

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO

3 ARMANDO DIAZ,

4 Petitioner,

5 v.

6 UNITED STATES OF AMERICA,

7 Respondent.

Civil No. 11-2232 (JAF)

(Crim. No. 10-251)

8 **OPINION AND ORDER**

9 Petitioner, Armando Díaz, brings this pro-se petition for relief from a federal court
10 conviction pursuant to 28 U.S.C. § 2255. (Docket No. 1.) Respondent, the United States of
11 America, opposes. (Docket No. 8.)

12 **I.**

13 **Factual and Procedural History**

14 We draw the following narrative from Petitioner's motions, the Government's response,
15 and the docket of the related criminal case. Petitioner was indicted as a drug seller on narcotics
16 trafficking and firearms charges on July 14, 2010. (Crim. No. 10-251, Docket No. 3.) After
17 protracted plea negotiations, Petitioner decided he no longer wanted to plead guilty. On
18 December 16, 2010, through his counsel, Ismael Rodríguez-Izquierdo ("Rodríguez"), Petitioner
19 filed a motion requesting withdrawal of legal representation, which explained that Petitioner had
20 told counsel that "he would not sign the outstanding plea offer nor go to trial," and had
21 requested that Rodríguez resign as counsel. (Crim. No. 10-251, Docket No. 857.) Rodríguez
22 agreed, stating that he believed Petitioner rejected his advice and that Petitioner appeared "to

1 be very vulnerable to external influences from [his fellow] inmates who . . . continuously
2 bombard him . . . with incorrect legal advice.” (Id.) The change of plea hearing was cancelled,
3 and this court met with Petitioner and counsel to discuss the matter. (Crim. No. 10-251, Docket
4 No. 891.) We refrained from deciding the withdrawal motion and, on December, 17, 2010, we
5 appointed attorney José Aguayo (“Aguayo”) to “discuss the case and plea agreement with the
6 defendant,” offering an independent second opinion and further information that would allow
7 Petitioner to better evaluate his choices. (Id.) On December 22, 2010, Aguayo filed a motion
8 with this court explaining that he had reviewed the outstanding plea agreement, as well as the
9 indictment and the corresponding sentencing guidelines following a conviction in each scenario.
10 (Crim. No. 10-251, Docket No. 911). Subsequently, he had visited Petitioner and discussed
11 several topics, including: The evidence against him, the “potential sentencing guidelines with
12 a criminal history III should he be found guilty at trial versus the plea offer,” his right to reject
13 the plea offer, and the government’s right to negotiate a plea offer (and right not to negotiate
14 one), as well as the possibility of taking a straight plea. (Id.) Aguayo also explained that he
15 gave Petitioner his address and phone number should he have any further questions. (Id.) At
16 his rescheduled change of plea hearing on January 29, 2010, Petitioner informed this court that
17 he would stand trial. (Crim. No. 10-251, Docket No. 942.) The same day, Aguayo was
18 terminated as counsel, leaving Rodríguez as sole trial counsel. After we set the trial date, a
19 tentative change of plea hearing was set for January 12, 2011. Petitioner pleaded guilty the
20 following day.

21 On January 13, 2011, Petitioner pleaded guilty to one count of conspiracy to possess with
22 intent to distribute narcotics within 1,000 feet of housing facilities owned by a public housing

1 authority, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 860, stipulating to at least 300 grams
2 but less than 400 grams of cocaine.¹ (Crim. No. 10-251, Docket No. 1009 at 1–3.) He also
3 pleaded guilty to a second count—the knowing carrying and use of a firearm during and in
4 relation to a drug trafficking offense, in violation of 18 U.S.C. §§ 2 and 924(c)(1)(A). (Id.) In
5 exchange, the government agreed to dismiss the counts remaining against him. (Id. at 8.) We
6 took Petitioner’s plea colloquy on January 13, 2011, and we denied the attorney withdrawal
7 motion on January 21, 2011. (Crim. No. 10-251, Docket No. 1056.) On May 19, 2011, we
8 sentenced Petitioner to 106 months’ imprisonment (forty-six months for the narcotics count
9 served consecutively with sixty months for the firearms count) and a supervised release term
10 of six years for the first count (to run concurrently with five years for the firearms count).
11 (Crim. No. 10-251, Docket Nos. 1805; 1806.) Petitioner did not file a direct appeal. (Docket
12 No. 8 at 2.) On December 20, 2011, Petitioner submitted his motion seeking § 2255 relief.
13 (Docket No. 1.)

14 II.

15 Standard for Relief Under 28 U.S.C. § 2255

16 A federal district court has jurisdiction to entertain a § 2255 petition when the petitioner
17 is in custody under the sentence of a federal court. See 28 U.S.C. § 2255. A federal prisoner
18 may challenge his or her sentence on the ground that, inter alia, it “was imposed in violation of
19 the Constitution or laws of the United States.” Id. The petitioner is entitled to an evidentiary

¹ Count one of the indictment charged conspiracy to possess with intent to distribute: At least one kilogram or more of heroin, fifty grams or more of cocaine base (“crack”); five kilograms or more of cocaine; one hundred kilograms or more of marijuana; detectable amounts of Oxycodone; and detectable amounts of Alprazolam, within 1,000 feet of housing facilities owned by a public housing authority. (Crim. No. 10-251, Docket No. 1009 at 1.)

1 hearing unless the “allegations, accepted as true, would not entitle the petitioner to relief, or
2 . . . ‘are contradicted by the record, inherently incredible, or conclusions rather than statements
3 of fact.’” United States v. Rodríguez Rodríguez, 929 F.2d 747, 749-50 (1st Cir. 1991) (quoting
4 Dziurgot v. Luther, 897 F.2d 1222, 1225 (1st Cir. 1990)); see 28 U.S.C. § 2255(b).

5 III.

6 Analysis

7 Because Petitioner appears pro se, we construe his pleadings more favorably than we
8 would those drafted by an attorney. See Erickson v. Pardus, 551 U.S. 89, 94 (2007).
9 Nevertheless, Petitioner’s pro-se status does not excuse him from complying with procedural
10 and substantive law. Ahmed v. Rosenblatt, 118 F.3d 886, 890 (1st Cir. 1997). Petitioner argues
11 that: 1) there was insufficient evidence to support his conviction for the firearms count; 2) this
12 court ignored his allegations of insufficient evidence and coercion; 3) this court refused his
13 request for new counsel; and 4) he received ineffective assistance of counsel because he was
14 coerced into pleading guilty to the firearms count. We discuss each argument in turn below and,
15 finding each lacking in merit, dismiss this petition.

16 A. Sufficiency of Evidence for the Firearms Count

17 Petitioner first argues that the government lacked evidence to prove he carried and used
18 firearms as detailed in the firearms count. (Docket No. 1-1 at 2.) We first note that normally,
19 a “significant bar on habeas corpus relief is imposed when a prisoner did not raise claims at trial
20 or on direct review.” Owens v. United States, 483 F.3d 48, 56–57 (1st Cir. 2007). This court
21 may consider such “claims for the first time on habeas corpus review only if the petitioner has
22 ‘cause’ for having procedurally defaulted his claims, and if the petitioner suffered ‘actual

1 prejudice' from the errors. ” Id. (quoting United States v. Frady, 456 U.S. 152, 168 (1982)).
2 The government has not raised the issue of procedural default, which “is an affirmative defense,
3 and a plaintiff generally is not required to negate an affirmative defense unless and until the
4 defendant has placed it in issue.” Oakes v. United States, 400 F.3d 92, 98 (1st Cir. 2005). This
5 court can raise procedural default sua sponte, but we must first provide Petitioner with notice
6 and an adequate opportunity to show cause and prejudice existed (apart from ineffective
7 assistance of counsel). Id. at 97 (holding district court can raise procedural default sua sponte
8 if waived by government, but noting that court must provide petitioner with adequate notice).

9 However, we need not resort to such a measure here because we reject Petitioner’s
10 argument on the merits without resorting to the affirmative defense. See Tse v. United States,
11 290 F.3d 462, 465 (1st Cir. 2002) (citations omitted) (“But because we are persuaded that each
12 of these claims is meritless, we need not decide whether any of them is immune to principles
13 of default, or, alternatively, whether [the petitioner] can establish cause and actual prejudice . . .
14 to excuse any such default.”)

15 Petitioner argues that there was insufficient evidence to show that he carried or used
16 firearms within the meaning of § 924(c)(1)(A). (Docket No. 1-1 at 7.) He argues that he did not
17 possess a firearm and was not charged with possession of one, and he also cites scattered
18 caselaw regarding the meanings of “use” and “carry” of a firearm within the statute. (Id.)
19 However, Petitioner’s argument misses the mark. In a similar case, the First Circuit rejected
20 the arguments of a defendant who, like our Petitioner, pointed to “a passage in the PSI Report,
21 which informed the sentencing court that the appellant ‘denied ownership of the firearm,’
22 contradicted his admissions and so undermined the factual basis for his plea as to require the

1 court to take corrective action.” United States v. Negron-Narvaez, 403 F.3d 33, 40 (1st Cir.
2 2005). Likewise, regardless of whether Petitioner “disavowed *owning* the gun, ownership was
3 not an element of the offense of conviction[, and] the statement did nothing to call into
4 question” his aiding and abetting the use and carry of firearms.² Id. (citations omitted). Beyond
5 his denial of firearm possession, Petitioner’s argument consists of hazy claims that the
6 allegations were “Totally Devoid of Evidentiary support” and that the government did not
7 present “any evidence whatsoever.” (Docket No. 1-1 at 7–8.) We reject this argument, as the
8 stipulated facts obviated the need for evidence such that might be required in a trial.

9 However, “Rule 11 requires that ‘before entering judgment on a guilty plea, the court
10 must determine that there is a factual basis for the plea.’” United States v. Matos-Quinones, 456
11 F.3d 14, 21 (1st Cir. 2006) (quoting Fed. R. Crim. P. 11(b)(3)). In plea proceedings, the district
12 court must discharge its duty to verify whether the “record permits a conclusion that the plea
13 has a rational basis in fact.” Id. (quoting Negron-Narvaez, 403 F.3d at 37). Rule 11 requires
14 “a reasoned basis to believe that the defendant actually committed the crime to which he is
15 admitting guilt,” but it does not require the court to conduct a mini-trial during the plea
16 colloquy, and certainly does not “require a test of guilt versus innocence, much less proof
17 beyond a reasonable doubt that the defendant is in fact guilty.” Id. (internal quotation marks
18 and citations omitted).

² Moreover, Petitioner was convicted of aiding and abetting other persons in carrying and using a firearm in the contested second count. See United States v. Morales-Cartagena, 987 F.2d 849, 853 (1st Cir. 1993) (“[A]iding and abetting is a form of agency in which the law holds a defendant criminally responsible for the acts and conduct of another person even though the defendant may not have personally committed every act constituting the offense alleged.”)

1 The district court may find—and we did so find—such a factual basis in “the defendant’s
2 admissions and concessions.” Negron-Narvaez, 403 F.3d at 37. In the plea agreement,
3 Petitioner stipulated that “during and in relation to such trafficking crimes, Armando Diaz,
4 aiding and abetting other persons, carried and used firearms.” (Crim. No. 10-251, Docket
5 No. 1009 at 11 (emphasis added).) “By entering a plea of guilty, the accused is not simply
6 stating that he did the discrete acts described in the indictment; he is admitting guilt of a
7 substantive crime.” United States v. Broce, 488 U.S. 563, 570 (1989). Moreover, at the change
8 of plea hearing, we reviewed the facts as stipulated in the plea agreement, asking Petitioner, “Is
9 that what happened, sir?” He replied “yes.” (Crim. No. 10-251, Docket No. 2561 at 16.) The
10 First Circuit has found “that a defendant, by responding to another person’s explanation of what
11 happened, may thereby establish the factual basis needed to undergird a guilty plea.”
12 Negron-Narvaez, 403 F.3d at 39–40 (citations omitted); see also United States v.
13 Martinez-Martinez, 69 F.3d 1215, 1221 (1st Cir. 1995) (citations omitted) (deeming factual
14 “description in open court—confirmed by [defendant]—sufficient to describe the elements of
15 the charges”). A defendant’s statements during a properly-conducted plea colloquy carry a
16 presumption of truthfulness. Hernandez-Hernandez v. United States, 904 F.2d 758, 762 (1st
17 Cir. 1990) (citations omitted). Petitioner puts forth nothing to rebut this presumption—beyond
18 his possession argument, which we have already rejected—and so this claim fails.

19 **B. Alleged Error of Ignoring Claims of Coercion and Lack of Evidence**

20 Petitioner next invokes the Due Process Clause, arguing this court erred because we “did
21 not take into consideration that the Presentence Investigation Report [(“PSR”)] contains relevant
22 information related to” his claims regarding: (1) alleged insufficient evidentiary support for the

1 firearms charge and (2) “the Pressure employed by [Rodriguez] to induce by coercion on
2 [Petitioner] to Involuntarily Plead Guilty to the Firearm Count [sic].” (Docket No. 1-1 at 6.)
3 As discussed above, the PSR recounts Petitioner’s statements that “the Government has no
4 evidence regarding the firearm count because [the gun] was not his” and that “he felt pressured
5 to plead guilty as to the firearm because . . . he was not given other options, other than going
6 to trial” and that he pleaded guilty “just to get it over with.” (Crim. No. 10-251, Docket
7 No. 1595 at 34.) As discussed below, we reject his argument not just because we did, in fact,
8 consider these two claims during the colloquy and sentencing, but also because those claims
9 lack merit.

10 **1. Evidentiary Support**

11 We have already discussed, and rejected, Petitioner’s arguments regarding the sufficiency
12 of the evidence for the firearms count above in Part III.A. Once again, Petitioner argues that
13 the firearm was not his and, once again, we reject this possession argument as irrelevant to the
14 offense charged. Negron-Narvaez, 403 F.3d at 40. Moreover, Petitioner’s claim that this court
15 failed in its duty to investigate these statements in the PSR fails for lack of a factual basis.
16 (Docket No. 1-1 at 9.) We questioned Petitioner and Rodríguez about the statements in the PSR
17 before conducting the sentencing hearing. (Crim. No. 10-251, Docket No. 2650 at 3–7.) On
18 behalf of his client, Rodríguez explicitly raised both the issues of evidentiary sufficiency and
19 his feeling “forced.” (Id. at 5–6.) This court then questioned Petitioner at length regarding his
20 entry of the plea and Petitioner confirmed that he wanted to proceed with sentencing, stating
21 “I’m guilty” and that “there is no problem.” (Id. at 7.)

1 **2. Coercion**

2 A guilty plea is constitutionally valid only to the extent it is “voluntary and intelligent.”
3 Bousley v. United States, 523 U.S. 614, 618 (1998). Petitioner argues that his counsel used
4 “psychological pressure, lies, fear and intimidation in order to coerce and induce [him] to
5 involuntarily plead guilty [sic],” and he did “deliberately mislead, trick and force to believe, that
6 would be impossible to drop the firearm charge because that have to come from Washington,
7 even though the fact that [counsel] knew that the government did not have any evidence
8 whatsoever that could sustain the firearm conviction [sic].” (Docket No. 1-1 at 8.) Despite its
9 ornate introduction, the argument proves hollow; Petitioner offers one sentence of elaboration,
10 in which his most damning allegation is that counsel told him that if he went to trial he “would
11 receive more than ten years.” (Id.) We will also consider the PSR, which contains his
12 statements that he had no “other options, other than going to trial” and pleaded guilty “just to
13 get it over with.” (Crim. No. 10-251, Docket No. 1595 at 34.)

14 Apart from the discussion about the consequences of trial, Petitioner does not offer any
15 other examples of alleged coercion by his counsel, and so his argument fails. The “strategic
16 decision to plead guilty was not rendered involuntary by the anxieties and time pressures
17 confronting [Petitioner. His] unenviable position . . . is common among criminal defendants,
18 and hardly exceptional enough to evince an overbearing of his will or to have precluded a
19 rational assessment of the available options.” United States v. Marrero-Rivera, 124 F.3d 342,
20 349-350 (1st Cir. 1997) (citations omitted); see also United States v. Gates, 698 F. Supp. 2d
21 212, 217 (D. Me. 2010) (citations omitted) (“In other words, his claim is not that his lawyer
22 threatened him or otherwise coerced him, but that his lawyer convinced him to plead guilty and
23 that circumstances made him feel that he had no choice but to accept a plea . . .”). This court

1 ensured at the change of plea hearing that Petitioner knew that he had a choice and felt secure
2 in his choice to plead, even taking a sidebar to discuss the plea with him. Additionally, at both
3 the change of plea and sentencing hearings, (Crim. No. 10-251, Docket Nos. 2650 at 3–7; 2651
4 at 14, 17), we inquired as to whether anyone had “threatened or otherwise induced” Petitioner’s
5 plea, and “specifically asked [him] whether anyone had forced him to plead guilty, to which he
6 responded no. Such statements in open court during a plea hearing ‘carry a strong presumption
7 of verity.’” United States v. Martinez-Molina, 64 F.3d 719, 733 (1st Cir. 1995) (quoting
8 Blackledge v. Allison, 431 U.S. 63, 74 (1977).

9 A court is entitled to rely upon the defendant's assurances at the
10 colloquy unless there is good reason for disregarding them, such as
11 . . . undisclosed threats of violence. No such good reason is alleged
12 in this case. Moreover, we have typically disregarded
13 representations at a plea colloquy only when the allegations were
14 highly specific and usually accompanied by some independent
15 corroboration. As shown below, [Petitioner’s] allegations have no
16 independent corroboration to support disregarding his
17 representations at the change of plea colloquy. Thus, we not only
18 view his plea colloquy as evidential, but sufficiently conclusive to
19 contradict his claims.

20 United States v. Pulido, 566 F.3d 52, 59–60 (1st Cir. 2009) (internal quotations and citations
21 omitted).

22 Indeed, Petitioner provides no corroboration of any sort. But the lack of corroboration
23 proves less problematic than the vague, conclusory, and speculative nature of his allegations.
24 Petitioner does not claim that counsel threatened specific unfortunate consequences if he did
25 not plead, nor does he elaborate at all on the nature of the alleged force. Such half-baked and
26 vague claims do not overcome the presumption of validity regarding his contradictory
27 statements made in open court. See United States v. Miranda, 654 F.3d 130, 139 (1st Cir. 2011)

1 (“In short, because [Petitioner’s] motion and sworn statement were so lacking in detail and
2 corroboration, the district court was justified in relying on the change-of-plea colloquy and
3 signed plea agreement to deny [Petitioner’s] motion, and in doing so without an evidentiary
4 hearing.”)

5 **C. Denial of Request for New Counsel**

6 Petitioner next argues that this court erred in declining to appoint new counsel through
7 a “summary denial of defendant’s motion for new counsel without further inquiry.” (Docket
8 No. 1-1 at 7.) Petitioner claims, without elaboration, that there was “conflict” and that his
9 counsel failed to engage in “meaningful adversarial testing” of the prosecution’s case. (Id. at
10 8.) His threadbare arguments lack both a factual and legal basis.

11 “Not every bare allegation of a disagreement between lawyer and client is enough to
12 trigger a right to new counsel.” United States v. Segarra-Rivera, 473 F.3d 381, 385 (1st Cir.
13 2007) (citing United States v. Mota-Santana, 391 F.3d 42, 47 (1st Cir. 2004)). “Moreover, the
14 mere fact that a defense attorney and his client disagree about the advisability of a plea does not
15 justify appointing new counsel.” United States v. Genao, 281 F.3d 305, 313 (1st Cir. 2002).

16 As recounted above in Part I, this court devoted substantial attention to this request, and
17 discussed it with both Petitioner and counsel. Mindful of the tension that stemmed from
18 Petitioner’s frustration with his situation and his puzzling distrust of Rodríguez, we took special
19 steps to ensure that Petitioner felt he had received sufficient advice to make an informed choice;
20 we temporarily appointed Aguayo to offer a sort of second opinion regarding the choice whether
21 to plead. When we later questioned Petitioner during sentencing regarding his prior troubles
22 with counsel, he simply responded that he had “felt bad because there wasn’t very good
23 communication” and stated that when counsel visited him prior to sentencing he had not wanted

1 to meet with him because he “had a stomachache.” (Crim. No. 10-251, Docket No. 2650 at 10.)
2 The petitioner gives even fewer details or explanation of the mysterious conflict.

3 He has failed to “show that the conflict between lawyer and client was so profound as
4 to cause a total breakdown in communication, preventing an adequate defense. Moreover, to
5 the extent that there was a breakdown, it was the doing of defendant himself, and [a] defendant
6 cannot compel a change [of] counsel by . . . refusing to talk with his lawyer.” Mota-Santana,
7 391 F.3d at 48. Before denying the request, we considered various factors, including the
8 “timing of the motion, [Rodríguez’] intimate knowledge of the case, the likely value of that
9 knowledge at sentencing, the conclusory nature of the reasons offered by the appellant and the
10 lawyer to support the request for new counsel, and the absence of any discernible disagreement
11 about sentencing issues.” Myers, 294 F.3d at 208. We conclude now, as we did then, that “no
12 good cause existed for the appointment of new counsel” and it was not worth “the concomitant
13 delay in sentencing that such an appointment would entail.” Id.

14 **D. Ineffective Assistance of Counsel: Coercion and the Plea Agreement**

15 The Sixth Amendment “right to counsel is the right to the effective assistance of
16 counsel.” Strickland v. Washington, 466 U.S. 668, 686 (1984) (internal quotation marks
17 omitted); see U.S. Const. amend. VI. To prevail on a claim of ineffective assistance of counsel,
18 Petitioner must show not only a deficient performance by trial counsel, “but also that the
19 deficient performance prejudiced the defense and deprived the defendant of a fair trial.” United
20 States v. Manon, 608 F. 3d 126, 131 (1st Cir. 2010) (quoting Strickland, 466 U.S. at 687).

21 Petitioner may satisfy the deficient-performance prong by showing that the trial counsel’s
22 representation “fell below an objective standard of reasonableness,” a standard that is informed
23 by “prevailing professional norms.” Peralta v. United States, 597 F.3d 74, 79 (1st Cir. 2010)

1 (quoting Strickland, 466 U.S. at 688). “The prejudice factor requires the defendant to ‘show
2 that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of
3 the proceeding would have been different.’” Manon, 608 F. 3d at 131–32 (quoting Strickland,
4 466 U.S. at 694).

5 Petitioner alleges ineffective assistance of counsel, recycling his claim that counsel
6 forced him to plead guilty to the firearms count despite the alleged lack of evidence. (Docket
7 No. 1-1 at 2–3.) Again Petitioner gives few details or specifics—save for the disjointed
8 allegations that counsel “did not file any motion to suppress evidence or for the dismissal of the
9 firearm count” and that counsel told him that if he lost at trial instead of pleading he “would
10 receive more than ten years on the Drug Conspiracy Charge [sic].” (Id. at 9.) These actions as
11 alleged do not constitute ineffective assistance, but, even if they did, Petitioner would fail the
12 prejudice prong.

13 Petitioner has failed “to establish that but for [counsel’s] conduct, [he] would have
14 foregone a guilty plea and run the gauntlet of trial.” Moreno-Espada v. United States, 666 F.3d
15 60, 66 (1st Cir. 2012). Petitioner has filed no “sworn statements or affidavits to support his
16 contention,” and he has not even stated that he “would have sought trial, and has instead
17 buttressed his case on groundless affirmations [S]uch self-serving statements
18 unaccompanied by either a claim of innocence or the articulation of any plausible defense that
19 could have been raised had a defendant opted for a trial, are insufficient to demonstrate the
20 required prejudice.” Id. at 66–67 (internal quotation marks and citations omitted). Thus, we
21 reject Petitioner’s conclusory claims for their failure to demonstrate prejudice. See id. at 66
22 (explaining that district court may dismiss § 2255 petition without evidentiary hearing “if it
23 plainly appears on the face of the pleadings that the petitioner is not entitled to the requested

1 relief, or if the allegations . . . consist of no more than conclusory prognostications and perfervid
2 rhetoric” (quoting United States v. LaBonte, 70 F.3d 1396 (1st Cir. 1995))).

3 Petitioner argues that we should presume prejudice because, he alleges, counsel did not
4 subject the prosecution’s case to “meaningful adversarial testing” under United States v. Cronic,
5 466 U.S. 648, 659 (1984). (Docket No. 1-1 at 8.) “To qualify for the Cronic exception, “the
6 circumstances leading to counsel’s ineffectiveness must be so egregious that the defendant was
7 in effect denied any meaningful assistance at all.” Manon, 608 F.3d at 132 (internal quotation
8 marks omitted) (citing United States v. Theodore, 468 F.3d 52 (1st Cir. 2006)). Courts “have
9 found that standard satisfied where counsel fell asleep during the presentation of evidence
10 against the defendant, where counsel was silent throughout the trial, and where counsel adopted
11 and acted upon a belief that his client should be convicted. The circumstances here are a far cry
12 from such scenarios.” Id. (internal quotation marks and citations omitted).

13 Finally, if Petitioner means to raise further arguments through his summary of the
14 holdings of various ineffective assistance cases, we cannot decipher them. He does not directly
15 make any further claims or mentions of the facts related to his own case, and so need we go no
16 further. See Cody v. United States, 249 F.3d 47, 53 n.6 (1st Cir. 2001) (ineffective assistance
17 claim raised in a perfunctory manner in § 2255 proceeding deemed waived).

18 IV.

19 Certificate of Appealability

20 In accordance with Rule 11 of the Rules Governing § 2255 Proceedings, whenever we
21 deny § 2255 relief we must concurrently determine whether to issue a certificate of appealability
22 (“COA”). We grant a COA only upon “a substantial showing of the denial of a constitutional
23 right.” 28 U.S.C. § 2253(c)(2). To make this showing, “[t]he petitioner must demonstrate that

1 reasonable jurists would find the district court's assessment of the constitutional claims
2 debatable or wrong.” Miller-El v. Cockrell, 537 U.S. 322, 338 (2003) (quoting Slack v.
3 McDaniel, 529 U.S. 473, 484 (2000)). We see no way in which a reasonable jurist could find
4 our assessment of Petitioner’s constitutional claims debatable or wrong. Petitioner may request
5 a COA directly from the First Circuit, pursuant to Rule of Appellate Procedure 22.

6 **V.**

7 **Conclusion**

8 For the foregoing reasons, we hereby **DENY** Petitioner’s § 2255 motion (Docket No. 1).
9 Pursuant to Rule 4(b) of the Rules Governing § 2255 Proceedings, summary dismissal is in
10 order because it plainly appears from the record that Petitioner is not entitled to § 2255 relief
11 in this court.

12 **IT IS SO ORDERED.**

13 San Juan, Puerto Rico, this 10th day of May, 2012.

14 s/José Antonio Fusté
15 JOSE ANTONIO FUSTE
16 U.S. District Judge