IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND UNITED STATES OF AMERICA

v. JOSEPH LAWHORN, Defendant.

Criminal No. ELH-09-541 Related Civil No.: ELH-20-3447

MEMORANDUM OPINION This case concerns a post-conviction petition filed pursuant to 28 U.S.C. § 2255 by defendant Joseph Lawhorn. See). Lawhorn entered a plea of guilty on October 27, 2010 (ECF 32) to Count Three of an Indictment (ECF 1), charging him with Production of Child Pornography, in violation of 18 U.S.C. § 2251(a). Under Fed. R. Crim. P. 11(c)(1)(C), the parties agreed to a sentence of 180 months of incarceration, which corresponded to the congressionally mandated minimum sentence. ECF 33 (Plea Agreement), ¶ 9. The term of supervised release, which ranged from five years to life, was left open in the Plea Agreement. See ECF 33; ECF 54 (Sentencing Transcript), at 3. Sentencing was held on February 1, 2011. ECF 41. Judge William Nickerson, to whom the case was then assigned, imposed the agreed upon sentence of fifteen years of imprisonment, along with a term of supervised release of life. See ECF 43 (Judgment) at 2; ECF 54 at 8. 1

Judge Nickerson imposed the Statutory Conditions of supervised release, but suspended the drug testing condition Conditions of supervised release.

1 The case was reassigned to me on November 25, 2020, after the retirement of Judge Nickerson. See Docket. Id. And, Judge Nickerson announced the following : defendant was required to partake in health treatment program . . . ; defendant is not to prior permission of the probation agent; and the defendant is required to register as a sex offender wherever he resides or works. ECF 54 at 8 9; see ECF 43 at 4. Defendant did not note an appeal. See Docket. 2

became final on February 15, 2011. See Fed. R. App. 4(b)(1)(A).

Over nine years later, on November 25, 2020, Lawhorn, who is now self-represented, filed the Motion. ECF 45. He claims that his Conditions of Supervised Release are unconstitutional, vague, overly broad, and do not comport with current law or the U.S. Sentencing Guidelines Id. at 4. The government opposed the Motion. ECF 55. It argues that the Motion is untimely. Id. at 1. Lawhorn did not reply. On October 4, 2021, during the pendency of the Motion, defendant was released from

incarceration. See BOP Inmate Locator, https://www.bop.gov/mobile/find_inmate/#inmate_results (search by BOP Register Number 44487-037). Therefore, on January 10, 2024, I wrote to the defendant and asked him to advise me as to whether he wishes to pursue the Motion. ECF 69. By letter docketed on January 26, 2024, defendant stated that he wishes to pursue the Motion. ECF 70. Because defendant remains on supervised release, his Motion is not moot. See United States v. Johnson (4th Cir. 2018).

In United States v. Rogers, 961 F.3d 291 (4th Cir. 2020), the Fourth Circuit all non-mandatory conditions of supervised release must be announced at a defendant s sentencing

2 In the Plea Agreement, Lawhorn waived many of his appellate rights. See ECF 33, ¶ 11. hearing Id. at 296. In connection with my review of the Motion, and with Rogers in mind, I wrote to the parties on February 1, 2024 (ECF 71), stating, in part, id. at 2:

of the standard conditions of supervised release would not comport with current Fourth Circuit law. See, e.g., United States v. Friend, 2023 WL 8469460, at *1 (4th Cir. Dec. 7, 2023) [(per curiam)] United States v. Rogers, 961 F.3d 291, 296 (4th Cir. 2020)); United States v. Lee, 2023 WL 3884112, at *1 (4th -mandatory conditions of (quoting Rogers, 961 F.3d at 296). It is also arguable that, under recent case law, there are defects in regard to certain special conditions. However, it is not apparent U.S.C. § 2255(f)(3).

Therefore, I aske ECF 71. The government . Lawhorn has not responded.

The government se any challenge to his supervised release conditions under Rogers, 961 F.3d 291. ECF 74 at 1. According to the government, because Rogers is a Fourth Circuit opinion, and not a Supreme Court opinion, it does not fall within 28 U.S.C. § 2255(f)(3). Id. at 5. Further, the government argues that Rogers has not been held Id. And, the government contends that even if the Rogers standard outlined in United States v. Frady, 456 U.S. 152, 165 (1982). Id. at 6.

No hearing is necessary to resolve the Motion. For the reasons that follow, I shall dismiss the Motion as untimely.

I. Factual Background Lawhorn was indicted on October 15, 2009. ECF 1. The Indictment contained six counts. Counts One through Five charged Production of Child Pornography, in violation of 18 U.S.C. § 2251(a). Id. at 1 6. Count Six charged a threatening communication, in violation of 18 U.S.C. § 875(d).

As noted, defendant entered a plea of guilty on October 27, 2010, to Count Three. ECF 32; ECF 49 (Rule 11 Transcript). Defendant was 36 years old at the time. ECF 49 at 14.

Under ¶ 6 of the Plea Agreement, the parties contemplated a final offense level of 35, after three

deductions under § 3E1.1 of the United States Sentencing Guidelines ECF 33. D Presentence Report reflected a criminal

history category of I. Id. ¶ 50. 3

Therefore, the advisory Guidelines called for a sentence ranging from 180 to 210 months of incarceration. Id. at ¶ 56. And, as noted, Count Three required a mandatory minimum sentence of 180 months. Id. at 1(a); id. ¶ 55; see 18 U.S.C. § 2251(a). Under Fed. R. Crim. P. 11(c)(1)(C), the parties agreed to a sentence of 180 months of incarceration. ECF 33, ¶ 9.

The Plea Agreement contains a stipulation of facts. Id. at 9 10. It indicates that on December 17, 2008, the Baltimore County Police Department received information that Lawhorn had sexually abused two males between the ages of twelve and sixteen. Id. at 9. The police executed a search warrant at on December 23, 2008 computers, three c Id. Lawhorn was arrested

3 I located the Presentence Report in the Chambers file of Judge Nickerson. I submitted it for docketing, under seal. See ECF 72. that day at his place of employment. Id. After waiving his Miranda rights, 4

Lawhorn admitted to police that his computer contained photos of himself and two minors engaged in sexually explicit conduct. Id. The photos were taken with Id.

An investigation uncovered 22 image files of the two minors engaged in sexually explicit conduct. Id. uter revealed that Lawhorn had sex with the two minors. Id. Defendant agreed with the accuracy of the factual summary in the Plea Agreement and as presented by the prosecutor. ECF 49 at 16.

At the guilty plea proceeding before Judge Nickerson on October 27, 2010, the defendant was placed under oath. Id. at 2. The transcript reflects that he was carefully advised of the terms of the Plea Agreement. Id. at 4 14. Moreover, defense counsel represent ly with Lawhorn, Id. at 7 8.

The Court fully reviewed Paragraph 11 of the Plea Agreement, titled Id. at 10; see also id. at 6 7. Among other things, defendant waived his right to appeal his conviction. Id. at 7. He also waived his right to appeal the sentence, unless the sentence exceeded fifteen years of imprisonment. Id. Further, Judge Nickerson stated, id. at 5 6:

And you understand that the statute that governs this particular charge provides for both minimum and maximum penalties. Specifically with regard to imprisonment, the statute provides a minimum of at least 15 years imprisonment prison term, living under supervision with certain conditions. If those conditions

were not met, and irregardless of when any violation might occur, you would be brought back into

court and likely returned to jail. And with supervised release, release but you had not committed any violations. In addition, that statute provides for a

4 See Miranda v. Arizona, 384 U.S. 436 (1966). Judge Nickerson then asked, id. at Defendant respond Y Id.

At sentencing on February 1, 2011, regard to the guideline calculation, rendering a bottom line offense level 35, Criminal History Category I, sentencing range of 180 to 210 mont ECF 54 at 2. As indicated, in accordance with the Plea Agreement, Judge Nickerson imposed a sentence of 180 months of imprisonment. Id. at 8.

As to supervised release, the statutory minimum is a term of five years, with Guidelines ranging from five years to life. ECF 72, ¶ 58. The Presentence Report recommended a term of life. Id. ¶ 59.

The government noted at sentencing that the issue of the term of supervised release was ECF 54 at 3. The government sought a term of supervised release of life. Id. at 3 4. In contrast, defense counsel requested five years of supervised release. Id. at 5 6. Judge Nickerson stated, id. at 8 9:

I appreciate the arguments presented by [defense counsel] regarding supervised release. However, in my view, and based on what I know thus far, life is the appropriate term. Also, recognizing that supervised release is subject to modification if it should be determined by the supervising probation officer that a modification is appropriate, somewhere down the line an appropriate motion can be presented. The conditions of supervised release will be standard conditions noted on mental health treatment program be undertaken. A condition that Mr. Lawhorn not use a computer or other device providing access to the internet without preapproval by the probation officer. And that Mr. Lawhorn register as a sex offender wherever he may reside or work, or wherever the probation officer may deem it to be important. The Judgment (ECF 43) contains tatutory Conditions Of Supervised as well as O Id. at 3. The Standard Conditions include the following, id.:

1) The defendant shall not leave the judicial district without permission of the court

or probation officer; 2) The defendant shall report to the probation officer and shall submit a truthful and

complete written report within the first five days of each month; 3) The defendant shall answer truthfully all inquiries by the probation officer and

follow the instructions of the probation officer;

* * * 7) The defendant shall refrain from excessive use of alcohol; 8) The defendant shall not frequent places where controlled substances are

illegally sold, used, distributed, or administered; 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any persons convicted of a felony unless granted permission to do so by the probation officer;

* * * 14) As directed by the probation officer, the defendant shall notify third parties of history or characteristics, and shall permit the probation officer to make such notifications and to con requirement.

The Judgment also includes three dditional Conditions of supervised release, id. at 4: ogram approved by the probation officer, which may include evaluation, counseling, and testing as deemed except that with the permission of the probation officer, a computer may be used in connection

local sex offender registration agency in any location where the defendant resides, is employed,

carries on a vocation,

At the conclusion of sentencing, the Co ECF 54 at 9. No appeal was filed. Indeed, no activity in the case occurred until November 25, 2020, when defendant filed his Motion (ECF 45).

II. Legal Standard Section 2255(a) of Title 28 of the United States Code provides relief to a prisoner in federal Constitution or laws of the See Hill v. United States, 368 U.S.

424, 426 27 (1962) (citing 28 U.S.C. § 2255); see United States v. Hodge, 902 F.3d 420, 426 (4th Cir. 2018); United States v. Newbold, 791 F.3d 455, 459 (4th Cir. 2015); United States v. Pettiford, 612 F.3d 270, 277 (4th Cir. 2010).

Under § 2255, the petitioner must establish (1) an error of constitutional magnitude; (2) a sentence imposed outside the statutory limits; or (3) an error of fact or law so fundamental as to render the entire proceeding invalid. Moss v. United States, 323 F.3d 445, 454 (6th Cir. 2003).

United States v. Addonizio, 442 U.S. 178, 185 (1979) (quoting Hill, 368 U.S. at 428). In order to prevail on a § 2255 motion, a defendant bears the burden of proving his grounds for collateral relief by a preponderance of the evidence. See Jacobs v. United States, 350 F.2d 571, 574 (4th Cir. 1965).

Of relevance here, § 2255(f) imposes a one-year period of limitations, within which a petitioner must file a motion. This one-year period begins on the latest of the following dates: (1) the date on which any unconstitutional, government-created impediment preventing the petitioner from filing this motion was lifted; (3) the date on which a newly asserted right was recognized by the Supreme Court and made retroactive on collateral review; 28 U.S.C. §

2255(f)(1)-(4).

Foster v. Chatman, 488, 519 (2016) (Alito, J.,

concurring) (quoting United States v. Frady, 456 U.S. 152, 165 (1982)). Indeed, conditions of t appeal from the original conviction and United States v. Amin, 85 F.4th 727, 736 (4th Cir. 2023) (quoting United States v. Holman, 532 F.3d 284, 287 n.1 (4th Cir. 2008)).

A failure to raise a claim on direct appeal constitutes a procedural default that bars Pettiford,

612 F.3d at 280 (citing United States v. Mikalajunas, 186 F.3d 490, 492 93 (4th Cir. 1999)); see Bousley v. United States ed);

Murray v. Carrier, 477 U.S. 478, 485 (1986); see also Dretke v. Haley, 541 U.S. 386, 393 (2004) (The cause and prejudice requirement shows due regard for States finality and comity interests while ensuring that fundamental fairness [remains] the central concern of the writ of habeas corpus.) (citation omitted); Reed v. Farley resulting from the allege Finch v. McKoy, 914 F.3d 292, 298 (4th Cir. 2019) (discussing requirements for a claim of actual innocence); United States v. Linder, 552 F.3d 391, 397 (4th Cir. 2009).

Generally, the rule governing procedural default of claims brought under § 2255 precludes

[unless] the movant . . . show[s] cause and actual prejudice resulting from the errors of which he Pettiford, 612 F.3d at 280 (quoting Mikalajunas, 186 F.3d at 492 93). Under the

error on direct appeal; and (2) actual prejudice from the alleged error. Bousley, 523 U.S. at 622; see Dretke, 541 U.S. at 393; Massaro v. United States, 538 U.S. 500, 505 (2003); see also Reed, Murray, 477 U.S. at

496; Frady, 456 U.S. at 167 68.

In order to show cause for not raising the claim of error on direct appeal, a petitioner must , such as the novelty of the claim or a denial of effective assistance of counsel, to raise the issue earlier. Coleman v. Thompson, 501 U.S. 722, 753 (1991); see Carrier requires a showing of some external impediment preventing counsel from constructing or raising

Mikalajunas

Additionally, the alleged error cannot simply create a possibility of prejudice, but must be actual and substantial disadvantage, infecting his entire trial Frady, 456 U.S. at 170 (emphasis in original). Pursuant Carrier, 477 U.S. at 494, prejudice does not support relief of a procedural default in the absence of a showing of cause. See also Engle v. Isaac, 456 U.S. 107, 134 n.43 (1982). 5

The Court is mindful that a self- standard[] Morrison v. United States, RDB-12-3607, 2014 WL 979201, at *2 (D. Md. Mar.

12, 2014) (internal citations omitted) (alteration in Morrison); see also Erickson v. Pardus, 551 U.S. 89, 94 (2007); Haines v. Kerner, 404 U.S. 519, 520 (1972) (stating that claims of self- stringent standards than formal pleadings drafted by Quintero v. Garland, 998 F.3d 612, 634 (4th Cir. 2021) (same); Bala v. Commonwealth , 532 F. App x 332, 334 (4th Cir. 2013) (per curiam) (same).

[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief United States v. Mayhew, 995 F.3d 171, 176 (4th Cir. 2021) (quoting 28 U.S.C. § 2255(b)); see United States v. Lemaster, 403 F.3d 216, 220 23 (4th Cir. 2005); United States v. White, 366 F.3d 291, 302 (4th Cir. 2004). Ordinarily, a district court has discretion as to whether hearing is required when a movant presents a colorable Sixth Amendment claim showing disputed facts beyond the record, or when a credibility determination is necessary Mayhew, 995 F.3d at 176 77. s relief without United States v. Akande, 956 F.3d 257, 261 (4th Cir. 2020); see also United States v. Turner 557, 559 (4th Cir. 2021) (same).

5 Defendant does not claim actual innocence. In my view, no hearing is necessary here, because credibility is not implicated.

III. Discussion A. 28 U.S.C. § 2255(f)(1) Lawhorn was sentenced on February 1, 2011. ECF 43. The Judgment was entered on the same date. Id. Lawhorn had fourteen days to note an appeal. Fed. R. App. Pro. 4(b)(1)(A)(i). No appeal was filed. Lawhorn filed the Motion on November 25, 2020, almost ten years after his guilty plea. ECF 45.

Section 2255(f) of 28 U.S.C. imposes a one-year period of limitations, within which a petitioner must file a post-conviction petition. This one-year period begins on the latest of the

which any unconstitutional, government-created impediment preventing the petitioner from filing this motion was lifted; (3) the date on which a newly asserted right was recognized by the Supreme Court and made retroactive on collateral review; or (4) the date on which the facts supporting the 28 U.S.C. § 2255(f)(1)-(4).

Here, the judgment was entered on February 1, 2011 (ECF 43), and defendant did not note an appeal. Therefore, the one-year period to file for post-conviction relief began fourteen days after entry of judgment, on February 15, 2011 a direct appeal expired. See Fed. R. App. Pro. 4(b)(1)(A)(i). Yet, defendant November 25, 2020 more than eight years after the expiration of the one-year period outlined in

§ 2255(f)(1).

In its Opposition (ECF 55), the government observes that nine years after final judgment was entered, well in excess of the applicable one-year statute of limitations, which expired by February 15, 2012, one year and fourteen days after judgment was Id. (citing 28 U.S.C § 2255(f)(1)). The government asserts, ECF 55 at 1 basis

I agree with the government. Therefore, unless another provision of § 2255(f) applies, the Motion appears to be untimely on its face.

Under Holland v. Florida, 560 U.S Id. at 649 (quoting

Pace v. DiGuglielmo instances where it would be

unconscionable to enforce the limitation period against the party and gross injus Whiteside v. United States, 775 F.3d 180, 184 (4th Cir. 2014) (en banc) (applying equitable tolling

to one-year limitation period in 28 U.S.C. § 2255) (quoting Rouse v. Lee, 339 F.3d 238, 246 (4th Cir. 2003) (en banc)) (additional citations omitted); see Hill v. Braxton, 277 F.3d 701, 704 (4th Cir. 2002); Harris v. Hutchinson, 209 F.3d 325, 330 (4th Cir. 2000).

Holland, 560 U.S. at 653 (citation omitted). But, defendant has Smith v. Warden of FCI Bennettsville, JRR-22-3340, 2023 WL 3251411, at *5 (D. Md. May 4, 2023).

Under § 2255(f)(4), the one-year period of limitations may begin on the date on which the facts s Defendant was present at his sentencing. He was aware of what transpired.

But, he cites a change in the law, discussed infra, to excuse his delay.

On the facts advanced here, defendant offers no grounds to invoke equitable tolling. See Allen v. United States, WDQ-12-2260, 2013 WL 4495670, at *2 (D. Md. Aug. 16, 2013) s that warrant equitable Diaz v. United States, WMN-12-3414, 2013 WL 709783, at *1 (D. Md. Feb. 26, . . . eight months after the limitations period expired. Unless principles of equitable tolling apply, the Motion must be

Nor does § 2255(f)(4) salvage the Motion. As the government argues, § 2255(f)(4) does tual data he Id.

Therefore, I turn to consider §§ 2255(f)(2) and (3).

B. 28 U.S.C. § 2255(f)(3) Under § 2255(f)(3), the one-year limitations period may begin on the date on which a newly asserted right is recognized by the Supreme Court and made retroactive on collateral review. See 28 U.S.C. § 2255(f)(3).

In his Motion, defendant attacks the Standard Conditions of supervised release, as well as the

Additional Conditions, asserting: ised Release are unconstitutional, vague, overly broad, and do not comport with current law or the U.S. Sentencing Guidelines see also id. at 13.

Defendant advances multiple arguments to support his contentions, including, ECF 45 at 13 17 why they are necessary in this case, or why a first-

(id. at 13); (2) the Standard Condition that Lawhorn not leave the judicial district without id. at 14); (3) the Standard Conditions requiring Lawhorn to report to the probation officer each mon id. at 14 15); (4) the Standard C has id. at 15); (5) the Standard C controlled substances are illegally sold, distributed, uid. at 15 16); (6) the Standard Condition that Lawhorn shall not associate with

as well as unconstitutional (id. at 16); and (7) the Standard Co id. at 17).

As to the Additional Conditions, Lawhorn argues that Judge Nickerson adequately explain at sentencing why [he] imposed the additional conditions of [supervised

release] regarding computer usage and participation in a mental health treatment prog Id. at 17 18. He asserts that the requirement to participate in a mental health program violates his Fifth Amendment rights and constitutes an abuse of discretion. Id. at 16 22. And, he contends that the Co as it violates his First Amendment rights. Id. at 22.

With respect to the belated filing of the Motion, Lawhorn explains, id. at 10: This Motion is filed on the basis of newly discovered case law, and he points to six cases on which he relies. Id. Two of the cases were decided more than one year prior to the filing of the Motion on November 25, 2020: United States v. Wroblewski, 781 Fed. Appx. 158 (4th Cir. 2019) (per curiam) (decided July 12, 2019); United States v. Ross, 912 F.3d 740 (4th Cir. 2019) (decided January 14, 2019). Four of the cases were decided within one year of the filing of the Motion: United States v. Mejia-Ramos, 798 Fed. Appx. 749 (4th Cir. 2019) (per curiam) (decided December 9, 2019); United States v. Arbaugh, 951 F.3d 167 (4th Cir. 2020) (decided February 20, 2020); United States v. Richards, 958 F.3d 961 (10th Cir. 2020) (decided May 6, 2020); and United States v. Van Donk, 961 F.3d 314 (4th Cir. 2020) (decided June 8, 2020). Defendant does not cite the case of United States v. Rogers, 961 F.3d 291, decided by the Fourth Circuit on June 2, 2020.

A motion is timely under § 2255(f)(3) if it falls within one newly asserted right was recognized by the Supreme Court and made retroactive on collateral

However, defendant does not cite any Supreme Court cases decided within one year of the filing of his Motion.

The Fourth Circuit has recently made clear that [a] district court is required to orally Friend, 2023 WL 8469460, at *1 (citing Rogers, 961 F.3d at 296); see Lee, 2023 WL 3884112, at *1 (stating that

-mandatory conditions of supervised release must be announced at a Rogers, 961 F.3d at 296). Moreover

United States v. Locklear, 2023 WL 3617838, at *1 (4th Cir. May 24,

2023) (per curiam) (quoting United States v. Boyd, 5 F.4th 550, 557 (4th Cir. 2021) (citations omitted)).

In its Supplement (ECF 74), the government argues and [he] Id. at 7 (quoting ECF 45 at 10). The government reiterates: The Defendant does not provide a Supreme Court case within one year of his filing his Motion as a basis for his timeliness, let alone a Supreme Court Id. at 8 (citation omitted). Thus, the government maintains that the Motion is not timely under 28 U.S.C. § 2255(f)(3), because defendant fails to Id. at 7 8.

Even assuming that Rogers, 961 F.3d 291, generally applies to a post-conviction matter, the government contends that to his supervised release conditions under Rogers Id. at 1. It points out has recently held that a defendant is barred from raising Rogers error on direct appeal if the notice

Id. (citing United States v. Brantley, 87 F.4th 262, 266 67 (4th Cir. 2023)). Consequently, the government argues: If Rogers error can be forfeited by failing to make a timely direct appeal, it surely is forfeited where it is first raised in a habeas filing more than a decade after the original judgment Id. at 1 (emphasis in

. . . . his Rogers claims are barred under Brantley

In addition, t not bring claims under § Id. at 3 (citing Frady, 456 U.S. at 167) (emphasis in original). The government ECF 74 at 3 (quoting Bousley, 523 U.S. at 622). Thus, the government maintains that, even if the Rogers standard applies, Frady, 456 U.S. 152. Id. at 6. Id. And, the government claims that Lawhorn also

have been different had they been orally conveyed, Id. (emphasis in original). Thus, the government contends Id.

Further, the government observes that Lawhorn does not cite Rogers, 961 F.3d 291, decided by the Fourth Circuit in June 2020. Id. his complaint is whether the district court adequately tailored the conditions to the facts and

Id. Thus, the government posits that in Rogers Id.

In my view, Lawhorn fails to satisfy § 2255(f)(3). As the government maintains, Lawhorn does not rely on any Supreme Court cases to support his contentions. Nor does he explain how Rogers applies retroactively. Further, even if defendant were to cite to a newly established and retroactive right

derived from a Supreme Court opinion, defendant has failed to actual prejudice. Accordingly, I conclude that § 2255(f)(3) does not excuse the delay.

C. Section 2255(f)(2) Pursuant to 28 U.S.C. § 2255(f)(2), the one-year period of limitations may begin on the date on which any unconstitutional, government-created impediment preventing the petitioner from filing this Motion was lifted.

The government correctly observes that § 2255(f)(2) does not apply here, was no impediment to [Lawhorn] ECF 74 at 6. Indeed, Lawhorn

does not allege an impediment to his filing that would fall within the parameters of § 2255(f)(2).

IV. Conclusion For the foregoing reasons, I shall dismiss the Motion as untimely. An Order follows, consistent with this Memorandum Opinion.

V. Certificate of Appealability Pursuant to Rule 11(a) of the Rules Governing Proceedings under 28 U.S.C. § 2255, the

adverse to the applicant as to a post conviction claim.

s earlier order. United States v. Hadden, 475 F.3d 652, 659 (4th Cir. 2007). In other words, unless a COA is issued, a petitioner may not appeal the court s decision in a § 2255 proceeding. 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22(b).

28 U.S.C. § 2253(c)(2); see Buck v. Davis, 580 U.S. 100, 115 (2017). Where

s motion on its merits, a petitioner satisfies this standard by debatable or wrong. See Tennard v. Dretke, 542 U.S. 274, 282 (2004); Slack v. McDaniel, 529

U.S. 473, 484 (2000); see also Miller-El v. Cockrell, 537 U.S. 322, 336 38 (2003).

28 U.S.C. § 2253(c)(2). Defendant has not made a substantial

showing of the denial of his constitutional rights. Therefore, I decline to issue a COA. 6

Date: March 11, 2024 /s/ Ellen L. Hollander United States District Judge

6 The denial of a COA by the district court does not preclude defendant from seeking a COA from the appellate court, i.e., the United States Court of Appeals for the Fourth Circuit.