

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 15-13261
Non-Argument Calendar

D.C. Docket Nos. 3:12-cv-00881-MMH-MCR; 3:09-cr-00051-MMH-MCR-1

FREDRICK CAMPBELL,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(October 2, 2018)

Before ED CARNES, Chief Judge, HULL, and JULIE CARNES, Circuit Judges.

PER CURIAM:

Our previous opinion in this case, Campbell v. United States, 891 F.3d 940 (11th Cir. 2018), is vacated and this opinion is issued in its place.

Fredrick Campbell, a federal prisoner proceeding pro se, appeals the district court's dismissal of his 28 U.S.C. § 2255 motion alleging ineffective assistance of counsel. A jury found Campbell guilty of drug and firearms offenses and he was sentenced to 195 months in prison. We affirmed his convictions and sentence on direct appeal. He then filed this § 2255 motion, contending that his pretrial counsel rendered ineffective assistance in investigating and litigating Campbell's motion to suppress evidence. The district court denied Campbell's § 2255 motion without an evidentiary hearing on the grounds that Campbell could not establish deficient performance or prejudice. This is his appeal.

I. FACTS AND PROCEDURAL HISTORY

A. Facts

In late 2008 Detectives Richard Hughey and Charles Bates of the Jacksonville Sheriff's Office received a tip from a confidential informant that Campbell was using United Parcel Service and Federal Express to ship marijuana to Jacksonville. The detectives used computer databases to identify several addresses associated with Campbell, one of which was 7635 Praver Drive East in Jacksonville. Detective Hughey contacted William Brown, a UPS employee, and

told Brown to notify him if UPS received any packages being shipped to addresses associated with Campbell.

In January 2009 a UPS driver told Brown that he had a package addressed for a “Maureen Lawrence” at the Prayer house. Brown took the package to his office, opened it, and found that it contained marijuana.¹ He contacted Detective Hughey who, along with Detective Bates, arrived at the UPS facility shortly thereafter to inspect the package. The detectives saw the marijuana sitting in the open package, determined that it was in fact marijuana, and resealed the package, intending to make a controlled delivery of it. They also obtained an anticipatory search warrant for the house, which they would execute after delivering the package.

Officers set up surveillance around the Prayer house before making the controlled delivery. Detective Hughey observed a man, later identified as Campbell’s brother, Alex, drive up to the house, pull into the garage, and close the garage door. About five minutes later he opened the garage door and drove off. A few minutes after Alex left, another vehicle arrived at the house and the passenger, whom the police identified as Campbell, got out. The vehicle then drove off, and a detective dressed in plainclothes walked up to Campbell in the front yard to give

¹ UPS prohibits the shipment of illegal drugs, and it also reserves the right to open and inspect any package that it ships. Brown testified that he opened the package to determine whether it contained any contraband.

him the package. Campbell said that the package might belong to a sibling with the last name of Lawrence, but he did accept the package and put it inside the garage. After closing the garage door from the outside, Campbell knocked on the front door of the house. A person later identified as Tamaro Wiley opened it and let Campbell in. A few minutes later, Alex returned to the house, drove his vehicle inside the garage, and closed the garage door from the inside.

The officers executed the search warrant about ten minutes later. They found the UPS package in a car parked in the garage; they also found in the car another package of marijuana, which weighed 50 pounds. As the officers searched the house for marijuana, they found a number of other relevant items: four firearms, including an assault rifle with a 100-round magazine; a laptop with an open screen displaying a UPS tracking number; a money counter; several thousand dollars in cash; a lease agreement naming Alex as the lessee of the Prayer house; lease agreements for other houses; and storage unit rental agreements.

The officers arrested Campbell and his brother. When they asked Campbell where he lived, he initially gave the P.O. Box listed on his driver's license but then identified the Prayer house as his residence. When the officers searched Campbell they found on him a small amount of marijuana and more than \$5,000 in cash.

The officers used the documents they seized from the Prayer house to obtain search warrants for storage Unit 226 at Atlantic Self-Storage and for a house

located at 4708 Trevi Drive in Jacksonville. In the storage unit, they found more than \$500,000 in cash. At the Trevi house, the officers found money grams; hotel, car rental, and airline receipts; various notes containing addresses, phone numbers, and tracking numbers; and storage unit rental agreements. Those rental agreements led the police to conduct more authorized searches at other storage units, one of which (storage Unit 2002) contained an assault rifle and boxes of shipping receipts that were connected to marijuana shipments.

B. Procedural History

A grand jury indicted Campbell, his brother Alex, his mother, and his sister for conspiracy to distribute 1,000 kilograms or more of marijuana, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A) and 846. Campbell and his brother were also charged with possessing marijuana with intent to distribute, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A) and 846, and possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A).

Campbell filed a motion to suppress the evidence obtained in Brown's search of the package at the UPS facility, the officers' search of the Prayer house, and the search of storage Unit 2002. He also sought to exclude the evidence taken from storage Unit 226 and the Trevi house. The government argued, among other things, that Campbell did not have standing to challenge the Prayer house search because he did not have a legitimate expectation of privacy in that house.

The magistrate judge held a hearing in August 2009 and the government called Brown, Detective Hughey, and Detective Bates. Campbell's pre-trial counsel, Ross Haine, did not call any witnesses, and instead attempted to show through cross-examination that Campbell had a legitimate expectation of privacy in the Prayer house. Haine argued to the magistrate judge that Campbell had standing to challenge the search of the Prayer house because computer searches revealed that he was associated with the Prayer house and had given it as his residence address when he was arrested. Haine urged that those facts showed that Campbell was more than a mere visitor at the Prayer house and had a legitimate expectation of privacy in it.

The magistrate judge issued a report recommending that Campbell's motion be denied because he did not have a legitimate expectation of privacy in the Prayer house. The magistrate judge found that the officers exceeded the scope of their authority under the warrant when they seized the storage unit agreement documents from the Prayer house, which led them to obtain search warrants for the storage units. But the magistrate judge found that Campbell could not challenge the evidence obtained from the storage units as fruits of the poisonous tree because he did not have standing to challenge the Prayer house search. The district court adopted the magistrate judge's recommendation and denied Campbell's motion to suppress in its entirety.

At Campbell's jury trial, he testified in his own defense. He admitted that he had marijuana shipped from California to Jacksonville and sold it, but he denied that any of his family members were involved in that crime. He also denied that he had ever rented or resided in the Prayer house. The jury found Campbell guilty on all three charges.² At the sentence hearing, the district court applied the obstruction of justice enhancement after finding that he had committed perjury by lying under oath about his family's involvement in the marijuana operation, the amount of marijuana he had been trafficking, and other matters. The court sentenced him to 195 months imprisonment.

Campbell appealed his convictions and sentence, which we affirmed. United States v. Campbell, 434 F. App'x 805 (11th Cir. 2011) (unpublished). In doing so, we rejected his claim that he had standing to challenge the search of the Prayer house. Id. at 809. We explained that Campbell had testified at trial that he did not live in the house and the evidence from the suppression hearing showed that he did not lease it either. Id. at 810. Because Campbell "did not establish that he was more than a mere guest at the Prayer house," we held that he did not have standing to challenge the search of that house. Id.

² The jury also found Campbell's brother Alex guilty on all three charges. His mother and sister pleaded guilty.

C. Campbell's § 2255 Motion

Campbell filed this pro se § 2255 motion in August 2012. He raised an ineffective assistance of counsel claim against Haine, his pretrial counsel who had handled the motion to suppress. He contended that Haine had rendered ineffective assistance at the hearing on the suppression motion by failing to consult with Campbell, failing to investigate Campbell's ties with the Prayer house, and by failing to call Campbell and other witnesses to testify at the hearing. According to Campbell, if Haine had called him and other witnesses he could have established that Campbell had a reasonable expectation of privacy in the Prayer house.

Campbell attached a number of sworn affidavits to his § 2255 motion. In one of them, Campbell stated that he had met with Haine on multiple occasions before the suppression hearing and that the two discussed potential defenses. He also said that he had instructed Haine to file a motion to suppress, which he did. But according to Campbell, Haine did not explain to him what "standing" was after the government filed its response; instead, Haine told Campbell not to worry about that because Campbell had provided the Prayer house as his residence when he was arrested. According to the affidavit, when Campbell told Haine that he did not live at the house, Haine replied that it "wouldn't be a good idea to tell the government you didn't live at the Prayer home, because if I were to say you didn't stay at the home, you wouldn't have standing to challenge the search." Campbell also stated

in the affidavit that Haine did not interview him about his connection to the home and that when he explained that he wanted to testify, Haine responded that it would not be a good idea because the government would trip him up. Campbell's friend, Tamario Wiley, also submitted an affidavit describing his meeting with Haine. Wiley stated that he and another friend met with Haine to discuss the case, Haine showed them some of the evidence, and Haine explained that he did not think Wiley would be a credible witness. Wiley also stated in his affidavit that Haine never told him about the suppression hearing and did not ask him about Campbell's connection with the Prayer house.

Campbell submitted another affidavit describing his connection to the Prayer house. He stated in it that he was a regular guest at the house and went there almost every day, even without an invitation. He stated that he had been present at the home when no one was there and had slept there on multiple occasions, including the night before his arrest. He also stated that he would go to the house to play video games, listen to music, and hang out with his brother Alex and their friends. And that he kept personal items at the Prayer house, such as clothes, his computer, and papers. Campbell admitted that he did not have a key to the Prayer house but claimed that if he wanted to visit when no one was there his brother Alex or Tamario Wiley would leave a door unlocked or he would borrow their keys. Finally, Campbell denied meeting anyone at the Prayer house to sell drugs, but

admitted that he had marijuana sent there on two occasions (including the delivery that gave rise to this case). Campbell also submitted affidavits from Alex, Wiley, and three friends who had visited the house. Their affidavits stated that Campbell often visited the Prayer house to hang out.

The district court denied, without a hearing, Campbell's § 2255 motion. It found that a hearing was not necessary because, even accepting as true the statements in the affidavits, he still could not succeed on his ineffective assistance claim. On the deficient performance issue, the court found that Haine had adequately investigated the case and made a reasonable decision not to call Campbell because the government could have used any testimony that he gave in the hearing for impeachment purposes at trial. On the prejudice issue, the court found that Campbell could not state a meritorious Fourth Amendment claim because the evidence did not establish that he had an unrestricted right of access to the house or that he had a reasonable expectation of privacy as an overnight guest.

Campbell appealed and we granted a certificate of appealability on the following claim only: Whether the district court erred in denying, without an evidentiary hearing, Campbell's claim that his pretrial counsel provided ineffective assistance in his litigation of a motion to suppress evidence that was obtained during the search of a residence located at 7635 Prayer Drive.

II. STANDARD OF REVIEW

“We review the district court’s denial of an evidentiary hearing in a § 2255 proceeding for abuse of discretion.” Winthrop-Redin v. United States, 767 F.3d 1210, 1215 (11th Cir. 2014). “A district court abuses its discretion if it applies an incorrect legal standard, applies the law in an unreasonable or incorrect manner, follows improper procedures in making a determination, or makes findings of fact that are clearly erroneous.” Id. (quotation marks omitted). A § 2255 petitioner “is entitled to an evidentiary hearing if he alleges facts that, if true, would entitle him to relief.” Id. at 1216 (quotation marks omitted). We have held that no evidentiary hearing is necessary if it can be determined from the record that the petitioner was not denied effective assistance of counsel. See Diaz v. United States, 930 F.2d 832, 834 (11th Cir. 1991).

III. DISCUSSION

To prevail on his ineffective assistance of counsel claim, Campbell must “demonstrate both that (1) ‘counsel’s performance was deficient,’ and (2) ‘the deficient performance prejudiced the defense.’” United States v. Webb, 655 F.3d 1238, 1258 (11th Cir. 2011) (quoting Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984)). “We may consider the prongs of the Strickland test in either order, and [Campbell] must show that both prongs are satisfied in order to demonstrate a Sixth Amendment violation.” Id. Because he cannot establish that

his counsel provided deficient performance in litigating his motion to suppress, we need not address the prejudice prong. Id. at 1258–59.

“The standard for counsel’s performance is reasonableness under prevailing professional norms.” Chandler v. United States, 218 F.3d 1305, 1313 (11th Cir. 2000) (en banc) (quotation marks omitted). We do not “grade counsel’s performance” because the “issue is not what is possible or what is prudent or appropriate, but only what is constitutionally compelled.” Id. (quotation marks omitted). Campbell must show that “particular and identified acts or omissions of [his] counsel were outside the wide range of professionally competent assistance,” and our review of counsel’s performance is “highly deferential.” Id. at 1314 (quotation marks omitted). Campbell argues that he can satisfy that heavy burden because Haine, his pretrial counsel, did not adequately investigate Campbell’s connection to the Prayer house and should have called Campbell and other witnesses at the suppression hearing to establish that Campbell had standing to challenge the search.

We are not persuaded. Campbell says that Haine did not interview him, but Haine did meet with him on multiple occasions to discuss case strategy and Haine complied with Campbell’s request to file a motion to suppress the evidence from the Prayer house. Campbell faults Haine for not properly investigating his relationship with the Prayer house, but his own affidavit states that Haine reached

out to Tamario Wiley (one of Campbell's friends who lived at the Prayer house) to discuss what he knew about the case.³ And the transcript from the suppression hearing shows that Haine was familiar with applicable Fourth Amendment law and the facts of the case, which he presented. Haine had argued that Campbell had standing to challenge the search because he was more than a mere visitor at the Prayer House. Haine knew that Campbell had given the Prayer house as his residence when he was arrested and that the detectives' computer searches revealed a connection between Campbell and the Prayer house. In light of those facts, Haine could have reasonably believed that he had enough information to establish standing and that his time would be better spent on other issues. See Puiatti v. Sec'y, Fla. Dep't of Corr., 732 F.3d 1255, 1280 (11th Cir. 2013) (stating that a "decision to limit investigation is accorded a strong presumption of reasonableness, and to be effective a lawyer is not required to pursue every path until it bears fruit or until all hope withers") (citation and quotation marks omitted); see also id. ("[R]easonably diligent counsel may draw a line when they have good reason to think that further investigation would be a waste.") (quotation marks omitted).

As for Campbell's argument that Haine should have called him and other witnesses to testify on the motion to suppress, we have stated that "[w]hich

³ As we have already mentioned, Wiley stated in his affidavit that Haine met with him and another friend of Campbell's, showed them some of the evidence, and talked about the case with them. And in that affidavit Wiley also stated that Haine had told him he did not think that Wiley would be a credible witness.

witnesses, if any, to call, and when to call them, is the epitome of a strategic decision, and it is one that we will seldom, if ever, second guess.” Waters v. Thomas, 46 F.3d 1506, 1512 (11th Cir. 1995) (en banc); see also United States v. Long, 674 F.2d 848, 855 (11th Cir. 1982) (“This Court will not second-guess tactical decisions of counsel in deciding whether to call certain witnesses.”). In light of Campbell’s testimony at trial that he did not reside at the Prayer house (which was contrary to what he told the arresting officer) and the district court’s finding that he perjured himself multiple times during trial, Haine’s fear that the government would trip up Campbell if he testified at a motion to suppress hearing was not unreasonable. And the other witnesses had little to offer that would have been of benefit to Campbell.

Accepting as true the facts in Campbell’s affidavits, he cannot demonstrate deficient performance. As a result, the district court did not abuse its discretion in denying his § 2255 motion without an evidentiary hearing. See Winthrop-Redin, 767 F.3d at 1216 (“A petitioner is entitled to an evidentiary hearing if he alleges facts that, if true, would entitle him to relief.”) (quotation marks omitted); see also Diaz, 930 F.2d at 834 (“[T]his court has held that on habeas a federal district court need not conduct an evidentiary hearing if it can be conclusively determined from the record that the petitioner was not denied effective assistance of counsel.”) (quotation marks and alterations omitted).

AFFIRMED.