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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 RICARDO ESTRADA,

8 Petitioner,

9 v.

10 UNITED STATES OF AMERICA,

11 Respondent.

CASE NO. C14-5590 BHS

ORDER GRANTING
PETITIONER'S MOTION FOR
EXTENSION OF TIME AND
DENYING PETITIONER'S
MOTION TO VACATE, SET
ASIDE, OR CORRECT
SENTENCE

12
13 This matter comes before the Court on Petitioner Ricardo Estrada's ("Estrada")
14 motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (Dkt. 1).
15 The Court has considered the pleadings filed in support of and in opposition to the
16 motion and the remainder of the file and denies the motion for the reasons stated herein.

17 **I. PROCEDURAL HISTORY**

18 On August 3, 2011, Estrada was arrested. Dkt. 1. The following day, Estrada was
19 charged by criminal complaint. *Id.* On August 18, 2011, Estrada was indicted on the
20 following eight counts: (1) conspiracy to distribute methamphetamine in violation of 21
21 U.S.C. § 841(b)(1)(A); (2) distribution of methamphetamine in violation of 21 U.S.C.
22 § 841(b)(1)(C); (3) possession of a firearm in furtherance of a drug trafficking crime in

1 violation of 18 U.S.C. § 924(c)(1)(A); (4) distribution of methamphetamine in violation
2 of 21 U.S.C. § 841(b)(1)(A); (5) felon in possession of a firearm in violation of 18 U.S.C.
3 §§ 922(g)(1), 924(a)(2); (6) distribution of methamphetamine in violation of 21 U.S.C.
4 § 841(b)(1)(A); (7) distribution of methamphetamine in violation of 21 U.S.C.
5 § 841(b)(1)(B); and (8) possession of methamphetamine with intent to distribute in
6 violation of 21 U.S.C. § 841(b)(1)(A). CR11-5413, Dkt. 16.

7 Estrada's attorney negotiated a plea agreement. Pursuant to the plea agreement,
8 Estrada pled guilty to conspiracy to distribute methamphetamine in violation of 21 U.S.C.
9 § 841(b)(1)(B) and to possession of a firearm in furtherance of a drug trafficking offense
10 in violation of 18 U.S.C. § 924(c)(1)(A)(1). CR11-5413, Dkts. 86, 90. Estrada had a
11 guideline sentencing range of 188 to 235 months. CR11-5413, Dkt. 103 at 1. The plea
12 agreement included a joint recommendation of twelve years imprisonment. CR11-5413,
13 Dkt. 90 at 6. On August 5, 2013, the Court sentenced Estrada to twelve years in custody.
14 CR11-5413, Dkt. 112.

15 On July 28, 2014, Estrada filed the instant motion for relief under 28 U.S.C.
16 § 2255. Dkt. 1. On November 7, 2014, the Government responded. Dkt. 5. On May 8,
17 2015, Estrada filed an unopposed motion for an extension of time to file his reply.¹ Dkt.
18 13. On May 29, 2015, Estrada replied. Dkt. 16. On June 11, 2015, Estrada filed a
19 declaration in support of his reply. Dkt. 18.

20
21 ¹ On May 8, 2015, Estrada retained counsel to assist him in replying to the Government's
22 response. Dkt. 13. Estrada requested additional time to file his reply brief so that his counsel
could acquaint himself with the issues. *Id.* The Court finds good cause to grant the requested
extension of time.

1 **II. DISCUSSION**

2 Estrada seeks to reduce his sentence under 28 U.S.C. § 2255, arguing that he
3 received ineffective assistance of counsel. Dkt. 1.

4 **A. 28 U.S.C. § 2255**

5 Under 28 U.S.C. § 2255, the Court may grant relief to a federal prisoner who
6 challenges the imposition or length of his incarceration on the following grounds: (1) the
7 sentence was imposed in violation of the Constitution or laws of the United States; (2) the
8 Court was without jurisdiction to impose such sentence; (3) the sentence was in excess of
9 the maximum authorized by law; or (4) the sentence is otherwise subject to collateral
10 attack. 28 U.S.C. § 2255(a). A petition under section 2255 for ineffective assistance of
11 counsel is considered a collateral attack. *See, e.g., Strickland v. Washington*, 466 U.S.
12 668, 676 (1984).

13 **B. Ineffective Assistance of Counsel**

14 The Sixth Amendment guarantees a criminal defendant the right to effective
15 assistance of counsel. *Id.* at 687. The Court evaluates ineffective assistance of counsel
16 claims under the two-prong test set forth in *Strickland*. Under *Strickland*, Estrada must
17 prove (1) that his counsel’s performance was deficient, and (2) that this deficient
18 performance was prejudicial. *Id.*

19 To establish deficient performance, Estrada must show that his counsel’s
20 representation “fell below an objective standard of reasonableness.” *Id.* at 688. The
21 Court must apply a “strong presumption that counsel’s conduct falls within the “wide
22 range of reasonable professional assistance.” *Id.* at 689. With respect to prejudice,

1 Estrada must demonstrate “a reasonable probability that, but for counsel’s unprofessional
2 errors, the result of the proceeding would have been different.” *Id.* at 694.

3 Here, Estrada claims that he received ineffective assistance of counsel because his
4 counsel (1) failed to file a motion to suppress; (2) failed to argue sentencing entrapment;
5 (3) failed to argue that a traffic stop was pretextual; and (4) failed to argue that the
6 firearm was not used in furtherance of a drug trafficking crime. Dkt. 1. The Court will
7 address each of these arguments in turn.

8 **1. Motion to Suppress**

9 Estrada first argues that his counsel failed to file a motion to suppress GPS
10 tracking evidence based on *United States v. Jones*, 132 S. Ct. 945 (2012). *Id.* at 5. To
11 prevail on this claim, Estrada must show (1) the motion to suppress was meritorious, and
12 (2) there is a reasonable probability that the result of the proceeding would have been
13 different absent the excludable evidence. *Kimmelman v. Morrison*, 477 U.S. 365, 375
14 (1986).

15 In *Jones*, the Supreme Court held that the installation of a GPS device on a
16 suspect’s vehicle to monitor the vehicle’s movements constitutes a search under the
17 Fourth Amendment. 132 S. Ct. at 949. The *Jones* decision overruled Ninth Circuit
18 precedent, which did not require law enforcement officers to obtain a warrant prior to
19 installing a GPS tracking device on a vehicle. *See United States v. Pineda-Moreno*, 591
20 F.3d 1212, 1216–17 (9th Cir. 2010), *vacated by* 132 S. Ct. 1533 (2012); *United States v.*
21 *McIver*, 186 F.3d 1119, 1126–27 (9th Cir. 1999).

1 Estrada has failed to demonstrate that a motion to suppress based on *Jones* would
2 have been meritorious in this case. Although law enforcement installed a GPS tracking
3 device without a warrant, the tracking device was installed prior to August 2011 and thus
4 before the Supreme Court decided *Jones* in January 2012. At the time the tracking device
5 was installed, Ninth Circuit precedent allowed law enforcement officers to install GPS
6 tracking devices on vehicles without a warrant. *See Pineda-Moreno*, 591 F.3d at 1216–
7 17; *McIver*, 186 F.3d at 1127. Law enforcement’s actions in this case were therefore
8 consistent with binding Ninth Circuit case law. “[S]earches conducted in objectively
9 reasonable reliance on binding appellate precedent [that is later overruled] are not subject
10 to the exclusionary rule.” *Davis v. United States*, 131 S. Ct. 2419, 2423–24 (2011).

11 Accordingly, any evidence obtained from the GPS tracking device would not have been
12 subject to the exclusionary rule. Counsel’s failure to file a motion that is meritless in
13 light of binding precedent does not constitute ineffective assistance of counsel. *See*
14 *Baumann v. United States*, 692 F.2d 565, 572 (9th Cir. 1982).

15 Estrada has also failed to demonstrate that the result of this proceeding would have
16 been different even if the GPS tracking evidence was excluded. The record does not
17 indicate what, if any, evidence was obtained from the GPS tracking device. The record
18 also does not indicate that the GPS evidence played any role in law enforcement’s
19 investigation. Indeed, there is no mention of GPS tracking evidence in the criminal
20 complaint or indictment.

21 For the foregoing reasons, the Court denies this claim for relief.
22

1 **2. Sentencing Entrapment**

2 Next, Estrada contends that he received ineffective assistance of counsel because
3 his attorney did not argue that he was a victim of sentencing entrapment. Dkt. 1 at 6.
4 Sentencing entrapment “occurs when a defendant, although predisposed to commit a
5 minor or lesser offense, is entrapped into committing a greater offense subject to greater
6 punishment.” *United States v. Castaneda*, 94 F.3d 592, 594 (9th Cir. 1996). “In making
7 a sentencing entrapment claim, the burden is on the defendant to demonstrate both the
8 lack of intent . . . and the lack of capability to [commit the offense] at issue.” *United*
9 *States v. Naranjo*, 52 F.3d 245, 250 n.13 (9th Cir. 1995).

10 Upon review of the record, there was not an adequate basis for Estrada’s counsel
11 to make a sentencing entrapment argument. Estrada claimed to have access to large
12 amounts of methamphetamine during conversations with the confidential source. For
13 example, Estrada told the confidential source that he was expecting to receive ten to
14 fifteen pounds of methamphetamine soon. CR11-5413, Dkt. 1 at 9. Estrada was
15 ultimately arrested with joint possession of almost fifteen pounds of methamphetamine.
16 CR11-5413, Dkt. 110 at 4. Although Estrada’s declaration indicates that he was close
17 friends with the confidential source, *see* Dkt. 18, this evidence does not establish that
18 Estrada lacked the intent or capability to sell large amounts of methamphetamine. Given
19 these circumstances, it is unlikely that Estrada’s counsel could have successfully raised a
20 sentencing entrapment argument. Thus, counsel’s decision not to do so was objectively
21 reasonable. The Court denies this claim for relief.
22

1 **3. Traffic Stop**

2 Estrada also contends that his counsel failed to argue that law enforcement
3 conducted an illegal search of the van based on a pretextual traffic stop. Dkt. 1 at 8. A
4 police officer may conduct a traffic stop if the officer has “probable cause to believe that
5 a traffic violation has occurred.” *Whren v. United States*, 517 U.S. 806, 810 (1996).
6 “The fact that the alleged traffic violation is a pretext for the stop is irrelevant, so long as
7 the objective circumstances justify the stop.” *United States v. Wallace*, 213 F.3d 1216,
8 1219 (9th Cir. 2000). Additionally, police officers may “conduct a warrantless search of
9 a vehicle if they have probable cause to believe that it contains contraband.” *United*
10 *States v. Hernandez*, 262 F.3d 974, 977–78 (9th Cir. 2001).

11 The record reflects that law enforcement had probable cause to believe Estrada
12 was on his way to deliver drugs when they stopped the van. *See* CR11-5413, Dkt. 1 at
13 11. Accordingly, Estrada’s counsel reasonably decided not to argue that the traffic stop
14 was pretextual. Because Estrada fails to establish that his counsel’s performance was
15 deficient, the Court denies this claim for relief.

16 **4. Firearm Element**

17 Finally, Estrada contends that his counsel failed to argue that the firearm was not
18 used “in furtherance” of the conspiracy to distribute methamphetamine. Dkt. 1 at 9. To
19 prove that a defendant possessed a firearm in furtherance of a drug tracking crime, “the
20 government must show that the defendant possessed the weapon to promote or facilitate
21 the underlying crime.” *United States v. Arreola*, 467 F.3d 1153, 1160 (9th Cir. 2006)
22 (internal quotation marks omitted). The Government can establish this element if “facts

1 | in evidence reveal a nexus between the guns discovered and the underlying offense.”

2 | *United States v. Krouse*, 370 F.3d 965, 968 (9th Cir. 2004).

3 | Estrada delivered a gun to the confidential source on June 2, 2011. CR11-5414,
4 | Dkt. 1 at 7. Estrada told the confidential source that he owed \$500 for the gun, and that
5 | the confidential source could pay this amount during the next drug transaction. *Id.* As
6 | part of his plea agreement, Estrada admitted that he understood the gun would be used to
7 | protect drugs and drug proceeds. CR11-5414, Dkt. 90 at 7. Together, these facts indicate
8 | a nexus between the firearm and the underlying conspiracy to distribute
9 | methamphetamine. Moreover, Estrada’s counsel negotiated a plea agreement that
10 | recommended a sentence well below the guideline sentencing range. *Compare* CR11-
11 | 5413, Dkt. 90 at 6 (plea agreement sentence of 132 months), *with* CR11-5413, Dkt. 103
12 | at 1 (guideline sentence of 188 to 235 months). Under these circumstances, counsel’s
13 | decision not to challenge the “in furtherance” element did not constitute ineffective
14 | assistance of counsel. The Court denies this claim as well.

15 | **III. ORDER**

16 | Therefore, it is hereby **ORDERED** that Estrada’s motion for an extension of time
17 | (Dkt. 13) is **GRANTED**. Estrada’s motion to vacate, set aside, or correct his sentence
18 | pursuant to 28 U.S.C. § 2255 (Dkt. 1) is **DENIED**.

19 | Dated this 16th day of June, 2015.

20 | 

21 | **BENJAMIN H. SETTLE**
22 | United States District Judge