IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CHRISTOPHER M. HORTON,

Petitioner,

v. **No. 3:17-cv-0023-DRH**

UNITED STATES OF AMERICA,

Respondent.

ORDER

HERNDON, District Judge:

Before the Court is petitioner Christopher Horton's ("Horton") Motion to Vacate, Set Aside, or Correct Sentence (Doc. 1) pursuant to 28 U.S.C. § 2255. The Government opposes (Doc. 9). Based on the following, the Motion to Vacate (Doc. 1) is **DENIED**.

I. BACKGROUND

On March 7, 2014, Horton was sentenced to 1,080-months imprisonment after pleading guilty to 5-counts of Sexual Exploitation of a Minor and 1-count of Attempted Sexual Exploitation of a Minor, in violation of 18 U.S.C. § 2251(a) and (e).[1] [2] On January 11, 2017, he filed a timely Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 arguing ineffective assistance of

[1] *See* Judgment, United States of America v. Horton, No. 13-cr-30042 (S.D. Ill. 2014), ECF No. 43.

[2] On March 14, 2014, Horton filed an appeal of final judgment, *see* Notice of Appeal, United States of America v. Horton, No. 13-cr-30042 (S.D. Ill. 2014), ECF No. 45; on October 21, 2015, the Court of Appeals affirmed the judgment of this Court. *See United States v. Horton*, 770 F.3d 582 (7th Cir. 2014). Horton's petition for writ of certiorari was denied by the United States Supreme Court on January 11, 2017.

counsel ("IAC") (Doc. 1). Specifically, Horton asserts defense counsel was ineffective during the sentencing phase of his proceeding by not obtaining "dynamic or holistic rehabilitation data" (Doc. 1-2 at 3), and not calling a specific type of expert witness to testify regarding a letter sent to a mentor describing conditions of Horton's childhood (*Id.* at 7). For relief, Horton seeks a "below guideline sentence."

In response, the government argues defense counsel's performance was objectively reasonable (Doc. 9 at 5-6), and that Horton's contention in claiming a different expert or more "dynamic" or "holistic" assessment should have been employed is deplorably insufficient to establish IAC under *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984) (*Id.* at 7). What is more, the government contends Horton cannot demonstrate—even if defense counsel hired additional experts or presented "dynamic" or "holistic" data regarding treatment—there would be a conjecturable effect on the outcome of the proceeding as necessitated by *Strickland* (*Id.*).

II. DISCUSSION

A. Standard for IAC claims

"*The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.*" *Strickland*, 466 U.S. at 686 (emphasis added); *see also Koons v. United States*, 639 F.3d 348, 351 (7th Cir. 2011) (defendant must overcome presumption that under the circumstances challenged action is considered sound trial strategy). As

stated in this Court's previous orders, **a claim of IAC must be analyzed under *Strickland v. Washington***; therefore, Horton must demonstrate that: (1) defense counsel's performance was deficient—in that errors made were *so serious*, he was not functioning as "counsel" as guaranteed by the Sixth Amendment; ***and*** (2) defense counsel's deficient performance prejudiced the defense—in that errors made were *so serious*, they constituted deprivation of a fair trial, the result of which is deemed unreliable. *See Strickland*, 466 U.S. at 687. "***Unless a defendant makes both showings, it cannot be said that the conviction [. . .] resulted from a breakdown of the adversary process that renders the result unreliable***." *Id.* (emphasis added). The Court finds Horton can demonstrate neither requirement.

B. *Strickland* Standard Not Satisfied

The Court concludes the failure to obtain a specific type of expert witness in order to satisfy a defendant's affinity is an insufficient basis for an IAC claim, and does not satisfy any of the two required prongs under *Strickland*. *See id.* The Sixth Amendment guarantees a defendant the right to effective assistance of counsel in all criminal prosecutions. *See Blake v. United States*, 723 F.3d 870, 878 (7th Cir. 2013). However, *"[i]t does not guarantee the right to counsel who knows and exploits every tactical advantage—unrelated to guilt or innocence—on his client's behalf." Prewitt v. United States*, 83 F.3d 812, 818 (7th Cir. 1996).

With that being understood, Horton's justification for what he believes constitutes defense counsel's inadequate preparation—not hiring and consulting

with experts in the field of sex offender treatment, and lack of effort in obtaining dynamic or holistic rehabilitation data—is both factually inaccurate and inconsequential under the *Strickland* analysis. First, as stated by the government, defense counsel did in fact hire and consult with a well-known expert in the field of sex offender treatment and victims of sexual abuse. Second, under *Prewitt*, counsel is not deemed ineffective because of a failure to "exploit[] every tactical advantage—unrelated to guilt or innocence—on his client's behalf," *Prewitt*, 83 F.3d at 818, i.e. retaining different or extra sex offense treatment experts; or obtaining "dynamic" or "holistic" rehabilitation data for purposes of sentencing mitigation.

Horton suggests the undersigned rejected the advice of the Sentencing Commission and imposed a sentence far above the guideline, when in reality—as the government points out—the undersigned imposed a sentence substantially below the guideline range.[3] In addition, as the Seventh Circuit indicated, Horton would have preferred the Court place more weight in sentencing analysis on his childhood and prospects for successful rehabilitation. However, the Court did not; the undersigned placed more weight on the need for punishment and protecting the public.

Horton's defense counsel was not ineffective, as he cultivated a forceful argument in an attempt to get the Court to consider prospects for successful

[3] Horton's offense level was determined to be 43 with a criminal history category of I resulting in a recommendation of life imprisonment or 2,160 months of incarceration. The Court sentenced Horton to a below guideline range of 1,080 months of incarceration. *See* Sentencing Transcript, United States of America v. Horton, No. 13-cr-30042 (S.D. Ill. 2014), ECF No. 52.

rehabilitation. Frankly, the undersigned did not find the argument persuasive. In turn, an unpersuasive argument does not mean that under the *Strickland* analysis Horton's defense counsel was ineffective.

Horton's sentence and conviction are legal. He has not demonstrated his sentence was "imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack[.]" § 2255. The Court notes that letting Horton's conviction and sentence stand would not result in a fundamental miscarriage of justice. *See Murray v. Carrier*, 477 U.S. 478, 495-96 (1986).

C. No Certificate of Appealability Issued

Under Rule 11(a) of the RULES GOVERNING § 2255 PROCEEDINGS, "[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Thus, the Court must determine whether Horton's claim warrants a certificate of appealablity pursuant to 28 U.S.C. § 2253(c)(2). *See id.* "If the court denies a certificate, a party may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22." *Id.*

A habeas petitioner does not have an absolute right to appeal a district court's denial of his habeas petition; he may appeal only those issues for which a certificate of appealablity has been granted. *Sandoval v. United States*, 574 F.3d 847, 852 (7th Cir. 2009). A habeas petitioner is entitled to a certificate of appealability only if he can make a substantial showing of the denial of a

constitutional right. *See* § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). Under this standard, Horton must demonstrate that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal citations omitted).

Where a district court denies a habeas petition on procedural grounds, a certificate of appealability should be issued only if: (1) jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and (2) jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *See id.* at 485.

Here, the Court finds that reasonable jurists would not debate that the petition does not present a valid claim of the denial of a constitutional right, or that this Court is barred from reviewing the merits of Horton's claims. Reasonable jurists could not debate that the petition should have been resolved in a different manner, as Horton's claims of IAC do not present evidence of constitutionally deficient attorney performance; nor do they demonstrate resulting prejudice. Therefore, the Court **DECLINES** to certify any issues for review pursuant to section 2253(c).

III. CONCLUSION

Based on the foregoing, the Motion to Vacate (Doc. 1) is **DENIED**. The Court **DISMISSES WITH PREJUDICE** this cause of action. The Court **ORDERS**

the Clerk of the Court to enter judgment reflecting the same. Further, the Court **DECLINES** to issue a certificate of appealability.

IT IS SO ORDERED.

Signed this 20th day of July, 2017.

UNITED STATES DISTRICT JUDGE