

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

UNITED STATES OF AMERICA)	
)	Criminal Action
v.)	No. 08-cr-00134-003
)	
KASEEN DOBSON,)	Civil Action
)	No. 12-cv-05794
Defendant)	

* * *

APPEARANCES:

JOHN GALLAGHER
Assistant United States Attorney
On behalf of the United States of America

KASEEN DOBSON
Defendant pro se

* * *

O P I N I O N

JAMES KNOLL GARDNER
United States District Judge

MOTION

This matter is before the court on defendant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody, filed by defendant Kaseen Dobson pro se on October 11, 2012. For the reasons expressed in this Opinion, I deny defendant's motion.

On April 12, 2013 defendant filed his Motion for Leave to File Memorandum of Law in Support of 2255 Petition, attaching as Exhibit A to that motion his Memorandum of Law in Support of 2255 Petition, Affidavit in Support of the Motion Pursuant to

28 U.S.C. § 2255 and Pertinent Part of Grand Jury Transcript of February 12, 2008.

By Order dated and filed November 10, 2015, I granted defendant's motion for leave and deemed those documents attached as Exhibit A, including defendant's Memorandum of Law in Support of 2255 Petition, incorporated as part of defendant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody.

On July 23, 2013 defendant also filed Movant's Supplemental Amendment Rule 15 Federal Rules of Civil Procedure.

On December 2, 2015 the United States Attorney for the Eastern District of Pennsylvania filed Government's Response in Opposition to Defendant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody.

On January 7, 2016 defendant filed Petitioner's Reply to Government's Opposition to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255.

PROCEDURAL HISTORY

On March 11, 2008 a grand jury in the Eastern District of Pennsylvania returned a fourteen-count Indictment charging defendant Kaseen Dobson, along with two co-defendants Ralick Cole and Dorian Rawlinson, with conspiring to and distributing crack cocaine in Easton, Pennsylvania and Phillipsburg, New

Jersey from January 2007 to January 2008.¹

On July 8, 2008 a grand jury returned a 37-count Superseding Indictment charging defendants Dobson, Cole and Rawlinson with conspiracy to distribute crack cocaine, distribution of crack cocaine, distribution of heroin and possession of a firearm in furtherance of a drug trafficking crime in Easton, Pennsylvania and Phillipsburg, New Jersey from January 2007 to March 2008.²

In particular, with respect to defendant Dobson, Count 1 of the Superseding Indictment charges him with conspiracy to distribute 50 grams or more of cocaine base in violation of 21 U.S.C. § 846; Count 2 charges him with conspiracy to possess and to aid and abet the possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. §§ 2, 924(c); Counts 5, 9, 23 and 25 charge him with possession of cocaine base with intent to distribute in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C); Counts 6, 10, 24 and 26 charge him with the use of a communication facility to facilitate the possession with intent to distribute five grams

¹ Specifically, Count One of the Indictment charged defendant Dobson with conspiracy to distribute 50 grams or more of cocaine base ("crack") in violation of 21 U.S.C. § 846. Indictment (Document 1) at pages 2-3. Count Four of the Indictment charged defendant Dobson with knowingly and intentionally using a communication facility to facilitate the possession with intent to distribute 5 grams or more of cocaine base in violation of 21 U.S.C. § 843(b). Id. at page 6.

² Superseding Indictment (Document 47).

or more of cocaine base in violation of 21 U.S.C. § 843(b); and Count 35 charges him with the carrying, and the aiding and abetting the carrying, of a firearm during, and in relation to, a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1).³

On October 7, 2008 a jury trial commenced against defendants Dobson and Rawlinson, and on October 20, 2008 the jury convicted defendant Dobson on Counts 1, 2, 5-6, 23-26 and 35 of the Superseding Indictment.⁴

Shortly following trial, on October 27, 2008, defendant Dobson moved for a judgment of acquittal pursuant to Federal Rule of Criminal Procedure 29 or alternatively, for a new trial pursuant to Federal Rule of Civil Procedure 33 with respect to Counts One and Two of the Superseding Indictment. Specifically, defendant Dobson argued that the evidence produced at trial, even viewed in the light most favorable to the government, was not sufficient to permit a rational jury to find defendant guilty of conspiracy to distribute cocaine base and conspiracy to possess a firearm in furtherance of a drug crime.

On April 30, 2009 I denied defendant Dobson's motion for a judgment of acquittal or for a new trial.

³ Superseding Indictment at pages 1-7, 10-11, 14-15, 28-31, 40.

⁴ The jury convicted co-defendant Dorian Rawlinson on Counts 1, 13, 18, 19, 27 & 28 and found him not guilty on Counts 2, 17, 20 & 36. See Minute Entry for Proceedings Held Before Honorable James Knoll Gardner: Jury Verdict. (Document 136).

On August 27, 2009 I sentenced defendant Dobson to 300 months imprisonment, 10 years supervised release, a \$5,000 fine and \$900 special assessment.

On September 29, 2009 defendant Dobson timely filed an appeal, arguing that (1) the evidence presented at trial was insufficient to support his convictions on the conspiracy charges; (2) the five-year mandatory minimum sentence for conspiracy to possess a firearm in furtherance of a drug trafficking crime was improperly imposed to run consecutively with the twenty-year mandatory minimum sentence for conspiracy to distribute 50 grams or more of cocaine base; and (3) the imposition of the twenty-year mandatory minimum sentence for conspiracy to distribute 50 grams or more of cocaine base violated defendant Dobson's constitutional rights to due process and equal protection of the law.⁵

On May 27, 2011 the United States Court of Appeals for the Third Circuit rejected defendant Dobson's arguments and affirmed the judgments of conviction and sentence. United States v. Rawlinson, 433 Fed.App'x 99 (3d Cir. 2011).

On August 25, 2011 defendant Dobson filed a petition for a writ of certiorari before the Supreme Court of the United

⁵ See Brief for Appellant, United States v. Dobson, no. 09-3862 (3d Cir. Apr. 12, 2010).

Court-appointed attorney John A. DiSantis represented defendant Dobson at trial and on appeal.

States, and on October 11, 2011 the Supreme Court denied that petition.

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, in relevant part:

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).

A motion to vacate sentence under section 2255 "is addressed to the sound discretion of the district court". United States v. Williams, 615 F.2d 585, 591 (3d Cir. 1980). A petitioner may prevail on a Section 2255 habeas claim only by demonstrating that an error of law was either constitutional error, jurisdictional error, "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).

Here, petitioner claims that he was deprived of his constitutional right to "reasonably effective assistance" of counsel. See United States v. Day, 969 F.2d 39, 40 (3d Cir. 1992) (citing Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984)).

A claim of ineffective assistance of counsel involves two elements which must be established by defendant:

(1) counsel's performance must have been deficient, meaning that counsel made errors so serious that he was not functioning as "the counsel" guaranteed by the Sixth Amendment; and (2) the deficient performance prejudiced the defense. Strickland, 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed.2d at 693.

To establish a deficiency in counsel's performance, a convicted defendant must demonstrate that the representation fell below an "objective standard of reasonableness" based on the particular facts of the case and viewed at the time of counsel's conduct. Strickland, 466 U.S. at 688, 104 S.Ct. at 2064-2065, 80 L.Ed.2d at 693-694; Senk v. Zimmerman, 886 F.2d 611, 615 (3d Cir. 1989).

There is 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." Strickland, 466 U.S. at 689,

104 S.Ct. at 2065, 80 L.Ed.2d at 694-695 (internal quotations omitted).

To establish the second Strickland prong, "defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id., 466 U.S. at 694, 104 S.Ct. at 2068, 80 L.Ed.2d at 698. Counsel's errors must have been so serious that they deprived defendant of a "fair trial" with a "reliable" result. Id., 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed.2d at 693.

DISCUSSION

Defendant Dobson raises four grounds for his claim that his court-appointed counsel, attorney John A. DiSantis, was ineffective. Specifically, defendant Dobson contends that Attorney DiSantis:

- (1) failed to impeach the prosecution's star witness, Sean Rogers,
- (2) failed to object to, or otherwise raise the issue of, allegedly perjured grand jury testimony,
- (3) failed to object to, or argue against, certain factual inaccuracies, and
- (4) permitted the "calculated drug quantities" to

trigger a mandatory minimum sentence.⁶

Ground One - Failure to Impeach Sean Rogers

Defendant Dobson contends that his attorney John DiSantis was ineffective, because Attorney DiSantis allegedly failed to impeach the government's witness, Sean Rogers.⁷

Sean Rogers testified before the federal grand jury that defendant Dobson, along with Ralick Cole and Dorian Rawlinson, purchased "two, three eight balls at a time -- a day" over the course of "a year to a year and a half".⁸ Defendant

⁶ In defendant's reply brief, defendant Dobson appears to raise an additional claim that in sentencing him, this court misapplied United States Sentencing Guideline Section 1B1.13(a)(1)(B). See Petitioner's Reply to Government's Opposition to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255 ("Defendant's Reply") (Document 233) at pages 10-12. Specifically, defendant Dobson contends that this court improperly sentenced him based on a quantity of crack cocaine exceeding 50 grams, which amount included drugs sold by his co-conspirators that were not reasonably foreseeable and should not have been included.

This additional claim does not relate to any of the ineffective assistance of counsel claims asserted in defendant's original motion and must therefore be denied as untimely, as it was not raised until January 2016. See United States v. Thomas, 221 F.3d 430, 435-435 (3d Cir. 2000).

Moreover, because defendant Dobson raises this claim for the first time in his reply brief, it is likely procedurally defaulted. See Oelsner v. United States, 60 Fed.App'x 412, 414 (3d Cir. 2003). Although the government has not raised procedural default as an affirmative defense, that is because defendant raised this claim after the government's response.

Finally, even if the above were not true, defendant's claim is patently frivolous: the court sentenced defendant Dobson for conspiracy to distribute more than 50 grams of crack cocaine pursuant to the jury's verdict, which found that defendant Dobson was responsible for that amount. The court did not commit any error in so doing.

⁷ Memorandum of Law in Support of 2255 Petition ("Defendant's Memorandum"), attached to defendant's Motion for Leave to File Memorandum of Law in Support of 2255 Petition (Document 223), at pages 4-7.

⁸ Id. at page 5.

Dobson contends that, because he was incarcerated in a New York state prison during a portion of that time, the grand jury testimony was "contrary to material facts".⁹

However, as the government notes, Sean Rogers did not testify at trial.¹⁰ Consequently, Attorney DiSantis never had the opportunity to impeach Sean Rogers. Although defendant Dobson is entitled to have the "prosecution's case . . . survive the crucible of meaningful adversarial testing", the "Sixth Amendment does not require that counsel do what is impossible or unethical." United States v. Cronin, 466 U.S. 648, 656 and n. 19, 104 S.Ct. 2039, 2045 and n. 19, 80 L.Ed.2d 657, 666 and n. 19 (1984).

Because no attorney could have cross-examined or impeached an individual who did not testify at trial, Attorney DiSantis was not deficient in failing to impeach Sean Rogers. See Latanzio v. Chavez, 2014 WL 7240653, at *19 (C.D.Cal. Dec. 18, 2014). Accordingly, I deny defendant Dobson's motion on this ground.

⁹ Defendant's Memorandum at page 5.

¹⁰ See e.g., Notes of Testimony of the jury trial conducted on October 7, 2008 in Allentown, Pennsylvania, styled "Transcript of Trial Before Honorable James Knoll Gardner and Jury[,] United States District Court Judge" ("N.T. 10/7/2008") at pages 115-116.

Ground Two - Failure to Object to Allegedly Perjured Grand Jury

Testimony

Defendant further contends that Attorney DiSantis was deficient for failing to otherwise object to or contest that part of Sean Rogers's grand jury testimony which defendant Dobson believes was false.

First, defendant's claim is premised on the allegation that Sean Rogers's grand jury testimony was, in fact, perjured. In support of this allegation, defendant identifies two statements in which Sean Rogers claimed that defendant Dobson and his co-conspirators, Dorian Rawlinson and Ralick Cole, would purchase drugs from him nearly daily over a period of a year to a year and half.¹¹ Defendant contends that these statements were false, because defendant Dobson was incarcerated for at least six months of that period. As a result, defendant argues that Sean Rogers could not possibly have sold drugs to defendant Dobson over the course of "a year to a year and a half, every day".¹²

Defendant's allegation that this testimony is false relies on an unreasonably narrow interpretation of what Sean Rogers said -- those statements are only false if one interprets

¹¹ Defendant's Memorandum at pages 4-5; Defendant's Reply at page 3.

¹² Defendant's Memorandum at page 5.

them to mean that all three conspirators were present on each occasion over the entire period.¹³ An entirely reasonable alternate interpretation of those statements is that Sean Rogers understood defendant Dobson, Dorian Rawlinson and Ralick Cole to be working together, and that one or more of them purchased drugs from him over the course of a year or year and a half. In other words, as long as at least one of the three purchased drugs from Sean Rogers during that time period, his statements were not false or perjured.

Thus, as an initial matter, defendant Dobson has not demonstrated that any failure by Attorney DiSantis to challenge Sean Rogers's grand jury testimony on the basis proposed here (presumably through a motion to dismiss the indictment) was objectively unreasonable.¹⁴ "There can be no Sixth Amendment deprivation of effective counsel based on an attorney's failure to raise a meritless argument." United States v. Henry, 2011 WL 3417117, at *5 (E.D.Pa. Aug. 3, 2011) (quoting United States v. Sanders, 165 F.3d 248, 253 (3d Cir. 1999)).

Moreover, even assuming that the decision was
objectively unreasonable and that Attorney DiSantis was

¹³ As defendant states, "it was actually only three months that Petitioner, Rawlinson, and Ralick Cole was [sic] on the streets, at the same time, during the said conspiracy." Defendant's Memorandum at page 5.

¹⁴ "[T]he dismissal of an indictment is a 'drastic remedy.'" United States v. Muhammad, 336 Fed.App'x 188, 193 (3d Cir. 2009) (quoting United States v. Morrison, 449 U.S. 361, 365 n. 2, 101 S.Ct. 665, 668 n. 2, 66 L.Ed.2d 564, 569 n. 2 (1981)).

deficient, defendant Dobson cannot demonstrate that he was prejudiced by such deficient performance. Where the alleged prosecutorial misconduct did not involve racial discrimination in the selection of the grand jury, the United States Court of Appeals for the Third Circuit has repeatedly held that "a petit jury's guilty verdict renders 'any prosecutorial misconduct before the indicting grand jury harmless' as a matter of law". United States v. Bansal, 663 F.3d 634, 660 (3d Cir. 2011) (quoting United States v. Console, 13 F.3d 641, 672 (3d Cir. 1993)).

As the Third Circuit explained in Console,

"Any prosecutorial misconduct before the grand jury 'had the theoretical potential to affect the grand jury's determination whether to indict these particular defendants for the offenses with which they were charged. But the petit jury's subsequent guilty verdict means not only that there was probable cause to believe that the defendants were guilty as charged, but also that they are in fact guilty as charged beyond a reasonable doubt. Measured by the petit jury's verdict, then, any error in the grand jury proceeding connected with the charging decision was harmless beyond a reasonable doubt.'"

13 F.3d at 672 (quoting United States v. Mechanik, 475 U.S. 66, 70, 106 S.Ct. 938, 941-942, 89 L.Ed.2d 50, 56 (1986)).

So it is here. Even if Sean Rogers gave perjured testimony and even if that perjured testimony affected the grand jury's decision to indict defendant Dobson, the subsequent petit

jury's guilty verdict means that there was probable cause to support the indictment and renders any error in the grand jury proceeding harmless. At this point, it bears repeating that because Sean Rogers did not testify at trial, there was sufficient evidence, even without that allegedly perjured testimony, for the petit jury to reach its verdict.

Because defendant Dobson was not prejudiced by Sean Rogers's grand jury testimony or any alleged prosecutorial misconduct, defendant Dobson is also not prejudiced by Attorney DiSantis's alleged failure to raise that issue. Accordingly, I deny defendant's motion on this ground.

Finally, although defendant Dobson believes that his attorney did nothing to challenge Sean Rogers's allegedly perjured grand jury testimony, Attorney DiSantis repeatedly argued at trial the crux of the issue -- that is, that defendant Dobson was absent for a substantial part of the conspiracy. For example, on October 8, 2008, the second day of trial, Attorney DiSantis cross-examined Federal Bureau of Investigation ("FBI") Special Agent Cliff Fiedler and elicited the following testimony:

"Q Okay. Now, agent, you know that Mr. Dobson and Mr. Rawlinson are charged in a conspiracy which according to the Government began in January of 2007 and extended to March of 2008 --

Q Okay. In terms of Mr. Dobson ever

being viewed in the presence of Ralick Cole or Dorian Rawlinson, did you or any of the other agents and/or law enforcement ever see Mr. Dobson together with Mr. Cole or Mr. Rawlinson in January of 2007?

A No.

Q In February of 2007?

A No.

Q In March of 2007?

A No.

Q April of 2007?

A No.

Q May of 2007?

A No.

Q June of 2007?

A No.

Q July?

A No.

Q Okay. First time in August to your recollection if even then?

A I'd have to refer to the surveillance reports, but I know the other months no. I don't believe so.

Q Okay. You don't believe not even in August?

A No.

Q Okay. September?

A Again I'd have to refer to the

surveillance reports.

Q Okay. So you're not sure?

A I'm not sure."¹⁵

In his summation at the end of trial, Attorney DiSantis once again highlighted for the jury the

"relatively limited amount of time that my client [defendant Dobson] was involved in a conspiracy. Once again, it's alleged that it may have been January of '07 to essentially March of '08. I think we've had testimony that he was involved from probably September of '07 to January of '08. That's the extent."¹⁶

Thus, even if Sean Rogers gave perjured testimony to the contrary before the grand jury, Attorney DiSantis made the petit jury that ultimately convicted defendant Dobson aware of the uncontroverted point that defendant Dobson was absent from the alleged conspiracy for a substantial period of time.

¹⁵ Notes of Testimony of the jury trial conducted on October 8, 2008 in Allentown, Pennsylvania, styled "Transcript of Trial Before Honorable James Knoll Gardner and Jury[,] United States District Court Judge" ("N.T. 10/8/2008") at pages 107-109.

¹⁶ Notes of Testimony of the jury trial conducted on October 16, 2008 in Allentown, Pennsylvania, styled "Transcript of Trial Before Honorable James Knoll Gardner and Jury[,] United States District Court Judge" ("N.T. 10/16/2008") at pages 48.

Although Attorney DiSantis did not inform the jury why defendant Dobson was absent for that period of time, it was reasonable trial strategy for him to avoid revealing that his client was incarcerated on another drug offense.

**Ground Three - Failure to Object to or Argue Against Certain
Factual Inaccuracies**

Defendant Dobson contends that Attorney DiSantis was deficient for failing to

"object to or bring to the court[']s attention factual inaccuracies on record which were relevant to the determination of the time frame, the drug amounts involved, and whether it was actually a conspiracy or independent low level drug dealers buying from the same high level drug dealer."¹⁷

Specifically, the "factual inaccuracies" defendant Dobson identifies are (1) the conflicting testimony of Ralick Cole, Anna Baez and Sean Rogers; (2) the evidence presented was insufficient to support a conspiracy among defendant Dobson, Ralick Cole and Dorian Rawlinson but rather reflected "independent low level drug dealers buying from the same high level drug dealer"; and finally, (3) the fact that defendant Dobson could not have been involved in the conspiracy during his incarceration.¹⁸

Defendant Dobson's claims here fail, because either (A) he cannot demonstrate the existence of an actual factual inaccuracy or conflict that Attorney DiSantis should have raised but failed to raise; or (B) Attorney DiSantis did, in fact,

¹⁷ Defendant's Memorandum at page 9.

¹⁸ Id.

raise the issue.

First, regarding the allegedly conflicting testimony of Ralick Cole, Anna Baez and Sean Rogers, defendant argues that whereas Sean Rogers testified before the grand jury that defendants Cole and Dobson worked together and purchased drugs nearly every day over the course of twelve to eighteen months, Ralick Cole testified at trial that defendant Dobson did not begin purchasing drugs from Sean Rogers until September 2007 and then only once or twice a week.

Defendant further contends that Sean Rogers's testimony that defendants Cole and Dobson worked and purchased drugs together also conflicts with the testimony of Anna Baez, who stated that Rogers would deal with each individually.¹⁹

¹⁹ Although defendant Dobson states that "the named co-defendant Cole, also government witness, testimony was conflicting with the testimonies of Sean Rogers and Anna Baez", that may have been a mistake, because defendant does not identify how, or argue that, Ralick Cole's testimony conflicted with Anna Baez's testimony. Defendant's Memorandum at page 8.

Nor could he. As the government explains in its brief, Ralick Cole's testimony was consistent with Anna Baez's. See Government's Response in Opposition to Defendant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody ("Government's Response") (Document 229), at pages 8-9.

In particular, Ralick Cole and Anna Baez both agreed on the time in which Dobson purchased drugs from Sean Rogers and on the fact that Sean Rogers dealt with Ralick Cole and Dobson separately. Compare Notes of Testimony of the jury trial conducted on October 9, 2008 in Allentown, Pennsylvania, styled "Transcript of Trial Before Honorable James Knoll Gardner and Jury[,] United States District Court Judge" ("N.T. 10/9/2008") at pages 34-36, 54, 55 with Notes of Testimony of the jury trial conducted on October 10, 2008 in Allentown, Pennsylvania, styled "Transcript of Trial Before Honorable James Knoll Gardner and Jury[,] United States District Court Judge" ("N.T. 10/10/2008") at pages 19-21, 94, 95.

I have already explained above that defendant Dobson's belief that Sean Rogers's grand jury testimony was false or contradictory relies on an unreasonably narrow interpretation of Sean Rogers's statements.²⁰ However, even if defendant Dobson were correct that Sean Rogers's grand jury testimony conflicted with the testimony of Ralick Cole and Anna Baez, defendant Dobson overlooks that Sean Rogers did not testify at trial.

Because Sean Rogers did not testify at trial, the petit jury never heard his allegedly false or contradictory testimony. The petit jury only heard the testimony of Ralick Cole and Anna Baez. Attorney DiSantis did not have the opportunity, nor any reason, to "object to or bring to the court['s] attention" any non-existent conflict between testimony that was not given and testimony that was.

Attorney DiSantis also did not fail to "object to or bring to the court['s] attention" the argument that defendant Dobson was an independent low-level drug dealer or that he could not have participated in the conspiracy during the time he was incarcerated in New York. Far from failing to raise these issues, the record clearly reflects that Attorney DiSantis developed them through cross-examination, argued them at summation, raised them again in a number of motions for

²⁰ See above, pages 11-12.

judgments of acquittal, as well as on appeal.

In fact, much of the favorable testimony that defendant Dobson now cites to demonstrate his counsel's deficiency was elicited by his counsel on cross-examination. For example, defendant Dobson repeatedly quotes that part of Anna Baez's trial testimony where she admits that Sean Rogers dealt with Ralick Cole and Kaseen Dobson individually.²¹ Specifically, defendant Dobson purports to quote Anna Baez as stating that "there was never a situation where Sean Rogers had a big bag of crack and said, okay, fellows, here's your joint crack, you guys can cut it up later."²² However, the speaker in that quotation was actually Attorney DiSantis.²³

Attorney DiSantis elicited the same testimony from Ralick Cole on cross-examination:

"Q And as you stated on your direct examination and as Anna Baez told us yesterday, the times that you and Mr. Dobson would go to see either Sean Rogers or Anna Baez to purchase drugs, they would be individual sales. You would buy your drugs, and Mr. Dobson would buy his drugs, am I right?

A Yes, that's it. . . .

Q Okay. There was never a single time

²¹ Defendant's Memorandum at pages 9-10, 13-14.

²² Id. at pages 9-10.

²³ N.T. 10/9/08 at page 55.

where either Anna Baez or Sean Rogers put a big bag of crack in front of you and Mr. Dobson and said okay, fellows, here is your crack, break it up, where is the money, see you later. That never happened, right?

A No.

Q That's not how any drug deal that occurred between you and Sean Rogers and Anna Baez, that never happened, am I right?

A No. You're correct."²⁴

In his questioning of other witnesses, Attorney DiSantis consistently highlighted, where he could, the lack of evidence directly connecting defendant Dobson with his co-conspirators. For example, in his cross-examination of Officer Amy Yashkas, the undercover officer who purchased drugs from defendant Dobson, Attorney DiSantis made clear that in none of the conversations she had with defendant Dobson did he mention his co-conspirators.²⁵

Similarly, in his cross-examination of Special Agent Cliff Fiedler, Attorney DiSantis reviewed each of the government's wiretap recordings at length and elicited testimony that none of those recordings featured defendant Dobson together with his co-conspirators, but only individually.²⁶ As discussed

²⁴ N.T. 10/10/08 at pages 94-95.

²⁵ N.T. 10/9/08 at page 146.

²⁶ N.T. 10/8/08 at pages 98-107.

above, Attorney DiSantis also elicited testimony from Special Agent Fiedler regarding defendant Dobson's absence from a substantial part of the conspiracy.²⁷

After the close of the government's case-in-chief, Attorney DiSantis moved for judgments of acquittal under Federal Rule of Criminal Procedure 29(a) for, among other charges, the conspiracy charges against defendant Dobson. In making that motion, Attorney DiSantis highlighted the same testimony discussed here and argued the very point that defendant Dobson now claims Attorney DiSantis did not do -- namely, that

"what we have here are individuals who are buying drugs from the same supplier, the same supplier being Sean Rogers. . . . The fact of the matter is, if the government has proven that Mr. Dobson and Mr. Cole were buying crack cocaine from the same supplier, which I respectfully suggest maybe that's what they've proven, it doesn't prove in and of itself, that they were doing it under the auspices of a conspiracy."²⁸

In his summation, Attorney DiSantis pressed the argument again, telling the jury that "not every individual act of criminality amounts to a conspiracy. Because two people were buying from the same drug supplier doesn't, in and of itself,

²⁷ See above, at pages 14-16.

²⁸ Notes of Testimony of the jury trial conducted on October 14, 2008 in Allentown, Pennsylvania, styled "Transcript of Trial Before Honorable James Knoll Gardner and Jury[,] United States District Court Judge" ("N.T. 10/14/2008") at pages 178-179, 181.

make a conspiracy."²⁹ He then argued that the evidence presented was insufficient to "establish a conspiracy" but rather only suggested that the latter -- "individuals [who] were buying from the same drug supplier" -- was true.³⁰ Attorney DiSantis also argued to the jury that, because there was no conspiracy, the government could not attribute over 50 grams of crack cocaine to defendant Dobson.³¹

Following trial, in which the jury disagreed and found defendant Dobson guilty of the conspiracy charges, Attorney DiSantis once again moved for judgment of acquittal pursuant to Federal Rule of Civil Procedure 29(c), arguing that the evidence presented at trial was insufficient to support a guilty verdict on the conspiracy charges.³²

After sentencing, Attorney DiSantis promptly filed an appeal to the United States Court of Appeals for the Third Circuit on behalf of his client. On appeal, Attorney DiSantis made the same broad argument that the evidence presented at trial was insufficient to support the conspiracy charges of

²⁹ N.T. 10/16/08 at page 43.

³⁰ N.T. 10/16/08 at page 48.

³¹ See id. at pages 46, 61-62.

³² See Motion of Defendant Kaseen Dobson for Judgement of Acquittal Pursuant to Federal Rule of Criminal Procedure 29 or a New Trial New Trial [sic] Pursuant to Federal Rule of Criminal Procedure 33 (Document 146).

which his client was convicted.³³

Upon review of the record, it is clear that Attorney DiSantis did not fail to make any of the valid factual contentions and legal argument that defendant Dobson identifies. On the contrary, defendant's counsel consistently and repeatedly raised these issues as the crux of the defense case at each stage of the litigation. Defendant Dobson has offered no basis for finding otherwise.

It is also abundantly clear that defendant Dobson's actual complaint is not so much with anything that Attorney DiSantis did or did not do, but rather with the fact that the jury, the trial court, and the appellate court did not accept his argument that he was nothing more than an independent low-level drug dealer who happened to have purchased from the same supplier. Defendant Dobson's arguments here amount to little more than a rehash of the same ones presented by his attorney before the jury, this court (through two separate motions for judgment of acquittal), and the Third Circuit. He has merely repackaged them as an ineffective assistance of counsel claim.

However, Attorney DiSantis was not deficient for

³³ See Brief for Appellant, United States v. Dobson, No. 09-3862 (3d Cir. Apr. 12, 2010).

In this appellate brief, Attorney DiSantis made explicit that the reason his client was absent from a substantial part of the conspiracy was that defendant Dobson was incarcerated. Id. at page 5.

failing to ultimately prevail. See United States v. Pungitore, 15 F.Supp.2d 705, 718 (E.D.Pa. 1998) (Antwerpen, J.); United States v. Ramirez, 1997 WL 602753, at *5 (E.D.Pa. Sept. 22, 1997) (Ditter, J.).

Accordingly, I deny defendant's motion on this ground.

Ground Four - Permitting the Amount of Drugs for which Defendant Dobson Was Found Responsible to Trigger a Mandatory Minimum

Finally, defendant Dobson also claims that Attorney DiSantis's unspecified

"deficiency caused Petitioner Dobson to be charged and convicted on insufficient evidence to support a conspiracy, resulting in calculating small quantity drug transactions together to triggered [sic] the mandatory minimum instead of the proper methodology for the actual offense, as an independent low-level drug dealer".³⁴

Defendant Dobson does not clearly differentiate this ground from his previous ground. Nor does he explain how Attorney DiSantis could have possibly prevented the amount of drugs for which defendant Dobson was found responsible, from triggering a mandatory minimum sentence.³⁵

³⁴ Defendant's Memorandum at page 15.

³⁵ Though not raised in this section, in other parts of Defendant's Memorandum and Defendant's Reply, defendant Dobson claims that he could not have been found responsible for over 50 grams of crack cocaine, because that quantity was based on drugs sold while he was incarcerated. See Defendant's Memorandum at pages 10-11; Defendant's Reply at pages 11-12.

(Footnote 35 continued):

On the contrary, as with the previous ground, defendant Dobson does little more than to rehash his argument that "[t]he evidence of this case is actually consistent with . . . independent low-level drug dealers who knows one another who buy their drugs from the same high-level drug dealer—more so than the charged and convicted conspiracy offense imposed on Petitioner Dobson."³⁶

For the same reasons elaborated in the previous section, defendant Dobson's arguments here have no merit. Accordingly, I deny defendant's motion on this ground.

Evidentiary Hearing

In deciding a section 2255 motion, "[t]he district court is required to hold an evidentiary hearing 'unless the motion and files and records of the case show conclusively that the movant is not entitled to relief.'" United States v. Booth, 432 F.3d 542, 545-546 (3d Cir. 2005) (quoting United States v.

(Continuation of footnote 35):

Defendant does not clearly explain how this relates to his counsel's alleged deficiency. In either case, this claim is plainly frivolous. All of the overt acts alleged in the Superseding Indictment, which involved more than 50 grams of crack cocaine, occurred after defendant Dobson returned to the area.

Moreover, the jury was presented with evidence and argument that defendant Dobson did not participate in the conspiracy until at least September of 2007. See above at pages 14-16. The jury still found defendant Dobson culpable for over 50 grams of crack cocaine. That jury determination was well-supported on the record by the mutually corroborating testimony of Ralick Cole and Anna Baez, among others. See Government's Response at pages 8-9.

³⁶ Defendant's Memorandum at page 12.

McCoy, 410 F.3d 124, 134 (3d Cir. 2005)). The decision whether to hold a hearing is committed to the sound discretion of the district court. Booth, 432 F.3d at 545.

I deny defendant Dobson's motion without holding an evidentiary hearing, because the motion, files and records of the case conclusively show that defendant is not entitled to relief.

Certificate of Appealability

Local Appellate Rule 22.2 for the United States Court of Appeals for the Third Circuit 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." "A certificate of appealability may 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 motion 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 deny defendant's motion without a hearing. 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
v.)	No. 08-cr-00134-003
)	
KASEEN DOBSON,)	Civil Action
)	No. 12-cv-05794
Defendant)	

O R D E R

NOW, this 24th day of March, 2016, upon consideration of the following documents:

- (1) Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody ("Defendant's § 2255 Motion"), filed by defendant Kaseen Dobson pro se on October 11, 2012 (Document 221);

- (2) Motion for Leave to File Memorandum of Law in Support of 2255 Petition, which motion for leave was filed by defendant Kaseen Dobson pro se on April 12, 2013 (Document 223), together with Exhibit A, including

Memorandum of Law in Support of 2255 Petition;

Affidavit in Support of the Motion Pursuant to 28 U.S.C. § 2255; and

Pertinent Part of Grand Jury Transcript of February 12, 2008;¹

- (3) Movant's Supplemental Amendment Rule 15 Federal Rules of Civil Procedure, which supplemental brief to Defendant's § 2255 Motion was filed on July 23, 2013 (Document 226);

¹ By Order dated and filed November 10, 2015, I granted pro se defendant Kaseen Dobson's motion for leave and deemed his Memorandum of Law in Support of 2255 Petition, Affidavit in Support of the Motion Pursuant to 28 U.S.C. § 2255, and Pertinent Part of Grand Jury Transcript of February 12, 2008, all attached as Exhibit A to his motion for leave, as timely filed and incorporated as part of Defendant's § 2255 Motion.

- (4) Government's Response in Opposition to Defendant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody, which response was filed on December 2, 2015 (Document 229);
- (5) Petitioner's Reply to Government's Opposition to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255, which reply was filed by defendant Kaseen Dobson pro se on January 7, 2016 (Document 233);
- (6) Indictment filed March 11, 2008 in the United States District Court for the Eastern District of Pennsylvania (Document 1); and
- (7) Superseding Indictment filed July 15, 2008 in the United States District Court for the Eastern District of Pennsylvania (Document 47);

upon consideration of the exhibits and record papers; and for the reasons set forth in the accompanying Opinion,

IT IS ORDERED that Defendant's § 2255 Motion is denied.

IT IS FURTHER ORDERED that because no reasonable jurist could find this ruling debatable and because there has been no substantial showing of the denial of a constitutional right, 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