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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Case No. CV 13-02531 DDP
)	[CR 08-01147 DDP]
Plaintiff,)	
)	
v.)	ORDER DENYING SECTION 2255 MOTION
)	
NATHANIEL NEWHOUSE,)	
)	
Defendants.)	
_____)	

Presently before the court is Defendant/Petitioner Nathaniel Newhouse’s Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. Having considered the submissions of the parties, the court denies the motion and adopts the following Order.

I. Background

After a jury trial, Defendant was convicted of three counts of possession with the intent to distribute controlled substances. (Dkt. 197.)¹ The court sentenced Defendant to 96 months imprisonment and three years of supervised release. (Id.) The Ninth Circuit affirmed Defendant’s conviction and the district

¹ “Dkt.” refers to the docket in the underlying criminal case, No. CR 08-1147-DDP.

1 court's denial of Defendant's motion to suppress evidence. United
2 States v. Newhouse, 464 Fed. Appx. 181 (9th Cir. 2012). In holding
3 that officers had probable cause to arrest Defendant, the court
4 provided the following background:

5 Newhouse was arrested following DEA agents' surveillance
6 of a pharmacy where pharmacists had alerted the DEA to an
7 unusual number of prescriptions for oxycodone filled by
8 patients associated with Dr. Efrain Sanchez. Agents
9 observed three persons each fill two prescriptions for
10 popular street drugs containing oxycodone and hydrocodone
11 prescribed by Dr. Sanchez, and depart together with a
12 fourth person who did not fill any prescriptions. At
13 least one of the individuals appeared to have multiple,
14 additional prescriptions in his possession. Agents
15 followed the individuals to the parking lot of a donut
16 shop fourteen miles away where, one hour later, they
17 observed a rendezvous with two other vehicles. The
18 individual who did not fill any prescriptions delivered a
19 white paper bag that appeared to be a pharmacy bag to Mr.
20 Newhouse.

21 Id.

22 Defendant now moves for a new trial or, in the alternative, a
23 reduction in sentence to 48 months. Defendant argues that relief
24 is warranted because he received ineffective assistance of counsel.
25 Specifically, Defendant contends that counsel was ineffective
26 because he (1) failed to obtain surveillance video from the donut
27 shop, (2) convinced Defendant to waive his right to testify, and
28 (3) failed to adequately prepare for trial.²

29 **II. Legal Standard**

30 Section 2255 allows federal prisoners to file motions to
31 vacate, set aside, or correct a sentence on the ground that "the
32 sentence was imposed in violation of the Constitution or laws of
33 _____

34 ² Defendant's Fourth Ground for relief is that counsel should
35 have introduced the donut shop surveillance video to impeach an
36 arresting agent's testimony. This claim overlaps with Defendant's
37 First claim for relief.

1 the United States, or that the court was without jurisdiction to
2 impose such sentence, or that the sentence was in excess of the
3 maximum authorized by law, or is otherwise subject to collateral
4 attack[.]” 28 U.S.C. § 2255(a). To show ineffective assistance of
5 counsel, a defendant must demonstrate (1) that counsel’s
6 performance was deficient and fell below an objective standard of
7 reasonableness, meaning “counsel made errors so serious that
8 counsel was not functioning as the ‘counsel’ guaranteed the
9 defendant by the Sixth Amendment,” and (2) the defendant was
10 prejudiced as a result and deprived of a fair trial. Strickland v.
11 Washington, 466 U.S. 668, 687 (1984).

12 **III. Discussion**

13 A. Counsel’s Failure to Obtain Surveillance Footage

14 Defendant argues that government agents falsely testified as
15 to what they observed in the donut shop parking lot. Defendant
16 contends that the donut shop’s surveillance camera footage would
17 have established that the agents did not have probable cause to
18 arrest Defendant. He further asserts that he asked his counsel to
19 obtain the footage, and that, had counsel introduced the footage,
20 “the result of the district court’s motion to suppress and trial
21 would have been different.”³

22 Defendant’s argument does not satisfy either prong of the
23 Strickland test. “[C]ounsel has a duty to make reasonable
24 investigations or to make a reasonable decision that makes
25 particular investigations unnecessary. In any ineffectiveness

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27 ³ Although the government’s opposition makes repeated
28 reference to the declaration of Defendant’s counsel, the
government’s citation to the docket is incorrect, and the
declaration does not appear to have been filed elsewhere.

1 case, a particular decision not to investigate must be directly
2 assessed for reasonableness in all the circumstances, applying a
3 heavy measure of deference to counsel's judgments." Strickland,
4 466 U.S. at 691. The court's assessment must look to both the
5 evidence already known to counsel and to "whether the known
6 evidence would lead a reasonable attorney to investigate further."
7 Wiggins v. Smith, 539 U.S. 510, 527 (2003).

8 Here, as an initial matter, is not clear whether the
9 surveillance footage to which Defendant refers exists. Even
10 assuming that it does, and that Defendant did ask his counsel to
11 obtain it, counsel's failure to do so was not unreasonable.
12 Defendant argues that the footage would have revealed what really
13 happened in the donut shop parking lot. According to Defendant, he
14 agreed to meet Leslie Wilson at the donut shop parking lot to give
15 his opinion regarding the authenticity of several prescriptions
16 others had had filled. (Declaration in Support of Motion at 1.)
17 Defendant also asked his wife to meet him at the donut shop to
18 deliver money to him. (Id.) When Defendant arrived at the donut
19 shop an hour later, Wilson's car was already there. (Id. at 2.)
20 Defendant's wife arrived a few minutes later. (Id.) Wilson
21 entered Defendant's car with a bag of medication, then returned to
22 her car. (Id.) Defendant then walked to his wife's car to
23 retrieve the money he had asked her to bring. (Id.)

24 Defendant's version of these events does not differ from the
25 version elicited through testimony at trial. Indeed, the Ninth
26 Circuit's recitation of the facts of the case is consistent with
27 Defendant's version. Thus, even if surveillance footage of the
28 events in the parking lot did exist, and assuming Defendant did ask

1 counsel to obtain it, it would not have been unreasonable for
2 counsel to conclude that the footage was not necessary, as it would
3 not have added anything to the evidence already known to counsel.

4 Even if counsel had unreasonably failed to investigate the
5 camera footage, Defendant cannot show that he was prejudiced as a
6 result. As discussed above, Defendant's version of events is
7 consistent with the trial testimony, as recounted by the Ninth
8 Circuit. The Ninth Circuit concluded, based upon those facts, that
9 officers did have probable cause to arrest Defendant and that the
10 district court properly denied Defendant's motion to suppress.
11 Defendant cannot show, therefore, that the outcome of the
12 suppression motion would have been different if camera footage
13 depicting those same facts had been introduced.

14 Nor can Defendant show that the absence of camera footage
15 prejudiced him at trial. With respect to this argument, Defendant
16 contends that the video would have shown that, contrary to the
17 agents' testimony, he did not approach the rear of his own car at
18 any time, he had not started his car when agents pulled into the
19 parking lot and blocked his car with their own vehicle, and he did
20 not have any pill bottles in his pockets or in his glove
21 compartment. (Decl. at 2-3.) It is unlikely that any of these
22 facts would have resulted in acquittal. Whether Defendant's car
23 was running or not and whether or not he approached his trunk
24 immediately prior to his arrest were not central issues in the
25 case. Nor is there any dispute that Defendant possessed all three
26 of the substances at issue. Defendant argues that two of the drugs
27 were in a pharmacy bag on top of the car, and not on his person or
28 in his glove compartment, while the third, consistent with agents'

1 testimony, was found in his trunk. (Decl. ¶¶ 2(g), 5.) Thus, the
2 camera footage would only have confirmed that Defendant possessed
3 the drugs.

4 Even if the camera footage would have called into question the
5 entirety of the arresting agents' testimony, the government
6 introduced other compelling evidence of Defendant's guilt. Two
7 different witnesses testified that they entered into a scheme with
8 Defendant and others to obtain monthly painkiller prescriptions
9 from unethical doctors and then pass those prescriptions on to
10 Defendant in exchange for cash. (CR 222, 135-149; 187-194.) One
11 witness also testified that he saw bags of medication inside the
12 trunk of Defendant's car "and people [Defendant] was doing business
13 with. It is like a circus out there." (Id. at 151, 169-70. This
14 testimony aligned closely with later testimony from a government
15 expert about illegal prescription drug distribution schemes in
16 general. (Id. at 251-269.) In light of this evidence, it is
17 highly unlikely that anything the surveillance camera footage of
18 the arrest might have shown would have changed the jury's decision
19 to convict Defendant.

20 B. Waiver of Right to Testify

21 Next, Defendant asserts that counsel convinced him to waive
22 his right to testify in exchange for the government's agreement not
23 to introduce evidence of controlled substances discovered at
24 Defendant's home and storage locker. Defendant argues that this
25 advice was "faulty" because "the medication was being temporarily
26 stored to facilitate [Defendant's] and another person's caretaker
27 responsibilities." Defendant argues that, had he been "correctly
28 advised," he would have testified on his own behalf, as "the

1 contents of all the bottles were later dumped into a plastic bag
2 and shown to the jurors at trial." (Decl. ¶ 7.)

3 The agreement to which Defendant refers was disclosed to the
4 court prior to trial, both in writing and at a pre-trial hearing.
5 (Dkt. 136 at 1; Dkt. 214 at 6.) The government agreed that it
6 would "not present or rely on [evidence seized from Defendant's
7 home or from his storage locker] at trial, conditioned on defendant
8 Newhouse not opening the door to admission of such evidence . . .
9 ." (Dkt. 136 at 1:21-23.) Thus, contrary to Defendant's argument,
10 it does not appear that the parties ever reached an agreement that
11 would have required Defendant to waive his right to testify.⁴
12 Further, it is unclear from the record and the submissions of the
13 parties whether the plastic bag shown to jurors at trial contained
14 pill bottles seized from Defendant's car or from his home and
15 storage locker.

16 Regardless, Defendant cannot satisfy the second, prejudice
17 prong of Strickland. As described above, the government presented
18 strong evidence of Defendant's guilt. Furthermore, it is far from
19 clear that, in the absence of counsel's alleged advice, Defendant
20 would have testified in his own defense. The government possessed
21 a great deal of impeachment evidence, including evidence of money
22 laundering and tax fraud and, at the very least, Defendant's prior
23 convictions for perjury and welfare fraud. (Dkt. 117.) Even if
24 Defendant had testified, the testimony he now claims he would have
25 given would not have helped his case. Defendant criticizes

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27 ⁴ Although the government represents that counsel has declared
28 that he never advised Defendant otherwise, the court has been
unable to locate counsel's declaration in the record.

1 counsel's recommendation as faulty because "the medication was
2 being temporarily stored to facilitate [Defendant's] and another
3 person's caretaker responsibilities." The court, however, granted
4 a motion in limine precluding this very argument. (Dkt. 137.) As
5 the government contended, even if Defendant had been storing and
6 distributing medication purely in his capacity as a caretaker, that
7 would not have been a defense to the charges against him, absent
8 authorization from the Attorney General to distribute controlled
9 substances. (Dkt. 113 at 4-6.) There is no dispute that Defendant
10 had no such authorization. Thus, even if Defendant testified, his
11 testimony would have been, at best, irrelevant, even if allowed.
12 Defendant could not, therefore, have been prejudiced by counsel's
13 recommendation that he not testify.

14 C. Counsel's Preparation for Trial

15 Lastly, Defendant argues that counsel "stated on the record
16 that he was not adequate[ly] prepared for trial." That statement
17 does not appear on the page of the transcript Defendant has
18 identified, or anywhere else in the document to which Defendant
19 cites. The government represents that counsel has denied being
20 unprepared for trial.⁵ The court's own review of counsel's pre-
21 trial representation and performance during trial itself does not
22 reflect any lack of preparation on counsel's part. Nor does
23 Defendant state what counsel should have done differently to
24 prepare for trial or failed to do in advance of trial. The only
25 deficiency Defendant alleges is counsel's failure to contact co-
26 Defendant Deborah Barker. Defendant does not explain how Barker's

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28 ⁵ (See notes 3 and 4, supra.)

1 testimony would have aided him and, in any event, Barker died over
2 a year before Defendant's trial began. (Dkt. 198.) Defendant has
3 not satisfied either of the Strickland prongs with respect to
4 counsel's preparation for trial.

5 **IV. Conclusion**

6 For the reasons stated above, Defendant's Section 2255 motion
7 is DENIED.

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9 IT IS SO ORDERED.

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11 Dated: October 6, 2016



DEAN D. PREGERSON
United States District Judge

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