IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JAMOHL AARON SWANN,	*	
	*	
Petitioner	*	
	*	
	*	Criminal Case No. RWT 08-0319
v.	*	Civil Case No. RWT 11-CV-2355
	*	
	*	
UNITED STATES OF AMERICA,	*	
	*	
Respondent	*	
	*	

MEMORANDUM OPINION

Pending before the Court is the petition of Jamohl Aaron Swann ("Swann") under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. Swann argues that his retained counsel was ineffective on four grounds: (1) counsel failed to argue that the underlying Maryland state convictions for which Swann's sentences were enhanced were Constitutionally invalid, (2) counsel induced Swann to plead guilty by giving him an erroneous sentencing guideline calculation, (3) counsel induced Swann to plead guilty to an offense of which he is factually innocent, and (4) counsel, after negotiating a "defective plea" agreement was disbarred from practicing law before the U.S. District Court of Maryland and the Fourth Circuit. ECF No. 236.

For the reasons stated below, the Court will dismiss Swann's petition.

Factual and Procedural History

On July 10, 2008, Swann was indicted for conspiracy to distribute and possess with intent to distribute cocaine, in violation of 21 U.S.C § 846, among other related charges. ECF No. 1. Swann has three prior drug distribution convictions, stemming from his pleading guilty to three separate instances of cocaine distribution in the Circuit Court for Charles County, Maryland. *See*

Maryland v. Swann (Case Nos. CR98-0532, CR98-668, and CR98-777). These prior cocaine distribution convictions qualify as three "serious drug offenses".[1]

On May 9, 2009, Swann pleaded guilty to Counts 1, 2, 3 and 4 of the Second Superseding Information. ECF No. 127. Count 1 charged Swann with conspiracy to distribute and possess with intent to distribute 50 grams or more of cocaine base and 5 kilos or more of cocaine pursuant to 21 U.S.C. § 846; Count 2 charged Swann with possession of a firearm in furtherance of a drug trafficking crime pursuant to 18 U.S.C. § 924(c); Count 3 charged Swann with being a felon in possession of a firearm/ammunition pursuant to 18 U.S.C. § 922(g)(1); Count 4 charged Swann with money laundering pursuant to 18 U.S.C. § 1956(a)(1)(B)(i). *Id.*

On August 31, 2010, Swann was sentenced to 180 months imprisonment for Counts 1, 3, and 4, to be served *concurrently*. ECF No. 223. For Count 2, Swann received 60 months imprisonment, to be served *consecutively*. *Id.* Swann appealed his judgment to the Fourth Circuit on September 15, 2010, but later withdrew his appeal on September 16, 2010. ECF Nos. 225, 227.

On February 9, 2011, Swann filed a Writ of Error Coram Nobis with the Circuit Court for Charles County, Maryland. *See Maryland v. Swann* (Case No. CR98-0777). A Writ of Error Coram Nobis is an ancient common law writ, allowed without a time limitation, to correct factual errors which affect the validity of a judgment. *Skok v. State*, 760 A.2d 647, 654-656

[1] "(**A**) the term serious drug offense means…(**ii**) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law." U.S.C.A. § 924 (e)(1)(A)(ii).

Swann was sentenced under Md Code Art. 27, §§ 284 and 286. Those statutes have not been substantively changed. However, they are now located in MD Code, Criminal Law, §§ 5-303 and 5-602**,** respectively. Under Md. Code, Criminal Law, §5-608, the penalty for cocaine distribution is "imprisonment not exceeding 20 years". Therefore, because Swann's three Maryland convictions meet U.S.C.A. § 924 (e)(1)(A)(ii) specification, each offense qualifies as a "serious drug offense."

(Md. 2000). In the Writ of Error Coram Nobis, Swann objects to the three cocaine distribution convictions in the Circuit Court for Charles County, Maryland. *See Maryland v. Swann* (Case No. CR98-0777). Swann's Writ of Error Coram Nobis is still pending. *Id.* On August 23, 2011 Swann filed this timely *pro se* motion pursuant to 28 U.S.C. § 2255. ECF No. 236.

Attorney History

On July 14, 2008, the Court appointed John Chamble, of the Office of the Federal Public Defender, to represent Swann. ECF No. 3. Mr. Chamble represented Swann during the initial appearance, detention hearing, arraignment, and also for sentencing. ECF Nos. 3, 18, 28, 173. On October 1, 2008 Mr. Chamble withdrew as counsel upon notice of retained counsel, Patrick Christmas. ECF No. 64.

Mr. Christmas began plea negotiations between Swann and the Government. ECF No. 245. On January 28, 2009, Mr. Christmas was not present for a telephone status conference. ECF No. 94. On May 8, 2009, Mr. Christmas withdrew as counsel upon notice of new retained counsel, Elmer Ellis. ECF No. 129.

Mr. Ellis represented Swann for the remainder of plea negotiations and throughout the plea hearing. ECF No. 132. Ellis was later suspended from the practice of law for 120 days by the Court of Appeals for the District of Columbia. *See In re: Elmer Douglas Ellis*, No. 07-8511, ¶1 (February 20, 2009). On December 3, 2009, the District of Columbia Court of Appeals ordered reciprocal discipline on Mr. Ellis until he "met the legal education requirements imposed by the D.C. Circuit." *Id.* ¶ 2.

On September 29, 2009, United State Magistrate Judge William Connelly held an inquiry hearing and appointed prior counsel, John Chamble to represent Swann. ECF No. 173. Mr. Chamble returned to represent Swann throughout his sentencing. ECF Nos. 173, 221.

ANALYSIS

Under 28 U.S.C. § 2255, to have his sentence vacated, set aside, or corrected, a petitioner must prove that the "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." 28 U.S.C. § 2255.

Relief under § 2255 may be found when the outcome "inherently results in a complete miscarriage of justice and presents exceptional circumstances that justify collateral relief under § 2255." *United States v. Metzger* 3 F.3d 756, 756 (4th Cir. 1993) (citing *David v. United States*, 417 U.S. 333, 346–47 (1974) (internal quotation marks omitted). However, if the petitioner's motion and the record, "conclusively show that [he] is entitled to no relief," a hearing on the motions is unnecessary and the claim may be dismissed. 28 U.S.C. § 2255(b); *United States v. White*, 366 F.3d 291, 296–97 (4th Cir. 2004).

Courts examine claims of ineffective assistance of counsel under the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Under *Strickland*, defendants must first "show that counsel's performance was deficient" (the "performance prong"). Deficient performance is performance that is objectively unreasonable and "requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* The Court must "evaluate the conduct from counsel's perspective at the time," and it "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id*. at 689.

Second, the defendant must show "that the deficient performance prejudiced the defense" (the "prejudice prong"). *Id.* at 687. To demonstrate prejudice, the "defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. "Unless a defendant makes both showings, it cannot be said that the conviction…resulted from a breakdown in the adversary process that renders the result unreliable. *Id.* at 687.

"In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Id.* at 691. Moreover, if a defendant alleges ineffective assistance of counsel following entry of a guilty plea, he "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." *Hooper v. Garraghty*, 845 F.2d 471, 475 (4th Cir. 1988) (internal quotation marks omitted).

Petitioners that challenge guilty pleas under § 2255 on the basis of ineffective assistance of counsel, where the plea was voluntary and the petitioner had indicated satisfaction with counsel, encounter more difficulty. *See United States v. Lemaster*, 403 F.3d 216, 221 (4th Cir. 2005). "[B]ecause courts must be able to rely on the defendant's statements made under oath…allegations in a § 2255 motion that directly contradict the petitioner's sworn statements made during a properly conducted Rule 11 colloquy are always 'palpably incredible' and 'patently frivolous or false.'" *Id.* "[I]n the absence of extraordinary circumstances, the truth of sworn statements made during a Rule 11 colloquy is conclusively established, and a district court should, without holding an evidentiary hearing, dismiss any § 2255 motion that necessarily relies on allegations that contradict the sworn statements." *Id.* at 221–22.

I. Swann's Underlying Maryland Convictions

Swann claims that his counsel, John Chamble, was ineffective because he failed to argue that his 1998 convictions in the Circuit Court for Charles County, Maryland were "Constitutionally invalid." ECF No 250, at 1–2. Swann argues that he was determined to be a career criminal and an armed career offender based on his 1998 convictions. Further, Swann alleges that he "told his counsel to argue the invalidity of the State convictions, but counsel failed to do so." *Id.*

Swann's argument is unpersuasive and conclusory. In applying the *Strickland* test, Swann's argument does not pass either the performance or the prejudice prong. With regard to performance, deference favors counsel's judgments. *See Strickland*, 466 U.S. at 691. Swann offers an accusation without any supporting evidence of why failing to argue against his past convictions was objectively unreasonable. *See* ECF No. 236, at 4. Without evidence, Swann does not overcome the heavy deference given to counsel's tactical decisions. Moreover, even if Swann demonstrated evidence that his counsel's failure to argue against his past state convictions was objectively unreasonable, Swann nevertheless fails *Strickland's* prejudice prong. To date, the Circuit Court for Charles County, Maryland has not overruled Swann's past convictions. *See Maryland v. Swann* (Case No. CR98-0777). Swann does not allege any facts that show that if his attorney had argued against his past convictions, the Circuit Court for Charles County, Maryland would likely overturn his convictions. Nor does Swann show there is a reasonable probability that the result of the proceeding would be different if counsel had argued against his Maryland state convictions. Therefore Swann fails to demonstrate that deficient performance prejudiced his defense.

Additionally, Swann requests that this matter be held "in abeyance" until the Circuit Court for Charles County, Maryland makes a ruling. ECF No. 236, at 4. This is unnecessary. This Court explained at sentencing that if circumstances eliminated the applicability of the mandatory minimums, such as an overturned conviction, the Court would revisit the case. ECF No. 245-2. Therefore, holding this motion in abeyance is not required.

II. Allegedly Erroneous Sentencing Guidelines Calculation

In his initial § 2255 motion, Swann argues ineffective assistance of counsel with regard to Count 2.[2] ECF No. 236 at 4. However, in Swann's reply, he seems to add a Rule 11 violation and an ineffective assistance of counsel argument with regard to Count 3.[3] ECF No. 250 at 4–5.

a. Initial § 2255 Claims

With regard to Count 2, Swann argues Mr. Ellis was ineffective for incorrectly informing him that Count 2 would run *concurrently*. Even if Swann's allegations are true, Swann does not pass *Strickland's* prejudice prong because the record demonstrates that Swann acknowledged Count 2 would run *consecutively*. A defendant cannot claim ineffective assistance for counsel's inaccurate sentence prediction when there has been a proper Rule 11 colloquy at which the court advises the defendant of his potential sentence. *United States v. Foster*, 68 F.3d 86, 88 (4th Cir. 1995). During the plea colloquy, the Court directly addressed Swann. Swann's argument is unpersuasive because it contradicts his direct sworn testimony:

> **The Court**: Now, in this case, you've also reached agreement to plead guilty to Count 2, which carries a mandatory *consecutive* term of an additional 60 months, or five years. Do you understand that?
>
> **The Defendant**: Yes, sir.

[2] Count 2 charged Swann with possession of a firearm in furtherance of a drug trafficking offense, pursuant to 18 U.S.C. § 942 (c).

[3] Count 3 charged Swann with being a felon in possession of a firearm/ammunition pursuant to 18 U.S.C. § 922 (g).

> **The Court**: So whatever you see in that table for Offense Level 37, you have to add 60 months to it. Do you understand that?
>
> **The Defendant**: Yes, sir.

ECF No. 245 at 28 (emphasis added).

b. Additional Claims Asserted in Reply

With regard to Count 3, Swann seems to argue that his plea was not knowing and voluntary due to a Rule 11 violation and ineffective assistance of counsel. ECF No. 250 at 5 ("Petitioner was not informed by his attorney…nor by the Court…as required in accordance with the Fed.R.Crim.P.11."). Specifically, Swann argues that the Court committed a Rule 11(b)(1)(I) error by not directly addressing the fifteen-year mandatory minimum sentence attached to Count 3.

It is questionable whether Rule 11 violations are cognizable claims in a § 2255 motion. *See U.S. v. Timmreck*, 441 U.S. 780, 784–85 (1979) ("[W]e find it unnecessary to consider whether § 2255 relief would be available if a violation of Rule 11 occurred in the context of other aggravating circumstances. We decide only that such collateral relief is not available when all that is shown is a failure to comply with the formal requirements of the Rule.") (internal quotation marks omitted). Rule 11 claims can be brought up on direct appeal. However, claims that are not raised on direct appeal are procedurally defaulted unless the petitioner can show "cause and actual prejudice." *U.S. v. Frady*, 456 U.S. 152, 167 (1982). Under the "cause and actual prejudice" standard, to obtain § 2255 relief the petitioner must show (i) cause excusing his procedural default and (ii) actual prejudice resulting from the errors of which he complains. *Id.* at 168. Because neither Swann's § 2255 motion, nor his reply to the Government's opposition show cause for not raising a Rule 11 violation on appeal, the Court need not answer

the question of actual prejudice. Swann's Rule 11 violation claim is therefore procedurally defaulted.

Swann cites *U.S. v. Goins*, 51 F.3d. 400 (4th Cir. 1995) and *U.S. v. Hairston*, 522 F.3d 336 (4th Cir. 2008). However, those cases are easily distinguished. In both cases, the Fourth Circuit vacated the defendant's plea because the defendant in each was not informed of the mandatory minimum at the time of entering a guilty plea. *See Goins*, 51 F.3d at 401-02; *Hairston*, 522 F.3d at 338–39. In Swann's case the plea agreement and the Government's explanation of the plea deal outline the mandatory minimum sentences involved. Moreover, *Goins* and *Hairston* involved Rule 11 violations brought on direct appeal, rather than in a § 2255 motion. *Goins* and *Hairston* are therefore not on point.

However, Swann's ineffective assistance of counsel argument with regard to Count 3 is, perhaps, colorable. If a lawyer miscalculates a possible sentence, and gives the defendant erroneous information as to what mandatory minimums would apply to the defendant's sentence, it is possible that would constitute ineffective assistance of counsel if the erroneous advice induces the defendant to accept the plea agreement, especially when the Court does not directly inform the defendant of a mandatory minimum sentence. Here, both the plea agreement and the Government's oral summary of the plea agreement mention all applicable mandatory minimum sentences, including the fifteen year mandatory minimum attached to Count 3. ECF No. 132 at 5; ECF No. 245-1 at 14. However, after the Government's summary, Swann voiced confusion about his sentence:

> **The Court**: Are there any side deals or secret assurances or private assurances that are not contained in this document? Is everything here?
>
> (Defendant conferring with Counsel.)

The Defendant: *My understanding that my minimum mandatory minimum is fifteen years?*

The Court: What are you referring to?

The Government: Your Honor, I think the Defendant is referring to – if I could interrupt here. The Defendant, under the terms of this agreement, the best case scenario under the statute is that the Defendant, under the 841 – that is, Count 1 offense -- the minimum mandatory there would be ten years, and *consecutive* to that would necessarily, by statute, be the five years on the 924(c). That is the possession of a firearm in furtherance of the drug-trafficking crime. Therefore, in total, the lowest mandatory minimum that the Court could impose pursuant to statute is 15 years.

The Defendant recognizes, however, and we've had extensive discussions that his guidelines on Count 1 is 360 to life because we believe he's a career offender, and, *in addition to that, he must serve five years*, so that any departure will occur on Count 1 as it relates to the 360 to life is a 37-VI under the guidelines.

The Court: All right. Is that your understanding sir?

(Defendant conferring with Counsel.)

The Defendant: Yes, sir.

The Court: That is your understanding?

The Defendant: Yes, sir.

The Court: All right. So, with the clarification that Mr. Crowell has given, am I correct that everything you're relying upon, all the assurances you're relying upon are contained in this document? Is that correct?

The Defendant: Yes, sir.

ECF No. 245-1, at 21–23 (emphasis added).

Although Swann eventually agreed that he understood how his sentence might be determined, the government explained Counts 1 and 2, but not Count 3. From the time Swann voiced confusion until the end of the plea hearing, there was no mention of Count 3's mandatory minimum sentence on the record.

Swann argues that emails, notes and letters from Mr. Ellis demonstrate that Mr. Ellis and Mr. Crowell (for the Government) negotiated a fifteen year sentence, rather than a twenty year sentence. In his reply, Swann presents an email message from Mr. Crowell to Mr. Ellis on April 22, 2009 (the same day that Swann signed the plea agreement). ECF No. 250-4. The email explains that Swann's plea agreement will require a "mandatory minimum floor of 15 years" rather than twenty years. *Id.* Additionally, in a letter written more than a year after Mr. Ellis negotiated and signed Swann's plea agreement, Mr. Ellis explains that he successfully negotiated a *fifteen* year sentence for Swann. ECF No. 250-7 at 22, 23, 25. In the same letter, Mr. Ellis explains that Swann only wanted representation "if [Mr. Ellis] could get him a plea for 15 years." *Id.* at 22.

There are several problems with Swann's analysis. First, Mr. Ellis could not possibly have negotiated a fifteen year sentence, as opposed to a twenty year sentence, on Swann's behalf. The plea agreement bound the parties to the agreement, i.e. the Government and Swann, *not* the Court, which was clearly explained to Swann during the Rule 11 hearing. *Id* at 23. More importantly, as noted above, the mandatory minimum sentence as to Count 3 is explicitly stated in the plea agreement, and was explicitly stated by the Government at the Rule 11 hearing. ECF No. 132 at 4-5; ECF No. 250-7 at 13-14.

The Court does recognize that there appeared to be some confusion about the mandatory minimums that would apply to Swann, and that confusion does not appear to have been resolved with unassailable certainty at the Rule 11 hearing.[4] However, given the facts of this case, even if Mr. Ellis truly believed, in error, that it was possible for Swann to receive only a fifteen year

[4] Of course, even if the confusion surrounding the mandatory minimum amounted to a Rule 11 violation, which is far from clear, "[t]he mere existence of a Rule 11 error is not enough to warrant reversal" if the error is harmless. *Hairston*, 522 F.3d at 341.

sentence, and even if that erroneous belief was communicated to Swann, Swann still did not suffer from ineffective assistance of counsel.

As noted above, the standard for determining whether a guilty plea was entered into based on ineffective assistance of counsel is whether Swann can show there is a reasonable basis to believe that, but for Mr. Ellis's alleged failure, he would not have pleaded guilty and would have gone to trial. *Hooper*, 845 F.2d at 475. Aside from Swann's own conclusory after-the-fact assertions that he would have gone to trial if he had known he was facing a mandatory minimum sentence of twenty years, there is no basis for concluding that Swann would actually have made a different decision. During the portion of the Rule 11 hearing which apparently led to the confusion, Mr. Crowell states that the *best case scenario* for Swann is fifteen years of incarceration. ECF No. 245-1 at 22. However, in that same exchange, Mr. Crowell clearly states that the government's position is that Swann would be considered a career offender, and therefore his guideline range would be 360 months, i.e. 30 years, to life. *Id.*

Further, as it stood at the time Swann entered his guilty plea, the offense level he and the Government agreed to was 37. *Id.* at 17. The Court specifically explained to Swann how the guidelines would be applied in his case based on this offense level, pointing out that, based on this offense level, the guidelines would produce a range of 210 months to life, depending on his criminal history. *Id.* at 28. Further, the Court also specifically informed Swann that he would have to add sixty months to that guideline range, resulting in a possible guideline of at least 270 months, or 30 months *more* than the twenty years Swann actually received. *Id.* Swann was also aware that any requested downward departure from that guideline for his cooperation would come solely at the discretion of the Government, and that, at most, they would only request a 4-level reduction. *Id.* at 28-30. Thus, at the time of Swann's guilty plea, based on the extensive

explanation provided by the Court as to exactly how sentencing would work in his case, not to mention the very clear explanation given in the plea agreement and by the Government, Swann must have been aware that he was facing the very real possibility of much more than fifteen years in prison.

At best, Swann has shown that his attorney was confused about the statutory minimum sentences that would apply in his case, and that this led to Swann's confusion about the very best case scenario he could hope for. But confusion about a best case sentencing scenario, i.e. the very best sentence a defendant can hope for if everything breaks right, does not justify attacking the actual sentence where the actual sentence was within the range of possibilities clearly communicated to the defendant. Swann has not produced any evidence that he was promised, by the Government, by his attorney, or by the Court, that he would only receive a fifteen year sentence if he signed the plea agreement. There is no indication that the Government agreed not to seek a sentence of longer than fifteen years. Nor did Swann object, at the Rule 11 hearing or at his sentencing, to the imposition of a sentence of more than fifteen years.[5] Whatever confusion might have existed about the mandatory minimums to which Swann was subject, Swann has simply not shown that he ever believed he was *entitled* to a sentence of only fifteen years, or even that he thought, or was led to believe, that a fifteen year sentence was a likely outcome. Rather, at most he has shown only that he believed that was one possible outcome. That is simply not enough to show ineffective assistance of counsel.

[5] By contrast, in *Hairston*, the Defendant objected strenuously at his sentencing to the imposition of a sentence fifteen years longer than contemplated by his plea agreement. *See Hairston*, 522 F.3d at 339.

III. Alleged Inducement to Plead Guilty To Offense Of Which He Was Innocent.

Next, Swann argues that Mr. Ellis induced him to plead guilty to Count 2, possession of a firearm in furtherance of a drug trafficking crime, although he was actually innocent of the charge. This argument is also unpersuasive.

Allegations in a § 2255 motion that directly contradict the petitioner's sworn plea are considered patently false in the absence of extraordinary circumstances. See *Lemaster*, 403 F.3d 221-22. Swann's argument that he is now innocent directly contradicts his plea testimony. Near the conclusion of Swann's plea hearing, this Court asked, "[a]nd are you pleading guilty because you're, in fact, guilty?" Swann responded, "Yes, sir." ECF No. 245-1, at 45:3–5.

Given Swann's past sworn statements, and in the absence of any extraordinary circumstance, these bare accusations do not show that Swann is entitled to relief. *See id*.

IV. Counsel's Disbarment

Last, Swann argues that Mr. Ellis was ineffective because, after negotiating a "defective plea" agreement, Mr. Ellis was disbarred from practicing law. ECF No. 236. Swann alleges that Mr. Ellis never informed him that he was under investigation or that there was a potential that he would not be able to complete the services for which he was retained. *Id.* Additionally, Swann asserts that Mr. Ellis hastily negotiated a plea agreement that was not in Swann's best interest. *Id.* Swann's final argument does not demonstrate prejudice and therefore fails.

It appears Mr. Ellis was under investigation by the District of Columbia Bar months before Mr. Ellis appeared on Swann's behalf. *See In re: Elmer Douglas Ellis*, No. 07-8511, ¶1 (February 20, 2009). Subsequently, Mr. Ellis was suspended from practicing law by the District of Columbia Court of Appeals and the District Court of Maryland. *Id.*; ECF No. 168. "For the

purposes of determining ineffectiveness under *Strickland*, we would presume prejudice from [counsel under investigation for disbarment] only if the defendant demonstrates that counsel actively represented conflicting interests and that actual conflict of interest adversely affected his lawyer's performance." *Roach v. Martin*, 757 F.2d 1463, 1479 (4th Cir. 1985) (internal quotation marks omitted).

Despite Mr. Ellis's disbarment, Swann fails to demonstrate that his representation was adversely affected or that his defense was prejudiced. Swann argues his plea was "defective," because Mr. Ellis rushed through the negotiations to close the case before his pending suspension, resulting in a plea deal that did not represent Swann's best interests. ECF No. 236. Given the facts of this case, Swann's allegation is incredible. Swann was facing life in prison for his crimes. Given his criminal history, even after pleading guilty, there was the real possibility that Swann would have received a sentence of thirty years or more. Mr. Ellis secured a plea agreement that gave Swann the opportunity to significantly reduce his possible sentence. Sure enough, as a result of that plea agreement, Swann received the lowest possible sentence the Court could lawfully impose. Pursuant to 21 U.S.C. § 924(c), Count 2 carries a minimum term of five years *consecutive* to any other another sentence imposed. Pursuant to 21 U.S.C. § 924(e)(1) and Swann's three prior "serious drug offenses", Count 3 carries a minimum fifteen year sentence which may not be suspended. Taken together, Count 2 and Count 3 require a twenty year minimum sentence. Swann received that twenty year minimum sentence. Whatever might have led to Mr. Ellis's disciplinary issues, it cannot credibly be said that these adversely affected or prejudiced Swann's case.

CERTIFICATE OF APPEALABILITY

Swann may not appeal this Court's order denying him relief under 28 U.S.C. § 2255 unless it issues a certificate of appealability. *United States v. Hardy*, 227 F. App'x 272, 273 (4th Cir. 2007). A certificate of appealability will only issue if Swann has made a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c); *Hardy*, 227 F. App'x at 273. A petitioner "satisfies this standard by demonstrating that reasonable jurists would find that any assessment of the constitutional claims by the district court is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable." *United States v. Riley*, 322 F. App'x 296, 297 (4th Cir. 2009). Swann has failed to raise a cognizable § 2255 claim in which a reasonable jurist could find merit, and thus no certificate of appealability shall issue.

CONCLUSION

Swann has not demonstrated that his counsel was ineffective and that, but for Counsel's alleged errors, he would not have pled guilty or would have received a lower sentence. Accordingly, the Court shall dismiss Swann's § 2255 Motion [ECF No. 236].

A separate Order follows.

Date: September 24, 2014

/s/
ROGER W. TITUS
UNITED STATES DISTRICT JUDGE