NONPRECEDENTIAL DISPOSITION
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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued May 22, 2025
Decided June 2, 2025

Before

FRANK H. EASTERBROOK, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 24-2948

HELEN CALDWELL,
Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,
Respondent-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 24 C 5927

Matthew F. Kennelly,
Judge.

O R D E R

Helen Caldwell, a former financial advisor for Citibank, pleaded guilty to defrauding several clients of nearly $1.5 million. She expected to receive probation and was shocked when the district court sentenced her to 30 months' imprisonment. She moved to vacate her plea under 28 U.S.C. § 2255, alleging that her counsel ineffectively assisted her in several ways. The district court held an evidentiary hearing and denied the petition as to all but one issue, allowing her to file an appeal because her counsel failed to in the first instance. She declined to take a direct appeal, though, and appealed the denial of her other § 2255 claims instead. We affirm.

I

Helen Caldwell was once a Vice President and Senior Wealth Advisor at Citibank. Caldwell owed fiduciary duties to the clients she advised in that position. But over the course of six years, Caldwell violated those duties—and federal law—by defrauding three of her clients of approximately $1,480,500. Caldwell had formed an entity called Canal Productions LLC, ostensibly to produce movies, and solicited investments from several clients to fund the venture. Citibank prohibited this type of solicitation for outside business activities, and each year Caldwell falsely certified that nothing of the sort was taking place. She told her clients that their investments would be used to fund the production of movies and that they would share in the resulting profits. Instead of advancing her clients' pecuniary interests, though, Caldwell misappropriated the funds for personal expenses or otherwise diverted them for her own benefit. The victims never saw their initial investments returned, nor did they receive any profits.

Caldwell's fraud was discovered after one of her victims, an elderly woman with dementia, became a ward of the Cook County Public Guardian's Office. The Public Guardian sued Caldwell, seized her assets, and launched an investigation into her alleged financial exploitation. The Financial Industry Regulatory Authority (FINRA), Illinois Office of the Comptroller of the Currency (OCC), and Illinois Secretary of State began their own proceedings. Caldwell agreed to surrender her securities license after testifying before FINRA and entered an agreement with the OCC regarding her false certifications to Citibank. The FBI and United States Attorney's Office opened a criminal investigation.

It was at this stage that Caldwell met attorney Steven Rosenberg. A partner at Rosenberg's firm was representing Caldwell in an unrelated employment matter and referred her to Rosenberg given her potential criminal exposure. Shortly after, an Assistant United States Attorney contacted Rosenberg and informed him of the pending federal criminal investigation into Caldwell and Canal Productions for mail and wire fraud. At Rosenberg's advice and before an indictment was issued, Caldwell pleaded guilty to one count of wire fraud in violation of 18 U.S.C. § 1343. The court conducted an extensive plea colloquy, during which Caldwell admitted to the factual basis of her fraudulent activity, said she was satisfied with her counsel, and confirmed that she had not been pressured, coerced, or promised anything in return for her plea. The district court sentenced Caldwell to a below-Guidelines sentence of 30 months' imprisonment with three years of supervised release and ordered her to pay $1,480,500 in restitution.

Caldwell moved to vacate her plea under 28 U.S.C. § 2255, alleging an assortment of ineffective assistance of counsel claims. Relevant here, Caldwell claimed

that Rosenberg advised her to plead guilty without sufficiently investigating her case, coerced and intimidated her into pleading guilty, and failed to file an appeal despite Caldwell's desire to. The district court held an evidentiary hearing and heard testimony by both Caldwell and Rosenberg, who gave dueling accounts of the circumstances leading to Caldwell's guilty plea. It then denied Caldwell's motion except to permit her to file a direct appeal, which she ultimately declined to pursue. The district court granted a certificate of appealability on her remaining § 2255 claims.

II

Caldwell maintains that Rosenberg's performance was constitutionally deficient because his investigation into the charges was inadequate and he coerced her into pleading guilty. Accordingly, she asks us to reverse the district court's order denying § 2255 relief, vacate her plea and sentence, and remand for further proceedings. A "dual standard of review" governs this appeal, such that we disturb only clearly erroneous factual findings but review de novo any legal questions. *Williams v. United States*, 879 F.3d 244, 248 (7th Cir. 2018). When, as here, the district court held an evidentiary hearing before denying a § 2255 motion, "its factual findings and credibility determinations are entitled to exceptional deference on appeal." *Dekelaita v. United States*, 108 F.4th 960, 968 (7th Cir. 2024) (quotation omitted).

Caldwell was certainly entitled to the effective assistance of counsel during plea negotiations. *Lafler v. Cooper*, 566 U.S. 156, 162 (2012). To successfully challenge her plea on these grounds, Caldwell must demonstrate that Rosenberg performed below an objective standard of reasonableness and that she was prejudiced by his conduct. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); see also *Hill v. Lockhart*, 474 U.S. 52, 58 (1985) ("[T]he two-part *Strickland v. Washington* test applies to challenges to guilty pleas based on ineffective assistance of counsel."). "Our scrutiny of an attorney's performance is highly deferential." *United States v. Jansen*, 884 F.3d 649, 656 (7th Cir. 2018) (quotation omitted). We "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance" in order "to eliminate as much as possible the distorting effects of hindsight." *Vinyard v. United States*, 804 F.3d 1218, 1225 (7th Cir. 2015) (quoting *Strickland*, 466 U.S. at 689). To establish prejudice, Caldwell must show by a reasonable probability that with competent counsel she "would not have pleaded guilty and would have insisted on going to trial." *Lockhart*, 474 U.S. at 59. A mere allegation to that end will not suffice. *United States v. Cieslowski*, 410 F.3d 353, 359 (7th Cir. 2005).

A

Caldwell claims that Rosenberg insufficiently investigated her case and failed to assess the government's evidence before advising her to plead guilty. She has multiple complaints about the quality of Rosenberg's investigation, including the amount of time he spent reviewing her files and learning the facts of the case, his decision not to interview government witnesses, and his failure to employ an investigator or accounting expert.

The district court was right to reject this argument. To be sure, "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 691. In the plea bargaining context, then, "reasonably competent counsel will attempt to learn all of the facts of the case, make an estimate of a likely sentence, and communicate the results of that analysis before allowing his client to plead guilty." *Gaylord v. United States*, 829 F.3d 500, 506 (7th Cir. 2016) (quotation omitted). But the decision not to investigate could also be a tactical strategy that is "virtually unchallengeable." *Strickland*, 466 U.S. at 690. Counsel may, for example, determine that an investigation and resulting delay in plea negotiations could lead the government to rescind the plea offer or even lodge additional charges. *Jansen*, 884 F.3d at 657–58. Accordingly, it is objectively reasonable to forgo a particular investigation or decline to otherwise "test the government's evidence" if counsel believes it "would be fruitless or even harmful" to the defendant. *Id.* at 656–58 (quotation omitted).

Our analysis begins and ends with the district court's decision. After holding an evidentiary hearing, the court concluded that Rosenberg's testimony about the amount of time he spent on the case was "less than satisfactory" and even "not particularly credible." But ultimately, the court was "not persuaded by Ms. Caldwell's contention that Mr. Rosenberg didn't consider the evidence, didn't review the evidence, and didn't do enough inquiry or investigation." After further concluding that Caldwell could not establish prejudice because the evidence showed she made a "judgment" to plead guilty rather than go to trial, the court denied this claim.

Simply put, the district court determined that Rosenberg's performance was not deficient after holding a hearing, taking testimony, and reviewing the evidence. This is a factual finding we must afford "exceptional deference," *Dekelaita*, 108 F.4th at 968, and Caldwell does not convince us that it was clearly erroneous. She urges us to examine her communications with Rosenberg leading up to the guilty plea, but they do not help her case. Various emails with Rosenberg demonstrate his concern that the government would withdraw the plea offer if Caldwell delayed the agreement. Others make clear that Rosenberg declined to have an investigator interview the government's witnesses

to avoid the appearance of witness tampering. These are strategic reasons to forgo the sort of exhaustive investigation and assessment of the government's evidence that Caldwell advocates for. *Jansen*, 884 F.3d at 657–59. Additionally, Rosenberg could have reasonably concluded that such an investigation was "fruitless" given the substantial civil and disciplinary proceedings against Caldwell, particularly her extensive FINRA testimony. See *Strickland*, 466 U.S. at 691. Rosenberg may not have conducted the most thorough investigation before advising Caldwell to plead guilty, but this does not render his performance constitutionally deficient.

B

Caldwell's remaining complaint is that Rosenberg coerced her into pleading guilty and promised she would receive probation if she did. These allegations, if true, would undermine the voluntary and intelligent nature of Caldwell's plea and establish that Rosenberg provided ineffective assistance. *United States v. Jordan*, 870 F.2d 1310, 1316 (7th Cir. 1989) ("A guilty plea is voluntary when it is not induced by threats or misrepresentations …. A guilty plea is intelligent and knowing when the defendant is competent, aware of the charges, and advised by competent counsel."); *Daniels v. United States*, 54 F.3d 290, 293–95 (7th Cir. 1995) (claim that defendant's attorney pressured him to plead guilty could demonstrate ineffective assistance of counsel); *United States v. Martinez*, 169 F.3d 1049, 1053 (7th Cir. 1999) ("A defense attorney cannot promise his client a particular sentence.").

The problem for Caldwell is that the district court conducted a thorough Rule 11 colloquy before accepting her guilty plea. Under oath, Caldwell repeatedly represented that her plea was knowing and voluntary, dispelled any notion that she had been coerced or pressured into pleading guilty, and asserted that no one had promised her a particular sentence. She even expressed satisfaction with Rosenberg's representation. The sworn statements during a plea are not "trifles" that one may "just elect to disregard." *United States v. Reed*, 859 F.3d 468, 471 (7th Cir. 2017) (quotation omitted). "When a defendant makes representations at a plea hearing, those representations are entitled to a presumption of verity." *United States v. Collins*, 796 F.3d 829, 834 (7th Cir. 2015). Caldwell "bears a heavy burden to overcome this presumption." *United States v. Smith*, 989 F.3d 575, 582 (7th Cir. 2021).

Caldwell claims that she was lying during the plea colloquy but telling the truth during the § 2255 proceedings when she testified that Rosenberg improperly induced her plea. But the district court came to the opposite conclusion. It found "no credible evidence," including Caldwell's testimony, that she was lying during her plea "or that she was coerced or pressured or pushed or anything else to say those facts." On the contrary, it found that "the shifting ground" of her § 2255 testimony "undermine[d] [its]

veracity." Caldwell does not meaningfully argue that this credibility determination was clearly erroneous, nor has she supplied anything beyond "bare protestations" to suggest that it was. *Collins*, 796 F.3d at 834 (quotation omitted).

Having observed Caldwell during both her plea colloquy and the § 2255 hearing, the district court was in the "best position" to assess the propriety of her plea. *United States v. Walker*, 447 F.3d 999, 1005 (7th Cir. 2006). "We will not second-guess [its] determination lightly," *United States v. Messino*, 55 F.3d 1241, 1252 (7th Cir. 1995), and find no reason to do so today.

AFFIRMED