community. Feldman provided the Court with letters from people in the community in support of Santana and he described in detail Santana's community activities, which included a soup kitchen and an Alcohol and Drug Rehabilitation Center that Santana created for veterans. The Court varied downward from the sentencing guidelines and imposed a sentence of 36 months. Santana took no direct appeal. All things considered, Feldman represented his client very well in these proceedings. He was not ineffective. Accordingly, we will deny Santana's Motion to Vacate, Set Aside, or Correct Sentence.

Finally, we decline to issue a certificate of appealability to Petitioner. The Third Circuit's Local Appellate Rules instruct:

At 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. If the district judge issues a certificate, the judge must state the specific issue or issues that satisfy the criteria of 28 U.S.C. § 2253. If an order denying a petition under § 2254 or § 2255 is accompanied by an opinion or a magistrate judge's report, it is sufficient if the order denying the certificate references the opinion or report.

Third Cir. L.A.R. 22.2. Under 28 U.S.C. § 2253, a petitioner seeking a certificate of appealability 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).

As discussed above, Petitioner has raised no viable claims, and no reasonable jurist would disagree with our assessment. Therefore, a certificate of appealability will not issue.

#### **IV. CONCLUSION**

For the foregoing reasons, Petitioner’s *Pro Se* Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, Or Correct Sentence By a Person in Federal Custody will be denied.

**BY THE COURT:**

*/s/R. Barclay Surrick*  
**U.S. District Judge**

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UNITED STATES OF AMERICA	:	
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	:	
MIQUEAS SANTANA	:	

**ORDER**

**AND NOW**, this 16<sup>th</sup> day of February, 2017, upon consideration of Petitioner's *Pro Se* Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, Or Correct Sentence By a Person in Federal Custody (ECF No. 33), and all documents submitted in support thereof and in opposition thereto, it is **ORDERED** as follows:

1. Petitioner's Motion is **DENIED**.
2. No Certificate of Appealability shall issue.

**IT IS SO ORDERED.**

**BY THE COURT:**

/s/R. Barclay Surrick  
**U.S. District Judge**