

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO
3
4

FELIX ALBERTO CASTRO-DAVIS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 13-1662 (JAF)

(Crim. No. 07-186-01)

5
6 **SUPPLEMENTAL OPINION TO DOCKET NO. 7**

7 On August 28, 2013, Félix Alberto Castro-Davis (“Castro-Davis”) came before the
8 court with a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct the sentence
9 we imposed in Criminal No. 07-186-01. (Docket No. 1.) The government opposed this
10 motion. (Docket No. 3.) On March 18, 2014, we issued an opinion and order denying
11 in part the petition. We dismissed all claims other than one regarding advice during plea
12 discussions, which we needed to explore further. (Docket No. 7.) On April 24, 2014, we
13 held an evidentiary hearing to address what advice was given during plea discussions.
14 Castro-Davis was represented by counsel, and both Castro-Davis and the lawyer for his
15 criminal case, Epifanio Morales-Cruz (“Morales”), served as witnesses. After the
16 hearing, it is clear to us that this petition must be dismissed.

17 **I.**

18 **Evidentiary Hearing**

19 In his petition, Castro-Davis alleged that his trial counsel provided inaccurate
20 advice during plea discussions. He claimed that he told counsel he wanted a plea option
21 that did not require cooperation with the government, such as a straight plea, but that
22 Morales said that was not available. (Docket No. 1.)

1 During the April 12, 2014, evidentiary hearing, the facts of the case were clearly
2 established. Castro-Davis told the court that he wanted to plead guilty in order to have a
3 potential reduction of sentence. Had he originally pled, the sentencing guidelines would
4 have changed slightly. Instead of a life term of imprisonment, the sentencing guidelines
5 would have recommended a range of thirty-five years imprisonment up to life, within the
6 judge's discretion. Although Castro-Davis said he wanted to accept responsibility for the
7 carjacking and weapon charge and conspiracy, he still maintained innocence in that he
8 did not have anything to do with the murder.

9 In his testimony, Morales said that he followed his standard procedure in this case,
10 which was to use the first one or two client meetings to explain the full process. He says
11 that he discussed the possible capital phase, and the three ways to dispose of the case – a
12 negotiated plea with the government; a straight plea; or a trial. Morales said that he
13 visited Castro-Davis once every two weeks, totaling twenty-four or twenty-five visits.

14 Morales also brought several exhibits to the stand. The first exhibit was a letter
15 from the government offering Castro-Davis thirty-seven years for a guilty plea. The
16 letter does not mention cooperation. Castro-Davis signed the top of the letter, witnessing
17 that he had seen it. According to Morales, Castro-Davis became upset when shown the
18 letter, and said that he wanted a sentence in the teens. According to Morales, about six or
19 seven months into the case, Castro-Davis told him that he had heard about a different
20 carjacking case where the defendant did a straight plea and received twelve to fourteen
21 years. Morales generally explained the sentencing guidelines, and said that because
22 Castro-Davis' carjacking resulted in a murder, it would be impossible to get a sentence so
23 low after a straight guilty plea.

1 Morales also testified about a March 2 meeting close to the trial date. According
2 to Morales, Castro-Davis said that he wanted to negotiate with the government and was
3 willing to negotiate a deal that would have him serve fifteen years in prison. For his
4 second exhibit, Morales showed the emails that he sent and received that night with the
5 Assistant United States Attorney (AUSA) asking for a negotiated plea deal on behalf of
6 his client. The next day, Morales spoke on the phone with the AUSA. He testified that
7 he asked if there was a possibility of less than twenty years and the AUSA rejected it. He
8 testified that he then asked if it was possible to get less than twenty-five years, and again
9 the AUSA denied that request. She offered a recommendation of thirty-five years in
10 exchange for a guilty plea, and of thirty-two years if all the defendants pled guilty.
11 Morales asked to have this in writing and, at 11:10 A.M., the AUSA sent an email
12 outlining this offer. Morales testified that he then spoke with his client in person, and
13 Castro-Davis said the he would not take a plea deal for more than fifteen years.

14 At the evidentiary hearing, Morales was asked about Castro-Davis' mental
15 capacity. There had been a medical evaluation for a potential death-penalty certification
16 in the potential capital phase showing that Castro-Davis had some form of diminished
17 capacity. Morales said that he had been surprised by that report because Castro-Davis
18 had always understood and asked good questions of him during their meetings. Morales
19 further stated that he went over the offer letter with Castro-Davis line by line, and neither
20 Morales nor Castro-Davis ever mentioned cooperation with the government while
21 reviewing the letter. At the hearing, we questioned Petitioner and he was able to tackle
22 all questions and give unequivocal responses. We credit attorney Morales' testimony and
23 place in question the credibility of the Petitioner.

II.

Analysis

The only remaining issue is whether Morales provided ineffective assistance of counsel regarding plea discussions. (Docket No. 7.) To prove a claim of ineffective assistance of counsel, Castro-Davis must show that both: (1) the attorney’s conduct “fell below an objective standard of reasonableness;” and (2) there is a “reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Strickland v. Wash., 466 U.S. 668, 688-94 (1984). This same test applies in the context of guilty pleas. Lafler v. Cooper, 132 S.Ct. 1376 (2012); Missouri v. Frye, 132 S.Ct. 1399 (2012); Hill v. Lockhart, 474 U.S. 52 (1985). While the performance prong is the same as in a trial context, for the prejudice prong, Castro-Davis must show that,

but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (*i.e.*, that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer’s terms would have been less severe than under the judgment and sentence that in fact were imposed.

Lafler, 132 S.Ct. 1376 at 1385; see also Frye 132 S. Ct. at 1409-10.

Castro-Davis has not shown that Morales’ conduct fell below an objective standard of reasonableness. Although that alone is enough to defeat the claim, Castro-Davis has also failed to show that his sentence under the offer’s terms would have been less severe than the sentence that was in fact imposed, because life imprisonment would still have been within the guidelines range, even after a plea. Further, we note that even in the evidentiary hearing, Castro-Davis refused to admit to any involvement in the

1 murder. Such an admission of guilt would have been essential to a straight plea. For
2 these reasons, we dismiss the remaining claim in his petition.

3 **III.**

4 **Certificate of Appealability**

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6 In accordance with Rule 11 of the Rules Governing § 2255 Proceedings, whenever
7 issuing a denial of § 2255 relief we must concurrently determine whether to issue a
8 certificate of appealability (“COA”). We grant a COA only upon “a substantial showing
9 of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make this showing,
10 “[t]he petitioner must demonstrate that reasonable jurists would find the district court’s
11 assessment of the constitutional claims debatable or wrong.” Miller-El v. Cockrell, 537
12 U.S. 322, 338 (2003) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)). While
13 Castro-Davis has not yet requested a COA, we see no way in which a reasonable jurist
14 could find our assessment of his constitutional claims debatable or wrong. Castro-Davis
15 may request a COA directly from the First Circuit, pursuant to Rule of Appellate
16 Procedure 22.

17 **V.**

18 **Conclusion**

19 For the foregoing reasons, we hereby **DENY** Castro-Davis’ § 2255 motion
20 (Docket No. 1). It is evident that Petitioner’s claims have no credible basis on the
21 developed record. Judgment will enter dismissing this case in its entirety.

22 **IT IS SO ORDERED.**

23 San Juan, Puerto Rico, this 25th day of April, 2014.

24 S/José Antonio Fusté
25 JOSE ANTONIO FUSTE
26 U. S. DISTRICT JUDGE