

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

|                          |   |                 |
|--------------------------|---|-----------------|
| UNITED STATES OF AMERICA | : |                 |
|                          | : | CRIMINAL ACTION |
| v.                       | : | 06-658-03       |
|                          | : |                 |
| CONSTANCE TAYLOR         | : | CIVIL ACTION    |
|                          | : | 14-6035         |

May 6, 2019

Anita B. Brody, J.

**MEMORANDUM**

Currently before me is Constance Taylor's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence. For the reasons set forth below, I will deny Taylor's § 2255 motion.

**I. BACKGROUND**

On April 24, 2007, a grand jury in the Eastern District of Pennsylvania returned a superseding indictment charging several individuals, including Taylor, with conspiracy to defraud the Internal Revenue Service ("IRS"), as well as corruptly endeavoring to obstruct the administration of the tax laws. These charges stemmed from each individual's involvement in an organization known as the Commonwealth Trust Company ("CTC"), a company that sold domestic and foreign trusts. CTC advised clients that they could escape paying federal income tax by diverting their income through CTC trusts, and instructed clients to transfer assets they already had into these trusts to protect the assets from IRS liens and seizures.

On January 28, 2008, a jury found Taylor guilty of one count of conspiracy to defraud the United States, in violation of 18 U.S.C. § 371, and two counts of corruptly endeavoring to obstruct and impede the due administration of the Internal Revenue laws, in violation of 18

U.S.C. § 7212(a). Taylor was sentenced to 90 months of imprisonment, three years of supervised release, a \$300 special assessment, and restitution in the amount of \$3,300,000.

Taylor appealed her conviction and sentence. On November 15, 2011, the Third Circuit affirmed Taylor's conviction and sentence, but vacated the award of restitution entered against her. The Third Circuit remanded the award of restitution to this Court to clarify "the amount of restitution and the method, manner and schedule of payments, after taking into account the financial resources of [Taylor]." *United States v. Crim*, 451 F. App'x 196, 210 (3d Cir. 2011). On November 5, 2012, this Court ordered Taylor to pay restitution at \$100 per year. Taylor appealed the restitution order. On January 16, 2014, the Third Circuit affirmed this Court's restitution order. *See United States v. Taylor*, 550 F. App'x 135 (3d Cir. 2014).

On October 24, 2014, Taylor filed her habeas corpus petition. On October 14, 2015, I appointed Alexandre Neuerburg Turner to represent Taylor in this habeas proceeding.

## **II. STANDARD OF REVIEW**

Section 2255 empowers a court to "vacate, set aside or correct" a sentence that "was imposed in violation of the Constitution or laws of the United States." 28 U.S.C. § 2255(a). If a party is entitled to relief under § 2255(a), "the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate." *Id.* § 2255(b). A petitioner is entitled to an evidentiary hearing unless the motion, files, and records of the case show conclusively that the petitioner is not entitled to relief. *Id.*

## **III. DISCUSSION**

Taylor argues that she is entitled to relief under § 2255 because counsel rendered ineffective assistance of counsel.

In *Strickland v. Washington*, 466 U.S. 668 (1984), the Supreme Court established the legal framework for determining Sixth Amendment claims of ineffective assistance of counsel.

*Strickland* sets forth a two-part test for claims of ineffective assistance of counsel:

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.

*Strickland*, 466 U.S. at 687. "Under *Strickland*'s first prong, a court must determine whether, in light of all the circumstances, the identified acts or omissions of counsel were outside the range of professionally competent assistance." *Grant v. Lockett*, 709 F.3d 224, 234 (3d Cir. 2013). A court's evaluation of an attorney's performance must be "highly deferential." *Strickland*, 466 U.S. at 689. "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Id.* "[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *Id.* (internal quotation marks omitted). The second prong of *Strickland*, prejudice, requires a petitioner to show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694.

Accordingly, "[t]here can be no Sixth Amendment deprivation of effective counsel based on an attorney's failure to raise a meritless argument." *United States v. Sanders*, 165 F.3d 248, 253 (3d Cir. 1999).

Taylor raises three separate claims of ineffective assistance of counsel: (1) trial counsel had an actual conflict of interest that prevented him from calling a trust expert as a trial witness; (2) trial counsel signed a stipulation stating that Taylor and her co-defendants failed to file tax returns from the years 2000 through 2003 despite Taylor's objection to the stipulation; and (3) appellate counsel failed to raise a violation of *Brady v. Maryland*, 373 U.S. 83 (1963).<sup>1</sup>

### **A. Factual Findings**

On April 22, 2019, I held an evidentiary hearing on Taylor's ineffective assistance of counsel claims regarding the stipulation and alleged *Brady* violation. At the evidentiary hearing, Taylor called one witness: Jonathan Altman, Taylor's trial counsel.

#### **1. The Stipulation**

Altman testified that he agreed to stipulate that Taylor failed to file tax returns from the years 2000 through 2003 only after all other defense counsel had executed the stipulation on behalf of their clients and Taylor had agreed that Altman should sign the stipulation on her behalf. Altman signed the stipulation because Taylor had not filed taxes during the years 2000 through 2003 and had told an undercover IRS agent that she had not filed taxes, and the Government was prepared to have an IRS agent testify that Taylor did not file taxes. Moreover, Altman was not concerned about the stipulation because Taylor was not being charged with failure to pay or failure to file taxes. Altman did not understand that the Government planned to use Taylor's failure to file tax returns to suggest that Taylor executed the CTC scheme in bad faith—i.e., that she intended to defraud the Government and prevent the IRS from assessing and collecting taxes on CTC clients.

---

<sup>1</sup> At the evidentiary hearing, Taylor conceded that she is not raising a claim of cumulative error as a result of her ineffective assistance of counsel claims.

Regardless of how the Government intended to use Taylor's failure to file tax returns, Altman believed that Taylor's failure to file tax returns would be clarified when Taylor testified during the trial. Altman and Taylor had agreed that Taylor would testify at trial. Taylor planned to testify that the reason she did not file tax returns was because she had not earned any money and therefore was not required to file. Part of Altman's defense strategy was to look for evidence of good faith. Altman intended to have Taylor testify as to her efforts to correct misinformation that independent contractors of CTC were providing. Taylor, however, decided not to testify after the stipulation had already been signed.

## **2. The Government's Production of Discovery**

Altman testified that the Government provided him with multiple compact discs containing discovery, and also made thirty boxes of discovery available for him to review at the IRS. Altman reviewed everything on the compact discs. He did not review the thirty boxes of discovery available for review at the IRS. Altman no longer has the compact discs provided by the Government because he threw them out several years ago.

## **B. Conclusions of Law**

### **1. Actual Conflict of Interest**

Taylor argues that trial counsel provided ineffective assistance of counsel due to an actual conflict of interest because he represented Taylor in this criminal matter while simultaneously representing Taylor and her criminal co-defendant, John Crim, in a civil matter in North Carolina.

"In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance." *Cuyler v. Sullivan*, 446 U.S. 335, 348 (1980). To prove that trial

counsel had an actual conflict of interest, a defendant must establish the following two elements in order:

First, he must demonstrate that some plausible alternative defense strategy or tactic might have been pursued. He need not show that the defense would necessarily have been successful if it had been used, but that it possessed sufficient substance to be a viable alternative. Second, he must establish that the alternative defense was inherently in conflict with or not undertaken due to the attorney's other loyalties or interests.

*United States v. Gambino*, 864 F.2d 1064, 1070 (3d Cir. 1988) (quoting *United States v. Fahey*, 769 F.2d 829, 836 (1st Cir. 1985)). Put another way, “[a]n actual conflict exists only if the proposed alternative strategy (a) could benefit the instant defendant and (b) *would violate the attorney’s duties to the other client.*” *United States v. Morelli*, 169 F.3d 798, 811 (3d Cir. 1999). A court must presume prejudice and conclude that counsel rendered ineffective assistance of counsel if a defendant demonstrates the existence of an actual conflict of interest. *Id.* at 810.

Taylor argues that her trial counsel failed to hire a trust expert to establish the validity of the CTC trusts due to an actual conflict of interest. According to Taylor, if an expert had established the validity of the CTC trusts then the Government’s theory of the case—that Taylor and her co-defendants used sham trusts to conspire to defraud the IRS and corruptly endeavored to obstruct the administration of the tax laws—would have been severely undermined. Thus, Taylor argues that she has proven the first prong of an actual conflict of interest because hiring a trust expert was a viable alternative strategy that counsel failed to pursue.<sup>2</sup>

Regardless of whether Taylor can establish that hiring a trust expert was a viable alternative defense strategy, she cannot succeed on her actual conflict of interest claim because

---

<sup>2</sup> At the evidentiary hearing, Altman testified that he had recommended to Taylor that she obtain a trust expert to testify as to the integrity of the trust documents, but she declined.

she has not established that hiring a trust expert would have violated trial counsel's duties and loyalties to his other client, John Crim.

In the civil case, trial counsel represented John Crim as the trustee of Corredores Centroamericanos and Taylor as the trustee of Northstar Properties. Taylor contends that trial counsel did not hire a trust expert in her criminal case to establish the legitimacy of the CTC trusts because the expert would have called into question the validity of Taylor's Northstar Properties trusts that were at issue in the civil matter in North Carolina. Taylor argues that if trial counsel had brought in a trust expert during the criminal trial, he would have been advocating for Crim's interests in the civil case over Taylor's interests in the civil case. Specifically, Taylor contends that trial counsel "could not agree to bring in a trust expert during trial because in so doing, he would be advocating for Crim's interests over mine." Pet'r's Mem. 14. Accordingly, Taylor contends that hiring a trust expert would have benefitted her and Crim in the criminal case but would have harmed her in the civil case. Thus, the alleged actual conflict that Taylor raises is that her trial counsel did not retain a trust expert in her criminal case because it would have conflicted with his defense of Taylor in her civil case.

"[T]here is no conflict of interest adversely affecting the attorney's performance if an attorney at trial does not raise a defense on behalf of his client because to do so *is not in that client's interest . . .*" *Gambino*, 864 F.2d at 1071 (emphasis added). Rather "[a]n actual conflict exists only if the proposed alternative strategy . . . *would violate the attorney's duties to the other client.*" *Morelli*, 169 F.3d at 811. Taylor makes no allegation that trial counsel would have violated a loyalty or duty owed to Crim if he had hired a trust expert. Taylor only alleges that trial counsel would have violated a duty owed to Taylor in her civil case. Because hiring a trust expert would not have hurt trial counsel's other client, Crim, trial counsel did not have an

actual conflict of interest. *See id.* (rejecting actual conflict of interest claim because alternative strategy would not have harmed the other client's interests). Therefore, I will deny Taylor's claim that trial counsel provided ineffective assistance of counsel because he operated under an actual conflict of interest.

## **2. The Stipulation**

Taylor contends that trial counsel provided ineffective assistance of counsel by stipulating that Taylor failed to file tax returns from the years 2000 through 2003. Taylor concedes that she did not file tax returns and the Government was prepared to have an IRS agent testify that she did not file tax returns. She argues, however, that if Altman had not stipulated to her failure to file tax returns, the IRS agent would have testified, and Altman could have cross-examined him. Taylor hypothesizes that if the IRS agent had been cross-examined, he would have testified that there are legitimate reasons why someone might not file tax returns, such as no income. Moreover, the IRS agent would have concluded that Taylor did not file tax returns because she did not have any income. Taylor points out that the Government used her failure to file tax returns as evidence of her intent to defraud the Government and prevent the IRS from assessing and collecting taxes on CTC clients. Taylor thus contends that if she had been able to cross-examine the IRS agent she would have been able to undermine the Government's proof of her intent.

Taylor has not established that trial counsel rendered ineffective assistance of counsel when he stipulated that she failed to file tax returns because Taylor has not proven that Altman's performance was deficient or that his allegedly deficient performance prejudiced Taylor. Although Altman may not have understood that the Government intended to use Taylor's failure to file tax returns as evidence of her intent to defraud the Government and impede the IRS, his

decision to stipulate that Taylor had not filed tax returns was reasonable and might be considered sound trial strategy.

At the time Altman signed the stipulation, Taylor intended to testify at trial. Altman signed the stipulation because he knew that the IRS agent would testify that Taylor did not file taxes and rather than attempt to cross-examine the IRS agent about whether Taylor had to file taxes, he intended to elicit directly from Taylor, during her testimony, that she did not file taxes because she did not have any income. Additionally, Altman intended to elicit from Taylor that she attempted to correct misinformation provided by independent contractors of CTC. Thus, Taylor's testimony would have supported her good faith defense and challenged the Government's argument that Taylor's failure to file tax returns was evidence of her intent to defraud the Government and impede the IRS. Altman's decision to sign the stipulation and not to cross-examine the IRS agent was reasonable because he intended to elicit evidence directly from Taylor that she was not required to file tax returns and that she possessed a good faith defense.

Even if Altman's performance was deficient, Taylor cannot succeed on her ineffective assistance of counsel claim because Taylor has not demonstrated that the stipulation prejudiced her defense. Regardless of whether Altman had signed the stipulation, Taylor's failure to file tax returns would have been admitted into evidence through the testimony of the IRS agent. While Altman may have been able to establish through cross-examination of the IRS agent that there are legitimate reasons why someone might not file tax returns, such as no income, there is no evidence that the IRS agent would have concluded that Taylor did not file her tax returns because she did not have any income. Cross-examination of the IRS agent may have weakened the Government's theory that Taylor's failure to file tax returns was evidence of her intent to defraud

the Government and impede the IRS, but it would not have destroyed the theory because there is no reason to believe that the IRS agent would have testified that Taylor would not have been required to file taxes. Moreover, Taylor's failure to file taxes was not the only evidence that the Government possessed of Taylor's intent. For instance, "the jury heard several recordings of Taylor's speeches from . . . CTC conferences wherein she lectured clients on how to prevent the IRS from assessing and collecting taxes." *United States v. Crim*, 451 F. App'x 196, 203 (3d Cir. 2011). At a CTC training session in Lancaster, Pennsylvania, "Taylor instructed the CTC sales department on how to use her document service to evade the IRS." *Id.* More than enough evidence was presented at trial that Taylor intended to defraud the Government and impede the IRS. There is no evidence that a reasonable probability exists that the outcome of the trial would have been different if Altman had been able to cross-examine the IRS agent about Taylor's failure to file tax returns because the Government presented overwhelming evidence of Taylor's guilt. Accordingly, I will deny Taylor's claim that trial counsel provided ineffective assistance of counsel by stipulating that Taylor failed to file tax returns from the years 2000 through 2003.

### **3. *Brady* Violation**

Taylor contends that appellate counsel provided ineffective assistance of counsel by failing to raise a *Brady* violation. Taylor speculates that the Government withheld evidence in her case because the Government withheld evidence in a separate related case, *United States v. Bitterman*, No. 09-CR-772 (E.D. Pa.) [hereinafter *Bitterman* action].

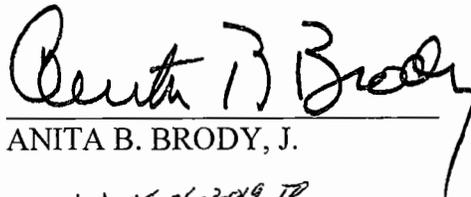
"To establish a *Brady* violation, it must be shown that (1) evidence was suppressed; (2) the evidence was favorable to the defense; and (3) the evidence was material to guilt or punishment." *United States v. Risha*, 445 F.3d 298, 303 (3d Cir. 2006). "Evidence is favorable if it is impeaching or exculpatory." *United States v. Georgiou*, 777 F.3d 125, 139 (3d Cir. 2015).

“Such evidence is material if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *Strickler v. Greene*, 527 U.S. 263, 280 (1999) (internal quotation marks omitted).

Taylor references a single piece of evidence, Document 66, that she infers may have been suppressed because it was suppressed in the *Bitterman* action. Taylor has neither produced Document 66 nor has she provided any concrete argument as to the materiality of the evidence. On the most basic level, Taylor has not proven that any evidence was suppressed, and even if Document 66 had been suppressed, she has not proven that it was material. Because Taylor has not established a *Brady* violation, she cannot succeed on her ineffective assistance of counsel claim because she has not established prejudice—there is not a reasonable probability that had appellate counsel raised a *Brady* claim the result of the proceeding would have been different. Therefore, I will deny Taylor’s claim that appellate counsel provided ineffective assistance of counsel by failing to raise a *Brady* violation.

#### IV. CONCLUSION

For the reasons set forth above, I will deny Taylor’s Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence. There is no basis for the issuance of a certificate of appealability.<sup>3</sup>

  
ANITA B. BRODY, J.

Copies VIA ECF on \_\_\_\_\_ to:

*Copies mailed 05-06-2019 TO  
CONSTANCE TAYLOR, NCFP.*

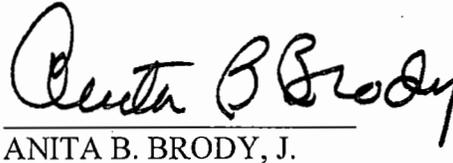
<sup>3</sup> A court may issue a certificate of appealability “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c). “Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: 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). Taylor has not shown that reasonable jurists would find this Court’s assessment of her constitutional claims debatable or wrong.

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

|                          |   |                 |
|--------------------------|---|-----------------|
| UNITED STATES OF AMERICA | : |                 |
|                          | : | CRIMINAL ACTION |
| v.                       | : | 06-658-03       |
|                          | : |                 |
| CONSTANCE TAYLOR         | : | CIVIL ACTION    |
|                          | : | 14-6035         |

**ORDER**

AND NOW, this 6<sup>th</sup> day of May, 2019, it is **ORDERED** that Petitioner's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (ECF No. 939) is **DENIED**. There is no basis for the issuance of a certificate of appealability.<sup>1</sup>

  
ANITA B. BRODY, J.

Copies VIA ECF on \_\_\_\_\_ to:

*Copies mailed 05-06-2019 to:  
CONSTANCE TAYLOR, ACF7*

O:\ABB 2019\L - Z\USA v. Taylor 2255 Order.docx

<sup>1</sup> A court may issue a certificate of appealability “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c). “Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: 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). Taylor has not shown that reasonable jurists would find this Court’s assessment of her constitutional claims debatable or wrong.