[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-14480
Non-Argument Calendar

D.C. Docket Nos. 6:15-cv-00644-CEH-DCI,
6:13-cr-00067-CEH-DCI-1

DANIEL HEFFIELD,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

(January 17, 2019)

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

PER CURIAM:

Daniel Heffield is a federal prisoner serving a 300-month sentence after he pleaded guilty to sexual exploitation of a minor in violation of 18 U.S.C. § 2251(a)

and (e) and possession of child pornography in violation of 18 U.S.C. § 2252A(a)(5)(B) and (b)(2). He filed a pro se 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence, which the district court denied. We granted a certificate of appealability on the sole issue of whether the district court misconstrued one of Heffield's claims or violated Clisby v. Jones, 960 F.2d 925 (11th Cir. 1992), by failing to address his claim that his plea was unintelligent because he did not understand the nature of the charges against him.

"Under well-settled principles in this circuit, pro se applications for post-conviction relief are to be liberally construed." United States v. Brown, 117 F.3d 471, 475 (11th Cir. 1997). And under Clisby, district courts are to resolve all claims for relief raised in a petition for writ of habeas corpus, "regardless [of] whether habeas relief is granted or denied." 960 F.2d at 936; see Rhode v. United States, 583 F.3d 1289, 1291 (11th Cir. 2009) (per curiam) (holding that Clisby applies to motions to vacate under 28 U.S.C. § 2255). When a district court has overlooked a claim, our practice is to vacate the judgment without prejudice and remand the case for consideration of that claim. Clisby, 960 F.2d at 938.

Heffield's central argument in his motion to the district court was that his attorney was ineffective for not objecting to the trial court's failure to establish a factual basis for Heffield's guilty plea. The district court denied Heffield's motion for relief on this ground. But Heffield also argued — less clearly, to be

sure — that his guilty plea was entered into unintelligently because he thought he was pleading guilty to possession and production of child pornography, when in fact he pleaded guilty to sexual exploitation of a minor and possession of child pornography. See Bousley v. United States, 523 U.S. 614, 618, 118 S. Ct. 1604, 1609 (1998) ("A plea of guilty is constitutionally valid only to the extent it is voluntary and intelligent.") (quotation marks omitted). While he did not present this claim as a separate argument section or under a distinct heading in his § 2255 motion, Heffield nevertheless discussed it several times in his motion. He argued that "it is also questionable as to whether Petitioner understood the nature of the charges for which he entered his guilty plea"; cited to case law for the proposition that, for a guilty plea to be valid, "the defendant must understand the nature of the charges" and "must know and understand the consequences of his guilty plea"; and quoted from his Rule 11 plea colloquy during which he told the magistrate judge that he "believe[d] [his] charges [we]re possession of child pornography and production of child pornography." (Emphasis omitted.) Heffield concluded this section of his motion by stating that "[i]t is very clear that Petitioner believed that the nature of his charges were possession and producing child pornography."

Construing the petition liberally, we think this was sufficient to present to the district court Heffield's claim that his guilty plea was not intelligent.[1]

The district court did not directly address this claim. The only ruling it made was that Heffield's counsel was not ineffective for failing to object to the factual basis of Heffield's guilty plea for sexually exploiting a minor.[2] To be sure, to make that determination the court did discuss the nature of Heffield's plea agreement and recounted that Heffield had told the magistrate judge that "he had read the Plea Agreement, that he had discussed it with his attorney, and that he understood it." But though this background is relevant to a determination of

[1] We construe this as a stand-alone claim for relief and not another claim of ineffective assistance of counsel. Cf. Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 370 (1985) ("[T]he two-part Strickland v. Washington test applies to challenges to guilty pleas based on ineffective assistance of counsel. . . . [T]he defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."). While Heffield emphasized in his Rule 59 motion that "at the core of [his] claims was the advice provided by counsel before and after [the Rule 11] hearing," this statement came too late if it was meant to show that his guilty plea was unintelligent because of the ineffective assistance of his counsel. Although Clisby requires a district court to resolve every claim properly presented in a § 2255 motion, it does not require the court to address a claim made after that motion has been denied. Cf. United States v. Evans, 473 F.3d 1115, 1120 (11th Cir. 2006) ("[A]rguments raised for the first time in a reply brief are not properly before a reviewing court.").

[2] The district court concluded its ruling with a catch-all denial that "[a]ny of [Heffield's] allegations not specifically addressed herein have been found to be without merit." This is not enough for us to know whether the district court considered Heffield's claim that his guilty plea was unintelligently made. See Long v. United States, 626 F.3d 1167, 1170 (11th Cir. 2010) ("[I]n a post-conviction case, the district court must develop a record sufficient to facilitate our review of all issues pertinent to an application for a COA and, by extension, the ultimate merit of any issues for which a COA is granted."); Broadwater v. United States, 292 F.3d 1302, 1303 (11th Cir. 2002) ("The district court's order gives us no guide as to its ruling on any of the issues, or to the findings or conclusions of law which explain the bases for the district court's denial of [the petitioner's] § 2255 motion.").

whether Heffield's plea agreement was intelligently made, the district court used it for another purpose. That other purpose was to find that, because Heffield admitted to the conduct described in his plea agreement, and that conduct included "placing the camera in the bathroom where minor children were videotaped while using the bathroom," there "were sufficient facts admitted by [Heffield] to sustain a conviction for sexual exploitation of children." ("As a result," the district court concluded, "[Heffield's] claim" — singular — "is without merit, and the Motion to Vacate will be denied.") This is not the same thing as finding that Heffield entered his guilty plea intelligently and that he fully understood "the nature of the charge[s] against him." Brady v. United States, 397 U.S. 742, 756, 90 S. Ct. 1463, 1473 (1970).

Nor did the district court rule that Heffield's unintelligent plea claim failed for any other reason. Had the district court considered the argument, we expect that it would have explained that Heffield had the burden of showing cause and prejudice for failing to raise the claim on direct appeal. See Bousley, 523 U.S. at 621, 118 S. Ct. at 1610 ("[E]ven the voluntariness and intelligence of a guilty plea can be attacked on collateral review only if first challenged on direct review."). But the district court's order did not mention that the claim was procedurally defaulted, presumably because the court did not consider the claim. Accordingly,

we vacate the district court's judgment without prejudice and remand the case to the district court to consider the claim.

VACATED AND REMANDED.