

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JAMES OLIVOS,

Petitioner,

v.

**Case No: 6:16-cv-5-Orl-31KRS
(6:12-cr-288-Orl-31KRS)**

UNITED STATES OF AMERICA,

Respondent.

ORDER

THIS CAUSE is before the Court on Petitioner James Olivos' Motion to Vacate, Set Aside, or Correct Sentence ("Motion to Vacate," Doc. 1) pursuant to 28 U.S.C. § 2255. Respondent filed a Response to the Motion to Vacate ("Response," Doc. 4) in compliance with this Court's instruction. Petitioner was provided an opportunity to file a Reply to the Response but did not do so.

Petitioner asserts three grounds in his Motion to Vacate.¹ For the following reasons, the Motion to Vacate will be denied.

I. PROCEDURAL HISTORY

A grand jury charged Petitioner by Indictment with bank fraud (Counts One through Eleven) in violation of 18 U.S.C. § 1344, money laundering (Counts Twelve through Fourteen) in violation of 18 U.S.C. § 1957, and fraud and false statements (Counts Fifteen through Eighteen)

¹ The Court has identified three grounds raised by Petitioner in his Memorandum in Support of the Motion to Vacate. (Doc. 2).

in violation of 26 U.S.C. § 7206(1). (Criminal Case No. 6:12-cr-288-Orl-31KRS, Doc. 1).² Petitioner entered a plea of guilty to Counts Three, Five, Seven, Nine, Eleven, Twelve, and Fourteen pursuant to a Plea Agreement before Magistrate Judge Karla R. Spaulding. (Criminal Case, Doc. 41). Magistrate Judge Spaulding filed a Report and Recommendation, recommending that the plea be accepted and that Petitioner be adjudicated guilty of Counts Three, Five, Seven, Nine, Eleven, Twelve, and Fourteen. (Criminal Case, Doc. 46). The Court accepted the plea and adjudicated Petitioner guilty of Counts Three, Five, Seven, Nine, Eleven, Twelve, and Fourteen. (Criminal Case, Doc. 50). The Court sentenced Petitioner to concurrent sixty-month terms of imprisonment for all counts. (Criminal Case, Doc. 57). The Government dismissed the remaining counts. (*Id.*). Petitioner appealed, and the Eleventh Circuit Court of Appeals affirmed the convictions and sentences. (Criminal Case, Doc. 103).

II. LEGAL STANDARD

The Supreme Court of the United States in *Strickland v. Washington*, 466 U.S. 668 (1984), established a two-part test for determining whether a convicted person is entitled to relief on the ground that his counsel rendered ineffective assistance: (1) whether counsel’s performance was deficient and “fell below an objective standard of reasonableness”; and (2) whether the deficient performance prejudiced the defense. *Id.* at 687-88. The prejudice requirement of the *Strickland* inquiry is modified when the claim is a challenge to a guilty plea based on ineffective assistance. *See Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985). To satisfy the prejudice requirement in such claims, “the 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.” *Id.* at 59.

² Criminal Case No. 6:12-cr-288-Orl-31KRS will be referred to as “Criminal Case.”