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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

NANCY STONE,  
  
Plaintiff,  
  
v.  
  
UNITED STATES,  
  
Defendants.

C12-2217 TSZ  
  
ORDER

THIS MATTER comes before the Court on pro se Petitioner Nancy Stone’s Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255, docket no. 1. Petitioner challenges the 24 month sentence imposed upon her by this Court after she pled guilty to one count of Social Security Fraud. After the Ninth Circuit dismissed Petitioner’s appeal on the grounds that it was barred by the appeal waiver in her Plea Agreement, Petitioner timely brought this motion challenging her sentence for ineffective assistance of counsel in two circumstances, first at the plea bargaining phase of litigation and, second, at sentencing. Having considered Petitioner’s § 2255 motion, docket no. 1,

1 and supplemental motion, docket no. 14, the Government’s responses thereto, the  
2 Petitioner’s reply,<sup>1</sup> and the balance of the record, the Court enters the following ORDER:

3 **I. Background**

4 Petitioner was indicted on three counts of Social Security Fraud and 17 counts of  
5 Theft of Government Funds on September 14, 2011. The indictment charged Petitioner  
6 and her husband, Ronnie George, with a 21-year fraud in which they conspired to collect  
7 over \$300,000 in need-based benefits to which they were not entitled. Superseding  
8 Indictment (Ex. A to Government’s Response, docket no. 11). The indictment charges  
9 that Defendants falsely represented to the Social Security Administration (“SSA”) and  
10 other federal agencies that Ronnie George was disabled and unable to work. Id. Based  
11 on these false representations, Petitioner and Ronnie George collected benefits  
12 administered by the SSA, the Department of Housing and Urban Development (“HUD”),  
13 and the Washington Department of Social and Health Services. Id.

14 Petitioner was represented by defense attorney Suzanne Elliott in connection with  
15 the charges. A Rule 11 change of plea hearing was held on October 14, 2011. Petitioner  
16 met with counsel for over an hour prior to the hearing to review the written Plea  
17 Agreement. Suzanne Elliott Time Records (Ex. E to Government’s Response). The Plea  
18 Agreement charged Plaintiff with one count of Social Security Fraud and stated that the  
19 government would cap its sentencing recommendation at 37 months. Plea Agreement

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21 <sup>1</sup> Petitioner’s reply was due on Monday, May 13, 2013. She filed a motion for an extension of deadline  
22 on May 15, 2013, docket no. 16, and filed her reply brief on May 16, 2013. The Court GRANTS the  
23 motion for extension, docket no. 16, and has considered the Petitioner’s reply brief.

1 (Ex. F to Government’s Response). The written Plea Agreement set forth the elements of  
2 the offense charged, the maximum penalties, the rights Petitioner waived by entering into  
3 the plea, and pertinent sentencing factors. Id. The Plea Agreement also represented that  
4 “Defendant has entered into this Plea Agreement freely and voluntarily and that no  
5 threats or promises, other than the promises contained in this Plea Agreement, were made  
6 to induce Defendant to enter this plea of guilty.” Id. at 9. Stone executed the written  
7 Plea Agreement prior to the hearing. Id. at 10.

8 At the change of plea hearing, Stone testified under oath that she was satisfied  
9 with the advice and counsel she had received from Ms. Elliott. Transcript of Proceedings  
10 of Change of Plea Hearing at 8 (Ex. G to Government’s Response). In addition, she  
11 testified that she had “carefully” reviewed the Plea Agreement, and “thoroughly”  
12 discussed it with counsel. Id. She confirmed that the Plea Agreement contained all the  
13 promises that had been made to her and that no one had threatened her in any way or tried  
14 to force her to plead guilty. Id. at 16. At the conclusion of the hearing, the Court found  
15 Petitioner “fully competent and capable of entering an informed plea, that she is aware of  
16 the nature of the charge and of the consequences of the plea, and that the plea of guilty is  
17 made knowingly, intelligently, and voluntarily.” Id. at 23.

18 Petitioner appeared for sentencing before this Court on March 7, 2012. Verbatim  
19 Report of Proceedings of Sentencing (Ex. H to Government’s Response). The Court  
20 found, over Petitioner’s objection, that the Sentencing Guideline range was 24 to 30  
21 months, which included an enhancement for use of a minor based on the finding that  
22 Petitioner’s 13 year-old son had completed a fraudulent document in furtherance of the  
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1 Defendants' fraud. Id. at 7-24. The government recommended a high-end sentence of 30  
2 months. Id. at 25. Counsel for Petitioner argued for a downward variance, with a  
3 sentence of six months in a halfway house and six months of home confinement. Id. at  
4 25-36. Petitioner addressed the Court and apologized for her conduct. Id. at 36.  
5 Petitioner was also given a second opportunity to address the Court after her husband  
6 addressed the Court. She apologized again and stated, "that's all I can say." Id. at 38.  
7 The Court imposed a sentence of 24 months. Id. at 41.

## 8 **II. Discussion**

9 Petitioner brings this motion under 28 U.S.C § 2255 to vacate, set aside, or correct  
10 her sentence, claiming ineffective assistance of counsel. She claims that counsel failed to  
11 adequately explain her rights under the Plea Agreement, that counsel and the prosecution  
12 threatened her to induce her to enter the plea agreement, and that counsel prevented her  
13 from testifying at her sentencing hearing. In a supplemental § 2255 motion, Petitioner  
14 also claims ineffective assistance of counsel based on Fifth Amendment violations at the  
15 time of her arrest. Docket no. 14.

16 The two-part test of Strickland v. Washington, 466 U.S. 668, 687-89, 104 S. Ct.  
17 2052 (1984), "applies to challenges to guilty pleas based on ineffective assistance of  
18 counsel." Hill v. Lockhart, 474 U.S. 52, 57, 106 S. Ct. 366 (1985). In order to prevail on  
19 a claim of ineffective assistance of counsel, Petitioner must prove (1) that counsel's  
20 performance was deficient, and (2) that the deficient performance prejudiced the defense.  
21 Strickland, 466 U.S. at 687. Counsel's performance is deficient if it falls below an  
22 objective standard of reasonableness. In order to satisfy the second prong of the test and  
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1 establish that counsel’s performance prejudiced the defense, a petitioner “must show that  
2 there is a reasonable probability that, but for counsel’s unprofessional errors, the result of  
3 the proceeding would have been different.” Strickland, 466 U.S. at 694. Where the  
4 conviction is by a guilty plea, the petitioner must establish that she would not have  
5 entered the guilty plea but for the professional errors. Hill v. Lockhard, 474 U.S. 52, 56,  
6 106 S. Ct. 366 (1985). “Judicial scrutiny of counsel’s performance must be highly  
7 deferential” and courts must indulge a “strong presumption that counsel ‘rendered  
8 adequate assistance and made all significant decisions in the exercise of reasonable  
9 professional judgment.’” U.S. v. Palomba, 31 F.3d 1456, 1460 (9th Cir. 1994) (quoting  
10 Strickland, 466 U.S. at 690).

11         Petitioner makes seven separate claims in her motions. The government argues  
12 preliminarily that the Court should dismiss the motions outright because the Petitioner  
13 has failed to comply with the requirement that a § 2255 petition set forth “a statement of  
14 specific facts” sufficient to warrant relief. James v. Borg, 24 F.3d 20, 26 (9th Cir. 1994).  
15 In support of this contention, the government cites several cases where the Ninth Circuit  
16 has upheld the dismissal of a § 2255 petition because the claims were only “conclusory”  
17 allegations without a sufficient factual basis. While this may be appropriate in certain  
18 circumstances, the Court concludes that in the present case, the Petitioner has set forth a  
19 sufficient factual basis for the government to understand the nature of her claims and  
20 offer a reasoned response. As such, the Court will proceed to the merits of Petitioner’s  
21 claims.

1           **1.     Rights pertaining to Plea Agreement**

2           Petitioner first claims that counsel “failed to advise movant of her rights in  
3 accepting the plea agreement.” Motion at 5. This claim fails because it is contradicted  
4 by Petitioner’s sworn testimony at the Rule 11 hearing where she testified that she had  
5 “carefully” reviewed the Plea Agreement and “thoroughly” discussed it with counsel.  
6 Transcript of Proceedings of Change of Plea Hearing at 8. During Petitioner’s colloquy,  
7 the Court explained in detail the elements the government would have to prove beyond a  
8 reasonable doubt at trial; the rights that Petitioner would have at trial and that she waived  
9 those rights by pleading guilty; and the Sentencing Guidelines and sentencing procedures.  
10 Id. at 9-20.

11           In addition, even if counsel failed to adequately advise the Petitioner of her rights  
12 with respect to the Plea Agreement, she cannot prove prejudice under the second prong of  
13 the Strickland test because any inadequacy in counsel’s representation was cured by the  
14 Court’s colloquy at the Rule 11 hearing. At the hearing, he reviewed the Plea Agreement  
15 in detail and confirmed that Petitioner understood her rights under the Agreement.

16           **2.     Threats concerning amount of prison time**

17           Petitioner next contends that counsel “worked with Prosecution in threatening  
18 Movant regarding the amount of prison time she would receive.” Motion at 5. This  
19 claim is also contradicted by Petitioner’s testimony at the Rule 11 plea hearing. At that  
20 time, Petitioner expressly confirmed that no one had threatened her or put any pressure  
21 on her to induce her to enter a plea of guilty. Transcript of Proceedings from Rule 11  
22 Hearing at 16.  
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1           **3.       Threats to Petitioner’s Children**

2           Petitioner also claims that counsel threatened that “if Movant did not accept the  
3 plea agreement, the prosecution would arrest and charge her son and daughter, and would  
4 also charge Movant with Bank Fraud.” Motion at 5.

5           The Government responds that this claim appears to be related to a conversation  
6 that defense counsel had with Petitioner about a separate matter involving eviction  
7 proceedings that occurred several months after Petitioner entered her guilty plea.  
8 Defense counsel memorialized the conversation in a letter. Letter to Petitioner from  
9 Defense Counsel (Ex. J to Government’s Response). In the letter, defense counsel  
10 advised Petitioner against filing in an ongoing eviction proceeding documents drafted by  
11 a person with a criminal history of creating forged documents. Id. Apparently at issue in  
12 the eviction proceeding were transactions in which Petitioner’s children had purportedly  
13 been incorporated as churches to reduce tax liability. Id. Defense counsel expressed  
14 concern that Petitioner’s intent to file forged documents in the eviction proceeding could  
15 lead to new charges or negatively impact her at sentencing. Id.

16           Any advice by defense counsel concerning the separate eviction litigation cannot  
17 be construed as ineffective assistance of counsel in this case because the conversation and  
18 follow-up letter occurred after Petitioner entered her guilty plea. Where a conviction is  
19 by a guilty plea, the petitioner must establish that she would not have entered a guilty  
20 plea but for the professional errors. Hill v. Lockhard, 474 U.S. at 56.

21           Petitioner’s reply brief reiterates the claim that defense counsel “related that, as a  
22 part of an unsaid agreement, if she didn’t accept the plea agreement the government was  
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1 offering, her children would be charged and indicted.” Reply at 12. Because this claim  
2 is contradicted by Petitioner’s testimony at the Rule 11 plea hearing that no one had  
3 threatened her or put any pressure on her to induce her to enter a plea of guilty, the Court  
4 views it with extreme skepticism. Blackledge v. Allison, 431 U.S. 63, 74, 97 S. Ct. 1621  
5 (1977) (holding that “solemn declarations in open court carry a strong presumption of  
6 verity.”) Because Petitioner’s allegation is conclusory and “unsupported by specifics” it  
7 is “subject to summary dismissal.” Id.

#### 8 **4. Sentencing Enhancement**

9 Petitioner claims that defense counsel failed to “present rebuttal evidence at  
10 sentencing” to oppose the two-point sentencing enhancement sought by the government  
11 for use of a minor in the commission of the crime. Motion at 5. Petitioner does not  
12 explain what evidence defense counsel failed to provide, but it appears that she is  
13 referencing the fact that Michael Stone was prepared to testify at sentencing that  
14 Petitioner was not present when he made misrepresentations to the SSA concerning  
15 Ronnie George’s disability. This claim is contrary to the record. Counsel did proffer at  
16 sentencing that Michael Stone would testify that he completed the form outside of  
17 Petitioner’s presence and not at her request. Verbatim Report of Proceedings of  
18 Sentencing at 8. However, the Court held that the enhancement would apply anyway  
19 because Petitioner had identified Michael Stone as a person able to corroborate Ronnie  
20 George’s disability and authorized the SSA to contact him. Id. at 18-20. As a result, the  
21 fact that Michael Stone did not testify is not a result of deficient representation and did  
22 not result in any prejudice to Petitioner.



1           **5.     Petitioner’s ability to testify at sentencing**

2           Petitioner claims that defense counsel prevented her from testifying at sentencing  
3 “regarding her confusion of accepting plea agreement of 24 months.” Motion at 5. This  
4 claim is entirely contradicted by the record. Petitioner was provided with two  
5 opportunities to address the Court at sentencing. Verbatim Report of Proceedings of  
6 Sentencing at 36, 38. She apologized to the Court, thanked her family for being present,  
7 and stated that she had nothing else to say. She now appears to contend that, although  
8 she had an opportunity to address the Court, defense counsel prevented her from saying  
9 what she wanted to say, i.e., that she was confused about accepting the Plea Agreement.

10           Petitioner testified at the Rule 11 hearing that she understood the Plea Agreement  
11 and the sentencing guidelines. The Ninth Circuit has held that the court should give  
12 “substantial weight” to the defendant’s relevant in-court statements, United States v.  
13 Kaczynski, 239 F.3d 1108, 1115 (9th Cir. 2001). Here, the Petitioner claims that she  
14 wanted to testify at sentencing that she was confused about entering the Plea Agreement  
15 but defense counsel prevented her from doing so. The Court concludes that this claim of  
16 ineffective assistance is without merit. Petitioner had previously testified under oath that  
17 she understood the Plea Agreement and the sentencing guidelines. She further was  
18 provided with two opportunities to address the Court at sentencing.

19           **6.     Evidence of Psychological State**

20           Petitioner’s last claim in her initial § 2255 motion is that defense counsel failed to  
21 “submit evidence of Movant’s psychological/emotional state of PTSD and confusion.”  
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1 Motion at 8. Specifically she contends that counsel should have submitted a  
2 psychological report from Health Point Community Center that she appended to her  
3 § 2255 motion. Id. at 17. She claims that the combination of prescription drugs that she  
4 was taking during the legal proceedings in this case rendered her incapable of  
5 understanding the proceedings.

6 This claim fails for two reasons. First, the medical report that Petitioner submitted  
7 is dated nearly a month after sentencing. Second, the report does not contain anything to  
8 suggest that Petitioner was not competent. The report indicates that Petitioner was  
9 “experiencing significant stress related to current legal stress” and “doesn’t sleep well.”  
10 Counsel was not ineffective for failing to present this evidence to the Court either at the  
11 Rule 11 hearing or at sentencing.

12 **7. Fifth Amendment violations**

13 In a supplemental § 2255 motion Petitioner alleges that her Fifth Amendment  
14 constitutional rights were violated when she was interrogated by federal agents at the  
15 time of her arrest prior to being read her Miranda rights. Motion to Supplement § 2255,  
16 docket no. 14. She also claims that she was not aware of her right to speak to an attorney  
17 before being questioned by law enforcement.

18 This claim is without merit. First, a valid guilty plea precludes a defendant from  
19 later asserting constitutional claims based upon alleged misconduct that occurred prior to  
20 entry of the plea agreement. Tollett v. Henderson, 411 U.S. 258, 267, 93 S. Ct. 1602  
21 (1973); see Mabry v. Johnson, 467 U.S. 504, 508, 104 S.Ct. 2543 (1984) (“It is well  
22 settled that a voluntary and intelligent plea of guilty made by an accused person, who has  
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1 been advised by competent counsel, may not be collaterally attacked”), abrogated on  
2 other grounds by Puckett v. United States, 556 U.S. 129, 138 n.1, 129 S. Ct. 1423 (2009).

3 Moreover, the Court notes that Petitioner’s allegations are contradicted by the  
4 report of the arresting officer, which memorializes that the arresting officer read  
5 Petitioner her Miranda rights and that Petitioner immediately requested a lawyer and  
6 indicated that she did not wish to speak with the arresting officer. SSA Investigation  
7 Report at 3 (Ex. A to Government’s Response to Supplemental § 2255 Motion). In  
8 addition, Petitioner does not allege that she told the agents anything that was later used  
9 against her. She does not explain how she was intimidated by agents or articulate any  
10 consequences resulting from the alleged misconduct. For these reasons, Plaintiff’s Fifth  
11 Amendment claims are not cognizable.

12 Further, to the extent that Petitioner claims that the events surrounding her arrest  
13 support a claim of ineffective assistance of counsel, this is entirely untenable. The right  
14 to counsel does not attach until the commencement of adversarial proceedings, and the  
15 Ninth Circuit has consistently held that there is no right to counsel at the time of arrest.  
16 See Anderson v. Alameida, 397 F.3d 1175, 1180 (9th Cir. 2005) (citing cases).

17 **8. Evidentiary Hearing**

18 A petitioner is entitled to an evidentiary hearing only if the petitioner (1) alleges  
19 specific facts which, if true, would entitle the petitioner to relief, and (2) the petition, files  
20 and record of the case do not conclusively show that she is not entitled to relief. 28  
21 U.S.C. § 2255. Where a petition consists of only conclusory allegations, no evidentiary  
22 hearing is required. United States v. McMullen, 98 F.3d 1155, 1158 (9th Cir. 1996)

1 (holding district court properly denied evidentiary hearing where plaintiff “failed to  
2 allege specific facts” supporting petition).

3 In the present case, the Petitioner makes several general claims in support of her  
4 theory that she did not receive effective assistance of counsel. However, these claims are  
5 not supported by specific facts or by the record. As such, the Court concludes that  
6 Petitioner’s assertions of ineffective assistance of counsel should be denied based on the  
7 record and the documentary evidence before the Court and no evidentiary hearing is  
8 required.<sup>2</sup>

9 **9. Certificate of Appealability**

10 A petitioner seeking post-conviction relief under § 2255 may appeal a district  
11 court’s dismissal of her federal habeas petition only after obtaining a certificate of  
12 appealability from a district or circuit judge. A certificate of appealability may be issued  
13 only where the petitioner has made “a substantial showing of the denial of a  
14 constitutional right.” See 28 U.S.C. § 2253(c)(3). This standard is satisfied “by  
15 demonstrating that jurists of reason could conclude the issues presented are adequate to  
16 deserve encouragement to proceed further.” Miller-El v. Cockrell, 537 U.S. 322, 327,  
17 123 S. Ct. 1029 (2003). The Court concludes that in the present case the Petitioner has

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20 <sup>2</sup> Because the Court concludes that an evidentiary hearing is not required, the Court is not required to  
21 appoint counsel. See Rule 8(c) of the Rules Governing § 2255 Cases; United States v. Duarte-Higareda,  
22 68 F.3d 369 (9th Cir. 1995). In the present case, the Court concludes that the legal issues are not  
23 inherently complex, that the petitioner has adequately articulated her claims, and that the appointment of  
counsel is therefore unnecessary. See Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Petitioner’s  
motion for appointment of counsel, docket no. 19, is DENIED.

1 not demonstrated that she is entitled to a certificate of appealability under the applicable  
2 standard.

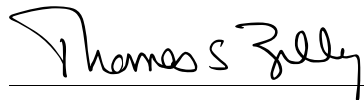
3 **III. Conclusion**

4 For the reasons described above, the Petitioner's § 2255 motion, docket no. 1, is  
5 DENIED and this matter is DISMISSED. No evidentiary hearing is required because the  
6 record and documentary evidence before the Court demonstrates that Petitioner is not  
7 entitled to relief. Because no evidentiary hearing is required, the Court DENIES  
8 Petitioner's motion to appoint counsel, docket no. 19. In accordance with Rule 11 of the  
9 Rules Governing Section 2255 Proceedings, a certificate of appealability is DENIED.

10 IT IS SO ORDERED.

11 The Clerk is directed to send a copy of this Order to all counsel of record and to  
12 Petitioner pro se.

13 Dated this 9th day of July, 2013.

14 

15 THOMAS S. ZILLY  
16 United States District Judge