BRIEF FOR APPELLEE

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 23-CO-288

LARRY WHITE, JR., Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

APPEAL FROM THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

Cr. No. 2020-CF2-001903

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ISSUE PRESENTED

Whether the trial court abused its discretion in denying without a hearing the D.C. Code § 23-110 motion by appellant Larry White, Jr., based on the claim that his counsel rendered constitutionally ineffective assistance by failing to inform him of a preindictment plea offer, where White failed to show a reasonable probability that he would have accepted the plea offer.

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COUNTERSTATEMENT OF THE CASE

On October 19, 2020, the grand jury indicted appellant Larry White, Jr., on one count of Carrying a Pistol Without a License ("CPWL"), in violation of D.C. Code § 22-4504(a); one count of Possession of a Large Capacity Ammunition Feeding Device ("PLCAFD"), in violation of D.C. Code § 7-2506.01(b); one count of Possession of an Unregistered Firearm ("UF"), in violation of D.C. Code § 7-2502.01(a); and one count of Unlawful Possession of Ammunition ("UA"), in violation of D.C. Code § 7-

2506.01(a)(3) (Record on Appeal in 21-CF-310 (R.310) at 35). The indictment also charged White with CPWL and PLCAFD while on release ("OCDR"), in violation of D.C. Code § 23-1328(a)(1) (*id.*).

On March 10, 2021, the Honorable Michael O'Keefe denied White's motion to suppress physical evidence (R.310 at 50). After a stipulated trial before the Honorable Rainey Brandt, White was found guilty of all counts in the indictment (4/13/21 Transcript (Tr.) 32-33). The court sentenced White to 10 months' incarceration for CPWL, 12 months' incarceration for PLCAFD, 180 days' incarceration for UF, 180 days' incarceration for UA, and 12 months' incarceration on each OCDR charge (R.310 at 62). All the sentences ran concurrently with each other, except for the OCDR sentences, which ran consecutively to the underlying charges (*id.*; 4/13/21 Tr. 51-52). All the sentences were suspended except for the UF and UA sentences (R.310 at 62). The court also imposed a term of probation for a total of one year (*id.*).[1] White timely appealed (R.310 at 63).

[1] White's probation has subsequently been revoked, and the trial court issued an updated judgment and commitment order on May 19, 2023, that reflected a "time served" sentence for the UF and UA charges (since (continued . . .)

On February 3, 2022, White filed a brief arguing that the trial court erred when it denied his motion to suppress. *See Larry White, Jr. v. United States*, No. 21-CF-310. White then obtained new appellate counsel, who informed the Court that she would not file a supplemental brief but would be filing a motion under D.C. Code § 23-110 in the trial court. *See* Answer to Court's Order (March 21, 2022). This Court stayed briefing to let the situation regarding the § 23-110 motion develop. *See* Order (March 24, 2022).

White filed his § 23-110 motion on April 29, 2022 (Record on Appeal in 23-CO-288 (R.) 4). The government opposed (R. 14), and Judge Brandt denied White's motion on December 9, 2022 (R. 19). White did not timely note an appeal from that order. The government filed its brief in White's direct appeal on March 29, 2023. *See Larry White, Jr. v. United States*, No. 21-CF-310.

On April 4, 2023, White asked the trial court to re-issue the denial of his § 23-110 motion so he could timely note an appeal (R. 20). The trial court did so and re-issued the denial on April 10, 2023 (R. 22). White

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White had already served 180 days on those charges) and imposed the original sentences on the other charges.

timely appealed from that re-issuance (R. 23). This Court consolidated the appeals.

On October 19, 2023, White filed his brief in case number 23-CO-288, arguing that the trial court erred when denying his § 23-110 motion. This brief responds to White's brief regarding his § 23-110 motion. The government relies on its previous brief, filed March 29, 2023, with respect to White's suppression arguments on direct appeal.

Background

The Offense Conduct

The circumstances surrounding White's arrest are detailed more fully in the government's brief on direct appeal. See Appellee Brief (Br.) in *Larry White, Jr. v. United States*, No. 21-CF-310, at 5-8. Essentially, the day after White pleaded guilty to PLCAFD in a separate case, Metropolitan Police Department (MPD) officers saw White on a live social media feed holding a handgun (R. 22 at 1). Officers traveled to an area near White's residence, where they saw White exit the building and walk to the rear of a nearby Infiniti that had just pulled up (*id.* at 1-2). As the officers got closer to White, he turned away from the car and started walking away (1/14/21 Tr. 20-21, 27-28). There was no one else near the

back of the car, and officers did not see any cars or objects in the street prior to the Infiniti pulling up (*id.* at 21-22, 25).

Officers stopped White (1/14/21 Tr. 20). When one of the officers looked underneath the car, he saw a semiautomatic firearm next to the tire (*id.* at 20, 30). It was a "ghost gun"[2] loaded with one cartridge in the chamber and 13 cartridges in the magazine (*id.* at 35-36). The firearm was dry when the officers recovered it, even though it had been raining that morning and the ground was wet (*id.* at 25).

The § 23-110 Motion

On April 29, 2022, White filed a motion to vacate his convictions under D.C. Code § 23-110 (R. 4). He alleged that his trial counsel did not inform him of a pre-indictment plea offer from the government (*id.* at 3). That plea offer had been presented to defense counsel on March 11, 2020, and would expire on March 20, 2020 (*id.* at 5, Exhibit (Ex.) A). It provided that if White pleaded guilty to CPWL, the government would dismiss any remaining and greater charges and cap its allocution at the bottom of the

[2] A ghost gun is a privately made firearm assembled from various components to create an operational semi-automatic firearm (1/14/21 Tr. 35).

applicable sentencing guidelines range (*id.* at 5, Ex. A). White alleged that he "knew nothing about this plea and instead was told that his best option was to move forward with a stipulated trial" (*id.* at 5). His § 23-110 counsel also claimed, in the motion, that White "would have taken the plea had it been presented to him because it would have put him in a better position" (*id.*). In White's accompanying declaration, however, he stated only that "[h]ad [he] known there was a plea offer[,] [he] would have *most likely* taken the plea" (*id.* at Ex. B (emphasis added)). Counsel's motion also claimed that White told the trial court at the stipulated trial on April 11, 2021, that he wanted to move forward with that trial instead of a plea because he had been told that it would be the better avenue to preserve his appeal rights (*id.* at 5-6).

The government opposed (R. 14). It attached declarations from both of White's lawyers, Harry Tun, Esq., and Daniel Dorsey, Esq. (*id.* at Ex. 1, Ex. 2). Tun asserted that he personally conveyed the March 11, 2020, plea offer to White (*id.* at Ex. 1, p. 3). White, however, had "made it clear to [Tun]" from the outset "that he planned to go to trial, and he did not want to plea[d]" (*id.*). Even after Tun received discovery and discussed the possibility of pleading guilty with White, White continued to tell Tun

that he wanted to go to trial (*id.*). Instead of pleading guilty, White "was focused on suppressing the firearms evidence and going to trial" (*id.*). Accordingly, Tun and Dorsey filed a motion to suppress evidence on March 15, 2020 (*id.*).

Tun wrote that on June 11, 2020, the government revoked the March 11, 2020, plea offer (R. 14 at Ex. 1, p. 4). But on August 24, 2020, the government reextended the offer and did not specify an expiration date (*id.*). Dorsey counteroffered on September 23, 2020, but the government rejected the counteroffer on the same day (*id.*). Dorsey and the government had further exchanges on various proposals the next day, but the government did not modify its plea offer (*id.* at pp. 4-5). On October 15, 2020, the government told counsel that the plea offer would expire on October 29, 2020 (*id.* at p. 5).

Tun asserted that on October 29, 2020, he contacted the Warden's Office at the D.C. Jail to arrange a phone call with White (R. 14 at Ex. 1, p. 5). He did so through the COVID-19 protocols in place at the time (*id.*). The call was scheduled for October 30, 2020 (*id.*). Tun personally conveyed the March 11, 2020, plea offer to White over the phone on October 30, 2020 (*id.*). Dorsey was with Tun and heard the discussion on

speakerphone (*id.*). Tun also told White his exposure under the Sentencing Guidelines, the evidence against him, and defense strategy (*id.*). Throughout the phone call, "it was apparent that [White] was focused on going to trial and getting the evidence suppressed" (*id.*). White never expressed any desire to accept the plea offer (*id.*).

Tun declared that on February 7, 2021, he and Dorsey visited White at the D.C. Jail to discuss the upcoming suppression hearing (R. 14 at Ex. 1, p. 6). They discussed the fact that if White lost the suppression hearing, he would either have to plead guilty or have a stipulated trial (*id.*). White did not express any interest in a plea during the meeting (*id.*). During the course of the representation, Tun told White that if he pleaded guilty, he would only have to plead guilty to one charge and the government would cap its allocution at the bottom of the Sentencing Guidelines range, but White would not be able to attempt to suppress the evidence or appeal any denial of that motion (*id.*). By contrast, if White did not plead guilty, he risked being convicted of all the counts at a stipulated trial without any government cap, but he would be able to pursue the motion to suppress and appeal any denial of that motion (*id.*). White "continued to want to pursue his motion to suppress" (*id.*). After

his suppression motion was denied on March 10, 2021, White entered into a stipulated trial on April 13, 2021 (*id.* at Ex. 1, p. 7). He then appealed the denial of the motion to suppress, which is the subject of case No. 21-CF-310 (*id.*). In sum, Tum wrote, both he and Dorsey presented the plea offer to White, but "[White] rejected it" (*id.*).

Dorsey confirmed the chain of events regarding the government's plea offer and his subsequent communications with the government (R. 14 at Ex. 2, pp. 2-4). Although he did not personally convey any plea offer to White, he spoke with White's family several times during 2020 (*id.* at Ex. 2, p. 3). During those discussions, he "learned that White was not interested in entering into a plea agreement at the time" (*id.*). Instead, White "was focused on suppressing the firearm evidence" (*id.*). Dorsey confirmed that on October 30, 2020, he heard Tun convey the plea offer to White (*id.* at Ex. 2, p. 4). He also confirmed that White had been informed as to the costs and benefits regarding pleading guilty versus a stipulated trial (*id.* at pp. 4-5). Ultimately, "White continued to want to pursue his motion to suppress" (*id.* at p. 5). Like Tun, Dorsey wrote that White "rejected" the plea offer (*id.*).

The government argued that White could not show deficiency because Tun had in fact conveyed the plea offer to White twice, once after it was extended in March 2020 and once again after the offer was re-extended in the summer and fall of 2020 (R. 14 at 13). But both times, White was uninterested in accepting it (*id.*). In any event, White could not show prejudice because he had not actually stated that he would have accepted the plea offer, and all indications in the record were that he would not have done so (*id.* at 14-16). Indeed, White had not actually shown that he would be in a better position by accepting the plea offer—instead, he was able to pursue his motion to suppress, the appeal of which is still pending (*id.* at 16). Nor could White show that the government would not have revoked the plea offer had he attempted to take advantage of it after the expiration date of March 20, 2020, but before the official revocation on June 11, 2020 (*id.* at 16-17). Finally, it was not clear whether the court would have accepted the plea in any event because it was uncertain whether White would have actually admitted to the CPWL count given the language used at the stipulated trial (*id.* at 17-18). Ultimately, White chose to pursue the suppression option (*id.* at

18). "His gamble did not work out," but that did "not mean he received ineffective assistance of counsel" (*id.* at 18-19).

The Trial Court's Ruling

The trial court denied White's motion without a hearing (R. 22). Regarding deficiency, it found that Tun had conveyed the plea offer to White, but White had made it clear from the beginning of the case that he did not want to plead guilty (*id.* at 7). Even after Tun discussed the possibilities of pleading guilty and White's potential options at sentencing, White told him that he wanted to go to trial (*id.*). White was focused on the suppression issue (*id.*). After the government re-extended the plea offer and provided an expiration date of October 29, 2020, Tun read the terms of the plea agreement to White over speakerphone (*id.* at 8). But again, White insisted on pursuing the suppression option and was uninterested in any plea offer (*id.*).

Moreover, the court found, after the suppression motion was denied, White demonstrated during the colloquy at the stipulated trial that he "was fully aware of the decision he was making" (R. 22 at 9). The trial court further inferred that White was aware of the prior plea offer because he said nothing to the contrary when he was asked about the

differences between a plea offer and a stipulated trial (*id.*). Further, because a stipulated trial is a "fairly unusual" occurrence, the trial court inferred that "White made a conscious decision to proceed with a stipulated trial—an avenue that allowed him to preserve his right to appeal the verdict and denial of the motion suppress, which was otherwise unavailable pursuant to the terms of the Government's agreement" (*id.*). In sum, there was "strong evidence that Mr. White merely prioritized his right to appeal over accepting a plea offer" (*id.* at 10). The court accordingly found that trial counsel had informed White of the plea offer and that therefore White had failed to prove his factual allegations by a preponderance of the evidence (*id.*).

Regarding prejudice, the court found that White had not shown a reasonable probability that he would have accepted the plea offer (R. 22 at 10). The court noted that "[e]ven months after being convicted and sentenced in this case, [White] declared that he 'most likely would have' accepted the Government's plea offer," which "seem[ed] to imply that he was grappling whether he should take a plea or proceed with a stipulated trial" (*id.*). Indeed, the record was "replete with evidence that Mr. White made a conscious decision to proceed with a stipulated trial to allow him

to preserve rights that were otherwise unavailable to him"—specifically, appealing the denial of his motion to suppress (*id.* at 11-12). Thus, White had failed to show that there was a reasonable probability that he would have accepted the plea offer (*id.*).[3] Finally, the court concluded that no evidentiary hearing was necessary because White's claims were vague and conclusory, and there was no genuine dispute as to the material facts of his claim (*id.*).

SUMMARY OF ARGUMENT

The trial court did not abuse its discretion in denying White's § 23-110 motion. The Court does not need to consider the issue of deficiency. Even if White could show that his attorneys failed to convey the government's plea offer, White failed to show prejudice. Specifically, he

[3] The court also briefly noted that it was "*possible*" that White could have received a lesser sentence if he had pleaded guilty to one count of CPWL and the government had capped its allocution at 10 months (which was the bottom of White's guidelines range for CPWL), but it was "not known how much of those 10 months the Court would have imposed" (R. 22 at 12). Because White has subsequently been revoked on probation and ordered to serve more than 10 months of incarceration, the government does not rely on any argument that White has not shown that his sentence under a plea agreement would have been less severe than the sentence he ultimately received.

did not show a reasonable probability that he would have accepted the plea offer. He never asserted that he would have accepted the government's offer. All he said was that he "likely" would have accepted it. Based on the timing of that assertion and White's evident desire to pursue his suppression motion—which the government's plea offer would not have allowed—the trial court did not abuse its discretion in finding that White failed to show a reasonable probability that he in fact wanted to accept the plea offer and plead guilty.

No hearing was required. Putting aside the issue of deficiency, because White's assertions would not support a finding of prejudice, his claims would not have warranted relief even if true.

ARGUMENT

The Court Did Not Abuse Its Discretion in Summarily Denying White's D.C. Code § 23-110 Motion.

White argues (at 6-12) that the trial court erred (1) when it found that there was no reasonable probability that White would have accepted the plea offer; (2) in finding counsel not deficient even though they advised White of the plea offer after the expiration date and apparently made a counteroffer without his consent; (3) in certain inferences about

counsel's performance that it took from the record; and (4) in not calling a hearing. The Court does not need to consider the second and third arguments, and the first and fourth arguments are without merit. The trial court correctly found that White's assertions did not support a prejudice claim and thus that no hearing was required.

A. Standard of Review and Applicable Legal Principles

This Court "review[s] a trial court's denial of a § 23-110 motion for abuse of discretion, assessing the trial court's findings of fact for clear error and determinations on questions of law *de novo*." *Gardner v. United States*, 140 A.3d 1172, 1195 (D.C. 2016) (internal citations omitted). Likewise, this Court reviews the trial court's decision to hold a hearing on a § 23-110 motion for abuse of discretion. *Wright v. United States,* 979 A.2d 26, 30 (D.C. 2009). A hearing is unnecessary when a defendant's motion consists of: "(1) vague and conclusory allegations, (2) palpably incredible claims, or (3) allegations that would merit no relief even if true." *Lopez v. United States*, 801 A.2d 39, 42 (D.C. 2002).

"When claiming ineffective assistance of counsel, a defendant must establish that his counsel's performance was deficient and that the

deficiency resulted in prejudice." *Blackmon v. United States*, 215 A.3d 760, 764 (D.C. 2019) (internal citation omitted). "To establish deficiency, trial counsel must have made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment." *Dickerson v. District of Columbia*, 182 A.3d 721, 730 (D.C. 2018) (internal quotation marks and citation omitted). To show prejudice, a defendant must show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v. Washington*, 466 U.S. 668, 694 (1984). Failure to show either deficiency or prejudice will defeat an ineffective-assistance claim. *Id.* at 700.

Regarding deficiency, "as a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." *Missouri v. Frye,* 566 U.S. 134, 145 (2012). "When defense counsel allow[s] the offer to expire without advising the defendant or allowing him to consider it, defense counsel d[oes] not render the effective assistance the Constitution requires." *Id.* Regarding prejudice, a defendant must demonstrate that there is a reasonable probability that, but for his counsel's purported failure to convey the plea offer (1) he would have accepted and pleaded

guilty in accordance with the terms of the pre-trial plea offer; (2) the prosecution would not have withdrawn the plea offer in light of intervening circumstances; (3) the Court would have accepted the plea agreement; and (4) the conviction or sentence or both would have been less severe than the conviction and sentence the defendant received. *Frye,* 566 U.S. at 147; *see also Benitez v. United States,* 60 A.3d 1230, 1236-37 (D.C. 2013).

B. Discussion

1. White Fails to Show That Any Deficiency by Trial Counsel Prejudiced Him.

As the trial court found (R. 22 at 10), White has not shown a reasonable probability that he would have accepted the plea offer. *See Frye,* 566 U.S. at 147; *Benitez,* 60 A.3d at 1236-37. White never actually stated that he would have accepted the offer and pleaded guilty. In the declaration accompanying his § 23-110 motion, White stated only that he "most likely" would have accepted the government's plea offer (R. 4 at Ex. B).

Contrary to White's claim (at 7), this "most likely" qualifier was not enough to show a reasonable probability that he in fact would have

accepted the plea offer and pleaded guilty. When he filed his § 23-110 motion in April 2022, White knew the exact terms of the plea offer. He also had presented his suppression motion, been found guilty and sentenced, and noted his appeal of the suppression ruling. At that point, White had all the information that he needed to determine whether the plea offer was a better option than filing a motion to suppress and engaging in a stipulated trial. Yet despite knowing the consequences of the path he followed, he still failed to state that the better option would have been to accept the plea offer. There was no reason for White's equivocation—unless, as the trial court found (R. 22 at 10), he still was "grappling" with whether to plead guilty. Given White's evident uncertainty, the trial court correctly found that he had not established a "reasonable probability" that he would have accepted the government's plea offer.[4]

Furthermore, White had good reason not to accept the plea offer. In order to accept it, he would have had to waive his right to seek suppression

[4] White points (at 7) to his counsel's claims—in counsel's § 23-110 motion—that White would have accepted the plea offer (R. 4 at 5-6). But White's counsel is not White, and White's counsel would not have been able to accept the plea offer without White's consent. The operative representations are the ones from White himself in his declaration, not arguments that White's counsel made in the § 23-110 motion.

of the evidence and, if a suppression motion were denied, to appeal that ruling. See R. 4 at Ex. A, p. 2 ("This plea offer expires when a trial date is set, or after any motions that will require a response by the government are filed in this case, including, but not limited to, motions to suppress, . . ."); *id.* ("In addition, your client agrees to waive his right to appeal his conviction on any basis, . . ."); *see also Collins v. United States,* 664 A.2d 1241, 1242 (D.C. 1995) (defendant could not challenge denial of motion to suppress on appeal; "A defendant who enters a guilty plea ordinarily waives all non-jurisdictional defects in the proceedings below on appeal."); *Moore v. United States,* 724 A.2d 1198, 1199 (D.C. 1999) (plea of guilty waives virtually all challenges) (collecting cases).

But White has consistently shown that he wanted to pursue his motion to suppress and to pursue an appeal. A week after White lost the suppression motion, his counsel told the court that he wanted to schedule a stipulated trial so that White could appeal that decision (R.310 at 50; 3/17/21 Tr. 3-4). Less than a month later, White entered into the stipulated trial (4/13/21 Tr. 6-7). At that hearing, White confirmed to Judge Brandt that he understood the differences between a stipulated trial and pleading guilty (*id.*). In particular, he understood that if he had decided to plead

guilty instead, he would be giving up his right to appeal (*id.* at 6). Instead, he decided to proceed with the stipulated trial (*id.* at 7). He confirmed that he understood that by doing so, he would be preserving his right to appeal the denial of the suppression motion (*id.*). He also confirmed that he had discussed these differences, and his options, with his attorneys (*id.*). He filed a notice of appeal shortly after the stipulated trial (R.310 at 63). He continues to pursue that appeal, arguing that his Fourth Amendment rights were violated when police learned of information from the GPS device that he was wearing. *See* Appellant Br. in *Larry White, Jr. v. United States*, No. 21-CF-310, at 14-15. Given White's evident desire to seek suppression and appeal, the trial court did not err in finding that White had failed to show a reasonable probability that he would have accepted the plea offer.

The contradictory goals of the two pending appeals highlight the weakness of White's prejudice claim. In the direct appeal, White seeks review and reversal of the trial court's denial of his suppression motion, which effectively would end the prosecution. In this § 23-110 appeal, if White succeeds in showing ineffectiveness of trial counsel in failing to inform him of the government's plea offer, the remedy would be a remand

for the government to re-extend its offer. *See Lafler v. Cooper*, 566 U.S. 156, 174 (2012). And if White then accepted that offer, he would have to disavow his suppression claim in the trial court and this Court because, as we have discussed, the plea agreement would preclude any suppression challenge. White already had noted his suppression appeal at the time he filed his § 23-110 motion.[5] Given that he may well not have wanted to abandon his suppression appeal, he understandably was reluctant to commit to a guilty plea when he raised his ineffectiveness claim.

In sum, the problem for White is that he could not have it both ways: either he wanted to accept the plea offer and not pursue suppression, or he wanted to take his chances on suppression and reject the plea offer. His inability to say more than that he "likely" would have chosen to plead guilty indicated that he was still weighing his choices. The trial court thus did not abuse its discretion in finding that White had

[5] Relatedly, if this Court were to find that a remand is appropriate for the trial court to hold a hearing on White's § 23-110 motion, it should reserve ruling on White's suppression argument so that White would have the opportunity to accept the re-extended offer if he prevails after that hearing. That acceptance would require him to withdraw his suppression appeal.

failed to satisfy his burden to show a reasonable probability that he would have accepted the plea offer. And because White cannot show prejudice, his ineffectiveness claim necessarily failed. *See Strickland*, 466 U.S. at 700.

2. No Hearing Was Required.

The trial court did not need to hold a hearing to deny White's motion. If this case turned on deficiency, we agree that a hearing would be necessary to resolve the factual dispute over whether White's attorneys told him about the plea offer. But neither the trial court nor this Court need to decide the deficiency question. Because White has never actually stated that he would have accepted the plea offer, and all indications are to the contrary, he would not be entitled to relief even assuming that counsel had not conveyed the plea offer to him. No hearing was necessary because the record already defeats White's prejudice claim. *See, e.g.*, *Shepherd v. United States*, 296 A.3d 389, 392 (D.C. 2023) (no hearing required if defendant's "assertions . . . would not merit relief even if true"); *see also* D.C. Code § 23-110(c) (no hearing required if the

"files and records of the case conclusively show that [White] is entitled to no relief.").[6]

CONCLUSION

WHEREFORE, the government respectfully submits that the judgment of the Superior Court should be affirmed.

Respectfully submitted,

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[6] If the Court does not affirm on the ground of no prejudice, we agree that the case should be remanded for a hearing on deficiency. The contradictory assertions in the declarations by White on the one hand and his attorneys on the other present a factual dispute that would require testimony to resolve.

District of Columbia
Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (amended May 2, 2023), this certificate must be filed in conjunction with all briefs submitted in all criminal cases designated with a "CF" (criminal felony), "CM" (criminal misdemeanor), "CT" (criminal traffic), and "CO" (criminal other) docketing number. Please note that although briefs with above designations must comply with the requirements of this redaction certificate, criminal sub-case types involving child sex abuse, cruelty to children, domestic violence, sexual abuse, and misdemeanor sexual abuse will not be available for viewing online.

If you are incarcerated, are not represented by an attorney (also called being "pro se"), and not able to redact your brief, please initial the box below at "G" to certify you are unable to file a redacted brief. Once Box "G" is checked, you do not need a file a separate motion to request leave to file an unredacted brief.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21, amended May 2, 2023, and Super. Ct. Crim. R. 49.1, and removed the following information from my brief:

A. All information listed in Super. Ct. Crim. R. 49.1(a) has been removed, including:

(1) An individual's social-security number
(2) Taxpayer-identification number
(3) Driver's license or non-driver's' license identification card number
(4) Birth date
(5) The name of an individual known to be a minor as defined under D.C. Code § 16-2301(3)
(6) Financial account numbers

(7) The party or nonparty making the filing shall include the following:

(a) the acronym "SS#" where the individual's social-security number would have been included;
(b) the acronym "TID#" where the individual's taxpayer identification number would have been included;
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(d) the year of the individual's birth;
(e) the minor's initials;
(f) the last four digits of the financial-account number; and (g) the city and state of the home address.

B. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

C. All pre-sentence reports (PSRs); these reports were filed as separate documents and not attached to the brief as an appendix.

D. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

E. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

F. Any other information required by law to be kept confidential or protected from public disclosure.

Initial Here

G. I certify that I am incarcerated, I am not represented by an attorney (also called being "pro se"), and I am not able to redact this brief. This form will be attached to the original filing as record of this notice and the filing will be unavailable for viewing through online public access.

/s/
Signature

23-CO-288
Case Number(s)

Kevin Birney
Name

2/15/2024
Date

Kevin.Birney@usdoj.gov
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused a copy of the foregoing to be served by electronic means, through the Court's EFS system, upon counsel for appellant, Tamara Jones, Esq., attorney@thelegalcourthouse.com, on this 15th day of February, 2024.

/s/
KEVIN BIRNEY
Assistant United States Attorney