

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
FLORIDA

Deshawn Lemonte Wheeler v. United States

Wheeler · No. 23-60422-CIV-SINGHAL · Decided February 25, 2026

SUMMARY

The United States District Court for the Southern District of Florida reviews Deshawn Lemonte Wheeler’s motion under 28 U.S.C. § 2255 challenging his conviction and sentence. The court concludes that counsel inadequately consulted Wheeler about pursuing an appeal, entitling him to relief on that claim, but finds no prejudice from counsel’s failure to object to the base offense level. The order grants the motion in part and directs that Wheeler be resentenced.

CASE DETAILS

COURT	United States District Court for the Southern District of Florida
WRITING FOR THE COURT	Raag Singhal
JURISDICTION	United States District Court for the Southern District of Florida
DECIDED	February 25, 2026
DOCKET	23-60422-CIV-SINGHAL
DISPOSITION	granted
PROCEDURAL POSTURE	Movant sought relief under 28 U.S.C. § 2255 from his federal conviction and sentence, alleging ineffective assistance for counsel's failure to file a notice of appeal and failure to object to an enhanced base offense level. The matter was referred for an evidentiary hearing and Report and Recommendation. After de novo review, the district court granted the motion in part and ordered an out-of-time appeal remedy.
STANDARD OF REVIEW	De novo review of the portions of the magistrate judge's Report and Recommendation to which objections were made under 28 U.S.C. § 636(b)(1). The court independently considered the record and factual issues, but could not reject the magistrate judge's credibility determinations without an articulable basis or a new hearing. Ineffective-assistance claims were analyzed under Strickland v. Washington.
PRECEDENTIAL VALUE	Unknown; unpublished district court order

PARTIES

Deshawn Lemonte Wheeler v. United States of America

TOPICS

federal habeas corpus

ineffective assistance

post-conviction relief

appellate procedure

sentencing

PRACTICE AREAS

federal post-conviction relief

criminal procedure

ineffective assistance of counsel

federal sentencing

appellate procedure

QUESTIONS PRESENTED

1. Whether counsel provided ineffective assistance by failing to consult adequately with Wheeler about filing a direct appeal after Wheeler inquired about an appeal.
2. Whether Wheeler was prejudiced by counsel's failure to consult about an appeal, such that an out-of-time appeal was warranted under § 2255.
3. Whether counsel was ineffective for failing to object to the use of Wheeler's prior battery-on-a-law-enforcement-officer conviction to establish an enhanced base offense level.
4. What remedy was appropriate for the failure to provide constitutionally adequate consultation about an appeal.

HOLDINGS

1. When a defendant inquires about an appeal, counsel must adequately consult by informing the defendant of the right to appeal, explaining the advantages and disadvantages of appealing, and making a reasonable effort to determine whether the defendant wishes to appeal. Wheeler's inquiry and subsequent discussions triggered that duty, and counsel's consultation was inadequate.
2. Wheeler established prejudice because there was a reasonable probability that, after adequate consultation, he would have timely appealed. Because a direct appeal from a federal conviction is a matter of right, the court did not assess the likely merits of the appeal.
3. Counsel performed deficiently by failing to object to the use of Wheeler's battery-on-a-law-enforcement-officer conviction to establish an enhanced base offense level because the applicable law was clear and counsel had no strategic basis for omitting the objection. Wheeler nevertheless failed to establish prejudice on this claim.
4. The proper § 2255 remedy for the deficient failure to consult was to vacate the criminal judgment, reimpose the identical sentence, advise Wheeler of his appellate rights, and allow fourteen days to file a notice of appeal.

KEY QUOTATIONS

“adequate consultation requires informing a client about his right to appeal, advising the client about the advantages and disadvantages of taking an appeal, and making a reasonable effort to determine whether the

client wishes to pursue an appeal, regardless of the merits of such an appeal.” (Section III.B)

“The idea that there was nothing left to appeal, combined with advising Wheeler that the court could impose a longer sentence after appeal, does not satisfy the attorney’s duty to consult.” (Section III.B)

“So long as a defendant can show that counsel’s constitutionally deficient performance deprived him of an appeal that he otherwise would have taken, courts are to presume prejudice with no further showing from the defendant of the merits of his underlying claims.” (Section III.D)

“The remedy in Philips ‘is limited to permitting the defendant to file what would otherwise be an untimely appeal from the original sentence,’ necessarily ‘requir[ing] the district court to re-impose the same sentence as before, which can then be reviewed on appeal.’” (Section IV)

FACTUAL BACKGROUND

A confidential informant purchased controlled substances from Wheeler several times between November 2021 and February 2022. In March 2022, officers executed a search warrant at Wheeler’s home and found firearms, ammunition, identification documents belonging to numerous out-of-state victims, debit cards, and other evidence. Wheeler pleaded guilty to three counts under a plea agreement, and the court imposed concurrent 96-month sentences on Counts 1 and 2 followed by a consecutive 24-month sentence on Count 3. His presentence report used a base offense level enhanced by a prior battery-on-a-law-enforcement-officer conviction, but counsel did not object to that enhancement and did not file a direct appeal.

PROCEDURAL HISTORY

Wheeler pleaded guilty in the related criminal case to firearm and ammunition possession by a convicted felon, possession of unauthorized access devices, and aggravated identity theft, receiving a total sentence of 120 months. He did not file a direct appeal. The magistrate judge recommended denying the § 2255 motion, finding that Wheeler had not expressly requested an appeal and had not triggered counsel’s duty to consult. The district court overruled that recommendation in part, found deficient consultation and resulting prejudice, denied relief on the unobjected-to base offense level issue for lack of prejudice, and granted an out-of-time appeal remedy.

DISPOSITION

granted

REMAND INSTRUCTIONS

The related criminal judgment must be vacated and an identical sentence reimposed in a new judgment. Wheeler must be advised of all appellate rights and may file a notice of appeal within fourteen days of entry of the new judgment. No de novo sentencing or new sentencing hearing is required.

CASES CITED

- *Nguyen v. United States*, 556 F.3d 1244, 1259 n.7 (11th Cir. 2009)
- *Jeffrey S. v. State Bd. of Educ.*, 896 F.2d 507, 513 (11th Cir. 1990)

- United States v. Cofield, 272 F.3d 1303, 1306 (11th Cir. 2001)
- Amlong & Amlong, P.A. v. Denny's, Inc., 500 F.3d 1230, 1250 (11th Cir. 2007)
- United States v. Marshall, 609 F.2d 152, 155 (5th Cir. 1980)
- Strickland v. Washington, 466 U.S. 668, 688, 693 (1984)
- Gomez-Diaz v. United States, 433 F.3d 788, 791-92 (11th Cir. 2005)
- Roe v. Flores-Ortega, 528 U.S. 470, 478, 484 (2000)
- Thompson v. United States, 504 F.3d 1203, 1206-08 (11th Cir. 2007)
- Frazer v. South Carolina, 430 F.3d 696, 711 (4th Cir. 2005)
- Palacios v. United States, 453 Fed. Appx. 887, 889 (11th Cir. 2011)
- Pako v. United States, 2024 WL 5683528, at *5 (S.D. Fla. Apr. 23, 2024)
- Danforth v. Minnesota, 552 U.S. 264, 283 n.18 (2008)
- United States v. Ramos, 130 Fed. Appx. 415, 421 n.7 (11th Cir. 2005)
- United States v. Fowler, 749 F.3d 1010, 1018-19 (11th Cir. 2014)
- Garza v. Idaho, 586 U.S. 232, 235, 242 (2019)
- Rodriguez v. United States, 395 U.S. 327, 329-30 (1969)
- Boyd v. Allen, 592 F.3d 1274, 1293 (11th Cir. 2010)
- Cintron v. U.S. Att'y Gen., 882 F.3d 1380, 1385 (11th Cir. 2018)
- Griffith v. United States, 871 F.3d 1321, 1329-31, 1336 (11th Cir. 2017)
- United States v. Davis, 2024 WL 4765852, at *3-4 (11th Cir. Nov. 13, 2024)
- United States v. Phillips, 225 F.3d 1198, 1201 (11th Cir. 2000)
- United States v. Doyle, 857 F.3d 1115, 1118 n.2 (11th Cir. 2017)