

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 14, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARY GONZALES,

Defendant - Appellant.

No. 26-2078
(D.C. Nos. 1:24-CV-00879-KWR-KK &
1:19-CR-00240-KWR-KK-1)
(D.N.M.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **HARTZ**, **MATHESON**, and **ROSSMAN**, Circuit Judges.

Defendant Mary Gonzales, proceeding pro se,¹ seeks a certificate of appealability (COA) to appeal the district court's denial of her motion for relief under 28 U.S.C.

§ 2255.² We deny a COA and dismiss the matter.

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

¹ Because Defendant proceeds pro se, we liberally construe her filings but we do not act as her advocate. *See Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

² Defendant did not file an application for a COA as part of her opening brief, but we construe her notice of appeal as a request for a COA. *See* 10th Cir. R. 22.1.

I. BACKGROUND

In June 2018 Socorro County Sheriff's Deputy Richard Lopez received a tip from a confidential informant that Defendant was going to deliver controlled substances to the house of a known drug dealer. At that house he observed Defendant engaging in what appeared to be a drug transaction from her vehicle. When Defendant drove away, Deputy Lopez followed her in his patrol vehicle and stopped her. During the traffic stop he noticed a small plastic bag sticking out of her shirt which he believed to contain drugs. Upon his order she handed him the bag, which contained what appeared to be methamphetamine. Defendant was arrested, and a search revealed that she was in possession of heroin, drug paraphernalia, a firearm, and additional methamphetamine.

Defendant was convicted by a jury in the United States District Court for the District of New Mexico on four counts: (i) possession with intent to distribute methamphetamine; (ii) possession with intent to distribute heroin; (iii) being a felon in possession of a firearm; and (iv) carrying a firearm during and in relation to a drug trafficking crime. The district court sentenced her to 195 months' incarceration, and this court affirmed on direct appeal. *See United States v. Gonzales*, No. 21-2099, 2022 WL 17725388 at *3-4 (10th Cir. 2022).

Defendant moved to set aside her conviction and sentence under § 2255, asserting, among other grounds, ineffective assistance of counsel. The district court dismissed the motion and denied a COA.

II. DISCUSSION

A COA will issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). This standard requires “a demonstration that . . . includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation marks omitted). In other words, the applicant must show that the district court’s resolution of the constitutional claim was either “debatable or wrong.” *Id.*

To prevail on a claim of ineffective assistance of counsel, a defendant must show both that her counsel’s performance was deficient—“that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment”—and that “the deficient performance prejudiced [her] defense.” *Strickland v. Washington*, 466 U.S. 668, 687 (1984). “Failure to make the required showing of *either* deficient performance or sufficient prejudice defeats the ineffectiveness claim.” *Id.* at 700 (emphasis added).

Defendant identifies four issues for appellate review. As no reasonable jurist could disagree with the district court’s disposition on these matters, we deny a COA.

First, Defendant argues that the Government violated *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to produce exculpatory material related to Deputy Lopez’s credibility and that her counsel was deficient in failing to pursue this issue. Her brief before this court points to two criminal cases in federal district court involving other

defendants, in which Deputy Lopez played a role.³ Defendant alleges that these cases, which “would [have been] found” by an effective attorney, “prove [Lopez’s] lack of credibility.” Apl’t. Br. at 2. But the only relevant judicial statement in either case—that Deputy Lopez had “knowingly or recklessly disregarded the truth” in preparing an affidavit and had been “inconsistent and not credible” in his testimony—was from an opinion that was released after Defendant’s March 2021 conviction, *United States v. Arvizo*, 20-CR-00329 KWR, 2022 WL 1136773, at *14 (D.N.M. Apr. 18, 2022). And while Defendant contends that events involving Deputy Lopez in another case led to an internal-affairs investigation, she offered no evidence to support this assertion.

Defendant asserts, based on the *Arvizo* opinion, that the Government must have been in possession of evidence of Deputy Lopez’s wrongdoing. But because Defendant could not “identify specific material evidence that existed at the time of her trial, which the prosecution had in its possession and withheld,” the district court properly concluded that her claim failed. *Gonzales v. United States*, Nos. 24-cv-0879 KWR-KK, 19-cr-0240-KWR KK, 2026 WL 1091772, at *4 (D.N.M. Apr. 22, 2026). And even if Defendant’s defense counsel was aware of other criminal cases involving Deputy Lopez, Defendant did not provide “a non-conclusory basis for [her] assumption” that the Government possessed *Brady* material bearing on Deputy Lopez’s credibility. *Id.* Counsel cannot be

³ Defendant points to additional cases in her notice of appeal that allegedly prove the existence of undisclosed *Brady* material, but as they are not raised in her opening brief, those arguments are waived. In any case, the notice of appeal does not point to specific *Brady* material related to those cases, nor did we find any.

faulted for failing to uncover evidence that did not exist at the time of her trial or for failing to investigate “without any indicia that [the alleged] evidence existed.” *Id.*

Second, Defendant argues that her counsel was ineffective in failing to obtain dash-camera footage from Deputy Lopez’s vehicle on the date of her arrest, which she claims would show that he could not have observed the alleged drug transaction from his vantage point. We disagree. In preparation for trial the government represented to Defendant’s counsel that there was no dash camera installed on Deputy Lopez’s vehicle, and thus no footage to recover. *See Gonzales*, 2026 WL 1091772, at *4. Defendant’s brief stresses her personal recollection of a camera in Deputy Lopez’s vehicle and alleges that Socorro County had a general policy of installing dash cameras since 1995. But a defense attorney is “entitled to rely on the state’s representation” regarding the production and existence of evidence. *Carter v. Bigelow*, 787 F.3d 1269, 1282 (10th Cir. 2015); *cf. Strickler v. Greene*, 527 U.S. 263, 283 n.23 (1999) (“if a prosecutor asserts that he complies with *Brady* through an open file policy, defense counsel may reasonably rely on that file to contain all materials the State is constitutionally obligated to disclose under *Brady*”). “[C]onscientious defense counsel” can rely on the “well established” presumption that “prosecutors have fully discharged their official duties” and need not “assert constitutional error on the basis of a mere suspicion that some prosecutorial misstep may have occurred,” *Strickler*, 527 U.S. at 286–87 (internal quotation marks omitted), nor “scavenge for hints of undisclosed *Brady* material when the prosecution represents that all such material has been disclosed.” *Banks v. Dretke*, 540 U.S. 668, 695 (2004).

Third, Defendant argues that her counsel was ineffective in failing to use a map of the area immediately around her arrest to cross-examine Deputy Lopez by showing that his line of sight to the alleged drug transaction was blocked. At trial Defendant's counsel cross-examined Deputy Lopez regarding his observation of the alleged drug transaction but did not present him with a map. Yet counsel elicited from Detective Lopez that "he did not actually witness [Defendant] get out [of] her vehicle, nor did he see her exchange drugs for money." *Gonzales*, 2026 WL 1091772, at *5. As the district court found, "the cross-examination of [Deputy] Lopez was lengthy, thorough, and designed to reveal inconsistencies in his testimony and doubt as to whether he actually witnessed a drug transaction." *Id.* The decision not to use the map was a matter of trial strategy well within the proper discretion of counsel. *See Nguyen v. Reynolds*, 131 F.3d 1340, 1349 (10th Cir. 1997) ("A strategic decision cannot be the basis for a claim of ineffective assistance unless counsel's decision is shown to be so ill chosen that it permeates the entire trial with obvious unfairness.").

Finally, Defendant's fourth argument is that her counsel was ineffective in failing to pursue various challenges to the chain of custody of the controlled substances and firearm.⁴ Contrary to Defendant's claims, the record demonstrates that defense counsel

⁴ Defendant's appellate brief focuses primarily on the underlying merits of the chain-of-custody claim. *See, e.g.*, Aplt. Br. at 5 ("The gap in the chain of custody hearing should have been granted in my favor for a new trial."). Because, however, she could have brought this challenge on direct review, her merits claim is procedurally defaulted. *See United States v. Cox*, 83 F.3d 336, 341 (10th Cir. 1996) ("When a defendant fails to raise an issue on direct appeal, [s]he is barred from raising the issue in a § 2255 proceeding, unless [s]he establishes either cause excusing the procedural default and prejudice resulting from the error or a fundamental miscarriage of justice if the claim is

litigated the chain-of-custody issues in cross-examination, in Defendant’s motion for a directed verdict, and in her motion for a new trial. Defendant does not identify, nor does the record show, any deficiencies in counsel’s representation on this matter. *See Harmon v. Sharp*, 936 F.3d 1044, 1058 (10th Cir. 2019) (“To be deficient, the performance . . . must have been completely unreasonable, not merely wrong.” (internal quotation marks omitted)).

III. CONCLUSION

We **DENY** a COA and **DISMISS** the matter. We **GRANT** the motion to proceed *in forma pauperis*.

Entered for the Court

Harris L Hartz
Circuit Judge

not considered.”). Defendant asserts that she did not raise the issue because her appeals lawyer advised her against it, but Defendant does not allege, nor do we see, any ground for a claim that this advice constituted ineffective assistance. And she does not argue miscarriage of justice. *See Hunter v. United States*, 608 U.S. 713, 717 (defining miscarriage of justice as “the kind of egregious error that would bring the judicial system into disrepute”).