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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 LLOYD IRVIN TAYLOR,
15 Defendant.

Case No.: 13cr1390-MMA
Related Case No. 16cv2118-MMA

**ORDER DENYING DEFENDANT'S
MOTION TO VACATE UNDER 28
U.S.C. § 2255**

[Doc. No. 133]

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18 On June 30, 2014, a jury found Defendant Lloyd Irvin Taylor guilty of three counts
19 of making a false statement on a United States passport application, in violation of Title
20 18, United States Code, section 1542; one count of engaging in a corrupt endeavor to
21 obstruct and impede the due administration of the Internal Revenue laws, in violation of
22 Title 26, section 7212(a); two counts of tax evasion, in violation of Title 26, section 7201;
23 seven counts of making a false statement to a federally insured financial institution, in
24 violation of Title 18, section 1014; and five counts of aggravated identity theft, in
25 violation of Title 18, section 1028A. *See* Doc. No. 98. On November 17, 2014, the
26 Court sentenced Defendant to a 57 month term of imprisonment, five years of supervised
27 release, and restitution in the amount of \$2,241,691.08, to the victim, the Internal
28 Revenue Service. *See* Doc. No. 113.

1 Defendant now collaterally challenges his conviction and sentence pursuant to 28
2 U.S.C. § 2255. *See* Doc. Nos. 133, 138, 140. Defendant raises multiple claims of
3 ineffective assistance of counsel. The government has filed a response, to which
4 Defendant replied. *See* Doc. Nos. 144, 145. For the reasons set forth below, the Court
5 **DENIES** Defendant’s motion.

6 **DISCUSSION**¹

7 ***1. Legal Standard***

8 If a defendant in a federal criminal case collaterally challenges his conviction or
9 sentence, he must do so pursuant to 28 U.S.C. § 2255. *Tripati v. Henman*, 843 F.2d
10 1160, 1162 (9th Cir. 1988). Under section 2255, a court may grant relief to a defendant
11 who challenges the imposition or length of his incarceration on the ground that: (1) the
12 sentence was imposed in violation of the Constitution or laws of the United States; (2) the
13 court was without jurisdiction to impose such sentence; (3) the sentence was in excess of
14 the maximum authorized by law; or (4) the sentence is otherwise subject to collateral
15 attack. 28 U.S.C. § 2255(a). A defendant must allege specific facts that, if true, entitle
16 him to relief. *See United States v. Howard*, 381 F.3d 873, 877 (9th Cir. 2004); *United*
17 *States v. Rodrigues*, 347 F.3d 818, 824 (9th Cir. 2003) (citation omitted).

18 The Court is not required to hold an evidentiary hearing when the issues can be
19 conclusively decided on the basis of the existing record. 28 U.S.C. § 2255; *see United*
20 *States v. Schaflander*, 743 F.2d 714, 717 (9th Cir. 1984) (citing *United States v. Hearst*,
21 638 F.2d 1190, 1194 (9th Cir.1980)). The Court declines to hold an evidentiary hearing
22 in this case because the motion, on its face, conclusively demonstrates that Defendant is
23 not entitled to relief.

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28 ¹ The Court adopts the factual background as set forth by the government in its response brief. *See* Doc.
No. 144 at 2-3.

1 **2. Analysis**

2 Defendant raises eight separate claims of ineffective assistance of counsel. To
3 prevail on such a claim, a defendant must show both that his counsel’s performance fell
4 below an objective standard of reasonableness, and that the deficiency in his counsel’s
5 performance prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 688 (1984). There
6 is a “strong presumption” that counsel’s conduct was reasonable. *Id.* at 689. To establish
7 deficient performance, a defendant must demonstrate that counsel did more than just
8 commit an error, but rather that counsel performed outside the “wide range of
9 professionally competent assistance.” *Id.* at 690. With respect to prejudice, a defendant
10 must demonstrate a reasonable probability that, but for counsel’s unprofessional errors,
11 the result of the proceeding would have been different. *Id.* at 694. A “reasonable
12 probability” means “[t]he likelihood of a different result must be substantial, not just
13 conceivable.” *Harrington v. Richter*, 562 U.S. 86, 112 (2011).

14 a) Claim One: Dismissal of Count 4

15 Defendant argues in his first claim that trial counsel provided ineffective assistance
16 by failing to move for dismissal of Count 4 of the Superseding Indictment. Defendant
17 was charged in Count 4 with corruptly obstructing and impeding and endeavoring to
18 obstruct and impede the administration of the Internal Revenue Code, in violation of Title
19 26, Section 7212(a), which provides in pertinent part:

20 Whoever corruptly . . . obstructs or impedes, or endeavors to obstruct or
21 impede, the due administration of this title, shall, upon conviction thereof, be
22 fined not more than \$5,000, or imprisoned not more than 3 years, or both . . .

23 26 U.S.C. § 7212(a). Defendant contends that his trial counsel should have moved to
24 dismiss the charge because the statute is unconstitutionally vague as applied to him, as
25 the words “obstructs or impedes” did not place Defendant on notice that his charged acts
26 were prohibited.

27 The Superseding Indictment charged Defendant with (a) opening and maintaining
28 financial accounts in the names of stolen identities; (b) opening and maintaining financial

1 accounts in the names of non-existent churches; (c) paying for personal expenses with
2 funds from these nominee financial accounts; and (d) converting his funds to gold coins
3 and other precious metals. Each of these acts results in a misrepresentation of the state of
4 Defendant's finances to the IRS, and by necessary implication, obstructs and impedes the
5 IRS from administering the internal revenue laws applicable to Defendant. Thus,
6 Defendant had notice that his conduct was unlawful. Moreover, every circuit to consider
7 a vagueness challenge to Section 7212(a) has found the statute constitutional. *See United*
8 *States v. Reeves*, 752 F.2d 995 (5th Cir. 1985); *United States v. Bostian*, 59 F.3d 474 (4th
9 Cir. 1994); *United States v. Hanson*, 2 F.3d 942 (9th Cir. 1993); *United States v. Mitchell*,
10 985 F.2d 1275 (4th Cir. 1993); *United States v. Yagow*, 953 F.2d 423 (8th Cir. 1992);
11 *United States v. Popkin*, 943 F.2d 1535 (11th Cir. 1991). As such, Defendant's trial
12 counsel was not ineffective for failing to seek dismissal of Count 4. *See Baumann v.*
13 *United States*, 692 F.2d 565, 572 (9th Cir. 1982) ("The failure to raise a meritless legal
14 argument does not constitute ineffective assistance of counsel.").

15 b) Claims Two, Six, and Seven: Restitution

16 Defendant argues that his trial counsel was ineffective for failing to object on
17 several grounds to the restitution portion of his sentence. First, Defendant contends in
18 Claims Two and Seven that the Court should not have imposed restitution based on
19 Defendant's tax liability for the years 2004, 2005, and 2006, which fall outside the
20 applicable six year statute of limitations for prosecuting the charged offenses. This claim
21 fails, as the Ninth Circuit has held that tax liability may be included in the Court's
22 sentencing calculation regardless of whether the statute of limitations prohibits
23 prosecution for the underlying violation(s) of the tax laws. *United States v. Yip*, 592 F.3d
24 1035, 1040 (9th Cir. 2010).

25 Second, Defendant argues that his trial counsel provided ineffective assistance
26 when he failed to object to the excessive restitution amount, particularly the inclusion of
27 prejudgment interest. This claim similarly lacks merit. Trial counsel did object generally
28 to the restitution amount, and any objection regarding the amount of prejudgment interest

1 would have been unlikely to change the ultimate result, as prejudgment interest may be
2 included in a restitution order. *United States v. Morgan*, 376 F.3d 1002, 1014 (9th Cir.
3 2004); *see also United States v. Smith*, 944 F.2d 618, 626 (9th Cir. 1991) (“Foregone
4 interest is one aspect of the victim’s actual loss, and thus may be part of the victim’s
5 compensation.”).

6 c) Claims Three, Four, and Five: Sentencing

7 Defendant raises three claims of ineffective assistance of counsel with regards to
8 trial counsel’s representation during sentencing. Defendant argues in Claim Three that
9 trial counsel should have objected to the imposition of a two-level increase to the offense
10 level for the use of “special skills.” Defendant contends in Claim Four that trial counsel
11 compounded the error by failing to object to the two-level increase to the base offense
12 level due to the use of “sophisticated means.”

13 Pursuant to Section 2T1.1(b)(2) of the Sentencing Guidelines, Defendant’s base
14 offense level was increased by two levels because the Court found that the offenses in
15 this case involved sophisticated means. The Court further adjusted the offense level
16 upward by two levels under Section 3B1.3, finding that Defendant used special skills to
17 facilitate the commission of the offenses. Contrary to Defendant’s contention, the record
18 clearly establishes that his trial counsel objected thoroughly to the imposition of both
19 sentencing enhancements. *See Sentencing Hearing Transcript*, Doc. No. 117; *see also*
20 *Sentencing Memorandum*, Doc. No. 105.

21 In Claim Five, Defendant argues that his counsel provided ineffective assistance by
22 failing to file objections to the Pre-Sentence Report, prepared by Defendant himself and
23 sent to counsel via mail. Defendant attaches these objections as Exhibit “G” to his 2255
24 motion. A review of the record demonstrates that trial counsel filed a lengthy sentencing
25 memorandum, which directly addressed many facts and issues raised in the Pre-Sentence
26 Report, as well as Defendant’s own objections. Counsel was not ineffective for filing a
27 thoughtful and well-written sentencing memorandum in lieu of Defendant’s *pro se*
28 submission.

1 d) Claim Eight: Supervised Release

2 Finally, Defendant argues that his attorney rendered ineffective assistance by
3 failing to object to the Court’s imposition of a five-year term of supervised release.
4 However, a five-year term was authorized under statute, recommended by United States
5 Probation, and within the Court’s discretion to impose. Even if counsel had objected to
6 the length of the term, Defendant cannot show that the result would have been different.
7 Furthermore, defense counsel did object, on a number of grounds, to the substantive
8 conditions of supervised release. The Court considered those objections carefully prior to
9 entering judgment.

10 **3. Conclusion**

11 In sum, based on the findings and conclusions set forth above, Defendant’s claims
12 lack merit. Accordingly, Defendant is not entitled to collateral relief.

13 **CERTIFICATE OF APPEALABILITY**

14 Rule 11(a) of the Rules Governing Section 2255 Proceedings for the United States
15 District Courts provides that “[t]he district court must issue or deny a certificate of
16 appealability when it enters a final order adverse to the applicant.” A defendant must
17 obtain a certificate of appealability before pursuing any appeal from a final order in a
18 Section 2255 proceeding. *See* 28 U.S.C. § 2253(c)(1)(B). When the denial of a Section
19 2255 motion is based on the merits of the claims in the motion, a district court should
20 issue a certificate of appealability only when the appeal presents a “substantial showing
21 of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The defendant must
22 show that reasonable jurists could debate whether the issues should have been resolved
23 differently or are “adequate to deserve encouragement to proceed further.” *Slack v.*
24 *McDaniel*, 529 U.S. 473, 483 (2000), quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4
25 (1983), superseded on other grounds by 28 U.S.C. § 2253(c)(2); *see also Mendez v.*
26 *Knowles*, 556 F.3d 757, 771 (9th Cir. 2009).

27 The Court has carefully reviewed Defendant’s 2255 motion and considered the
28 record as a whole. Because Defendant has not made a substantial showing of the denial

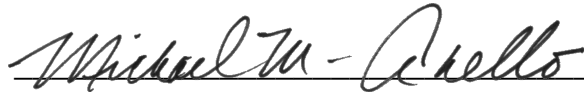
1 of a constitutional right, and because the Court finds that reasonable jurists would not
2 debate the denial of Defendant's motion, the Court declines to issue a certificate of
3 appealability.

4 **CONCLUSION**

5 Based on the foregoing, the Court **DENIES** Defendant's 2255 motion. The Court
6 **DECLINES** to issue a certificate of appealability. The Clerk of Court is instructed to
7 enter judgment in accordance herewith and close the related civil case.

8 **IT IS SO ORDERED.**

9 DATE: April 7, 2017



10 HON. MICHAEL M. ANELLO
11 United States District Judge
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