

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Nov 23, 2020
DEBORAH S. HUNT, Clerk

FARID FATA,)
)
 Petitioner-Appellant,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent-Appellee.)

ORDER

BEFORE: THAPAR, Circuit Judge.

Farid Fata, a federal prisoner represented by counsel, appeals the district court’s judgment denying his motion to vacate filed under 28 U.S.C. § 2255. Fata has moved for a certificate of appealability.

Fata pleaded guilty to thirteen counts of health care fraud, in violation of 18 U.S.C. § 1347; conspiring to pay and receive kickbacks, in violation of 18 U.S.C. § 371; and two counts of money laundering, in violation of 18 U.S.C. § 1956(a)(1)(A)(i). The district court sentenced Fata to an aggregate prison term of 540 months. We affirmed the district court’s judgment. *United States v. Fata*, 650 F. App’x 260 (6th Cir. 2016).

In 2018, Fata filed a § 2255 motion, arguing that his two trial attorneys, Christopher Andreoff and Mark Kriger, rendered ineffective assistance in connection with his guilty plea. Fata ultimately argued that (1) Andreoff improperly advised him to plead guilty to obtain leniency from the district court at sentencing; and (2) both attorneys misled him by advising him that, if he pleaded guilty, the government would debrief him in person to discuss his potential cooperation and he would receive a fifty percent cooperation credit.

After conducting an evidentiary hearing, a magistrate judge recommended denying Fata’s motion on the merits. The magistrate judge concluded that (1) to the extent that Fata received

conflicting advice from his attorneys concerning whether he should plead guilty in an attempt to obtain leniency from the district court, his ineffective-assistance claim failed under *Logan v. United States*, 910 F.3d 864 (6th Cir. 2018), *cert. denied*, 139 S. Ct. 1589 (2019), and, in any case, Fata pleaded guilty against the advice of both of his attorneys; and (2) the evidence showed that Fata was never promised that he would be personally debriefed by the government or given a cooperation credit, and, in any case, he failed to show that he would have gone to trial had he known that the debriefing would be conducted through his attorneys. Over Fata's objections, the district court adopted the recommendation, denied the motion to vacate, and declined to issue a certificate of appealability.

Fata now moves for a certificate of appealability. To obtain a certificate of appealability, a movant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). Where a district court has rejected a constitutional claim on the merits, a movant must show that jurists of reason would find the district court's assessment of the claim to be debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). To prevail on an ineffective-assistance-of-trial-counsel claim, a movant must establish that trial counsel's performance was deficient and that the deficiency prejudiced the defense. *See Shimel v. Warren*, 838 F.3d 685, 697 (6th Cir. 2016). To show prejudice in the context of a guilty plea, the movant must show that there is a reasonable probability that, but for counsel's error, he would not have pleaded guilty and would have insisted on going to trial. *See id.* at 698.

Reasonable jurists would not debate the district court's rejection of Fata's ineffective-assistance claim premised on Andreoff's allegedly improper advice to plead guilty. As correctly noted by the district court, to the extent that Fata argues that Andreoff performed deficiently by advising him to plead guilty to obtain leniency at sentencing, the claim fails under *Logan* because Fata acknowledges that Kriger properly advised him that he should go to trial because he had nothing to lose by doing so. *See Logan*, 910 F.3d at 869-70. And, in any case, reasonable jurists would not debate the district court's factual finding that Fata pleaded guilty against the advice of

both Andreoff and Kriger. As reflected in a document signed by Fata and both of his attorneys shortly before Fata pleaded guilty, Fata acknowledged that he was pleading guilty against the advice of both of his attorneys. In addition, both attorneys testified that, prior to his guilty plea, they advised Fata to go to trial, and Kriger adequately explained why he had mistakenly stated in a prior declaration that Andreoff had advised Fata to plead guilty.

Reasonable jurists also would not debate the district court's rejection of Fata's ineffective-assistance claims premised on his attorneys allegedly misadvising him that, if he pleaded guilty, the government would conduct an in-person debriefing and he would receive a fifty percent cooperation credit. As correctly determined by the district court, the evidence in the record does not show that Fata was ever advised that he would receive such a cooperation credit. And Fata has failed to demonstrate prejudice resulting from the alleged misadvice concerning the in-person debriefing because he has not established a reasonable probability that, but for counsel's error, he would have insisted on going to trial. *See Shimel*, 838 F.3d at 698; *see also Lee v. United States*, 137 S. Ct. 1958, 1967-69 (2017).

Accordingly, Fata's motion for a certificate of appealability is **DENIED**.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk