

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-3019

September Term, 2026

FILED ON: JULY 14, 2026

REISSUED: SEPTEMBER 1, 2026

UNITED STATES OF AMERICA,
APPELLEE

v.

DAVID FLOYD,
APPELLANT

Appeal from the United States District Court
for the District of Columbia
(No. 1:21-cr-00666-1)

Before: WILKINS, KATSAS, and RAO, *Circuit Judges*.

J U D G M E N T

The cause came to be heard on the record on appeal from the United States District Court for the District of Columbia and on the briefs and oral arguments of the parties. The panel has accorded these issues full consideration and decided that they do not warrant a published opinion. *See* D.C. Cir. R. 36(d). For the reasons stated below, it is hereby

ORDERED and **ADJUDGED** that the judgment of the United States District Court for the District of Columbia be **AFFIRMED**.

* * *

In January 2023, David Floyd was sentenced to 120 months of imprisonment and 60 months of supervised release after pleading guilty to one count of violating 21 U.S.C. § 846, pursuant to a plea agreement. Mr. Floyd timely appealed. He asserts that he received ineffective assistance of counsel because his counsel allowed a gun enhancement to be included in the sentencing estimate found in his plea agreement. Mr. Floyd had brought this claim before the

District Court in an *ex parte* hearing, which the District Court denied.

Finding no error in the judgment below and no merit to Mr. Floyd's ineffective assistance of counsel claim, we affirm. Mr. Floyd has failed to demonstrate that his counsel's performance was deficient under *Strickland v. Washington*, 466 U.S. 668 (1984).

I.

Only the most salient facts related to Mr. Floyd's ineffective assistance of counsel claim are set forth below.

On November 9, 2021, Mr. Floyd was charged with one count of Conspiracy to Distribute and Possess with Intent to Distribute 500 grams or More of a Mixture and Substance Containing a Detectable Amount of Cocaine, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B)(ii) and 21 U.S.C. § 846. On October 4, 2022, Mr. Floyd pleaded guilty pursuant to a plea agreement (the "Plea Agreement").

As consideration for his guilty plea, the Government agreed not to further prosecute Mr. Floyd for the conduct in the "Statement of Offense" part of the Plea Agreement, not to pursue the mandatory ten years of imprisonment under 21 U.S.C. §§ 841(b)(1)(B) and 851, and not to prosecute him for unlawful possession of a firearm in Maryland.

The Statement of Offense included a factual proffer, which the Plea Agreement characterized as "fairly and accurately describ[ing] [Mr. Floyd's] actions and involvement in the offense to which [he was] pleading guilty." J.A. 21. The factual proffer included a section for "Drug Conspiracy" and one for "Firearm Possession During Drug Conspiracy." J.A. 60–66. In relevant part, the Drug Conspiracy section stated that on January 20, 2021, Mr. Floyd and his brother mailed two packages that collectively contained slightly more than two kilograms of cocaine from a post office in Saint Thomas to two addresses in Washington, D.C. Law enforcement intercepted the packages and discovered their contents. Then law enforcement in Washington, D.C. conducted a controlled delivery of one of the packages to the delivery address where Mr. Floyd's brother was present and accepted the delivery, at which time law enforcement arrested him. Additionally, at a residence that Mr. Floyd rented, law enforcement recovered a firearm, a scale for weighing drugs, and "items used to distribute illegal drugs." J.A. 64–65. And in relevant part, the Firearm Possession section stated that on March 12, 2021, Mr. Floyd mailed a package consisting of two firearms, three magazines, and ammunition from Washington, D.C. to an address in Sint-Maarten. J.A. 65. Mr. Floyd signed the Statement of Offense, attesting, *inter alia*, that he: (1) had read each page and discussed it with his counsel; (2) fully understood the proffer of evidence and "agree[d] to it without reservation"; and (3) did so "voluntarily and of [his] own free will, intending to be legally bound." J.A. 68.

The Plea Agreement also included an “Estimated Offense Level Under the Guidelines” in which the parties agreed that the following provisions applied:

U.S.S.G. § 2D1.1(c)(7) (“Section 2D1.1(c)(7)”) Base Offense Level	26
U.S.S.G. § 2D1.1(b)(1) (“Section 2D1.1(b)(1)”) Possession of a Firearm	2
Total	28

J.A. 22.

Therefore, the Plea Agreement had a total offense level of 28 points, comprising 26 points from United States Sentencing Guidelines Section 2D1.1(c)(7) for a drug conspiracy offense involving between 2 and 3.5 kilograms of cocaine (the “base offense level”) and another 2 points from Section 2D1.1(b)(1) for possession of a firearm during the drug conspiracy (the “gun enhancement”). The Government also agreed to a 3-point reduction of Mr. Floyd’s offense level based on his acceptance of responsibility (the “acceptance of responsibility reduction”) under U.S.S.G. § 3E1.1. Based on these calculations and agreements, Mr. Floyd’s Estimated Offense Level was “at least 25,” with his estimated sentencing range between 100–125 months. J.A. 22, 24.

The parties agreed not to seek any offense-level calculation different from this Estimated Offense Level, except as provided in the “Reservation of Allocution” section of the Plea Agreement. The “Reservation of Allocution” section, *inter alia*, allowed the parties to address the correctness of any sentencing calculations by the pre-sentence report (the “Pre-Sentence Report”). The parties further agreed that a sentence within the estimated range would constitute a reasonable sentence pursuant to the 18 U.S.C. § 3553(a) factors but that Mr. Floyd reserved the right to seek a sentence below that estimated range based on those factors.

Under the Plea Agreement, Mr. Floyd generally waived his right to appeal his conviction and sentence, but he did retain the right to appeal based on ineffective assistance of counsel. Additionally, upon signing the Plea Agreement, Mr. Floyd attested that he was satisfied with his counsel’s services regarding the proffer, the Plea Agreement, and “matters related to it.” J.A. 68.

The District Court held a plea hearing for Mr. Floyd before accepting his plea pursuant to the Plea Agreement. At the outset of the plea hearing, the District Court repeatedly told Mr. Floyd to inform the court if there was something he did not understand. At the hearing, Mr. Floyd confirmed that he: (1) was “completely satisfied with the services” of his attorneys; (2) had enough time with them to discuss the charge and the decision to plead guilty; (3) had received and read the indictment; and (4) had “fully discussed” the indicted charge and “the case in general” with his counsel. J.A. 35–38. Mr. Floyd further confirmed regarding the Statement of Offense that: (1) he had read and fully discussed the document with his counsel; (2) his signature indicated that he had read and agreed to it; and (3) the Statement of Offense accurately described his criminal conduct.

Mr. Floyd's defense counsel and the prosecuting attorney summarized the terms of the Plea Agreement, including the guilty plea, offense level, criminal history points, criminal history category, and resulting estimated Sentencing Guidelines range, to the District Court. Mr. Floyd stated that he understood but that he believed the "points in the guidelines" were incorrect. J.A. 45. When the District Court asked Mr. Floyd if he and his counsel had talked about sentencing and how the Sentencing Guidelines may apply to his case, Mr. Floyd said "No." J.A. 48. Defense counsel immediately requested a break to speak with Mr. Floyd, which the District Court granted. After the break, Mr. Floyd confirmed that he had talked with his counsel about sentencing and how the statute and Sentencing Guidelines might apply to his case. The District Court emphasized that the numbers in the Plea Agreement were merely what the Government estimated that Mr. Floyd will face but that "the actual numbers" would not be known until the Probation Office made its own Sentencing Guidelines calculations, to which Mr. Floyd and the Government would have an opportunity to object. J.A. 50–51. The District Court also underscored that it would ultimately determine Mr. Floyd's Sentencing Guidelines range, which might differ from the Government's estimate in the Plea Agreement. Mr. Floyd confirmed that he understood these details.

Near the end of the hearing, Mr. Floyd confirmed that he was entering his guilty plea voluntarily because he was guilty and that there was nothing that he did not understand. The District Court then accepted Mr. Floyd's guilty plea. The District Court explained that Mr. Floyd and his counsel would have an opportunity to read the Pre-Sentence Report and file objections to it before sentencing and that they would have an opportunity to speak to the court at the sentencing hearing.

The Pre-Sentence Report's Sentencing Guidelines computations matched those of the Plea Agreement. Neither Mr. Floyd nor the Government lodged an objection to the calculations in the Pre-Sentence Report.

Following issuance of the Pre-Sentence Report, the District Court held a sentencing hearing, allowing the Government and Mr. Floyd to present arguments as to the length of the sentence. The Government in its sentencing memorandum requested a sentence of 120 months incarceration, calling Mr. Floyd an "international drug and firearms trafficker." J.A. 95. On the other hand, defense counsel requested a sentence of 72 months in Mr. Floyd's sentencing memorandum, citing his valuable contributions to the community, arguing he played a "lesser role" in the charged conspiracy (noting that he only had low-level offenses until his brother came out of prison), and arguing that his criminal history was overstated since it consisted of low-level non-violent crimes. J.A. 70–82. Notably, defense counsel included arguments regarding the inapplicability of the gun enhancement in its sentencing memorandum.

At the sentencing hearing, defense counsel informed the Court that Mr. Floyd had made several statements to them indicating that "he finds that counsel has not been effective." J.A. 102. The District Court then conducted an *ex parte* hearing with Mr. Floyd and his defense counsel.

During the hearing, Mr. Floyd stated that his counsel was supposed to tell the Government, before he took the Plea Agreement, that the two-point gun enhancement was illegal because the gun was unrelated to the conspiracy. The District Court responded that Mr. Floyd had signed the Statement of Offense and had specifically stated that he had read each page, discussed it with his counsel, and fully understood and agreed to it without reservation. After hearing from defense counsel, the District Court ruled that insofar as there was any motion to disqualify counsel or for a new attorney, it was denied, finding that Mr. Floyd had been “extremely well-served by his attorneys” who the Court believed had “gone above and beyond in representing him.” The District Court further noted that it is common for sentencing calculation errors to be made early in plea negotiations and that any error would have been identified before sentencing anyway.

After the *ex parte* hearing, the District Court announced back at the sentencing hearing that it had denied any motion to remove defense counsel and had found no evidence of ineffective assistance. The District Court then calculated the applicable Sentencing Guidelines range as 100–125 months, and the parties did not object.

The Government and Mr. Floyd’s defense counsel argued during the sentencing hearing in support of their respective sentencing recommendations. In relevant part, defense counsel addressed the gun enhancement by stating:

[W]e would note that with the gun, yes, it was part of his proffer and he did not contest at the time that it was part of the conspiracy, and we’re not contesting that today in front of you. But again, the D.C. Circuit has advised that you can take into account that the gun was not used in a violent way, that he was not just holding the gun and selling drugs at the time. So you don’t need to necessarily mechanically apply it in this case.

J.A. 136. The District Court ultimately sentenced Mr. Floyd to 120 months incarceration and 60 months of supervised release.

Mr. Floyd brings an appeal to this Court claiming ineffective assistance of counsel regarding the Plea Agreement due to the inclusion of the gun enhancement in the sentencing estimate calculation. Mr. Floyd requests that this Court vacate his sentence and grant him the opportunity to be re-sentenced without the gun enhancement before a different judge. This Court reviews *de novo* the denial of an ineffective assistance of counsel claim. *United States v. Henderson*, 108 F.4th 899, 902 (D.C. Cir. 2024). Mr. Floyd does not ask this Court to review the sentencing decision itself as that is prohibited by the terms of the Plea Agreement.

II.

Under longstanding Supreme Court precedent set forth in *Strickland v. Washington*, when a defendant alleges that their counsel has been ineffective, they must successfully demonstrate two components. For the first component, they must show that their counsel made errors that are “so

serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” 466 U.S. at 687. This is known as deficiency. For the second component, the defendant must demonstrate that counsel’s deficiencies were prejudicial, i.e., “that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. This is known as prejudice. Courts are not required “to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697. Simply stated, failure to meet either component defeats the ineffectiveness claim. *Id.* at 700.

Here, there is no need to proceed to the prejudice component because Mr. Floyd has failed to demonstrate deficiency. To succeed on the deficiency component, the defendant first must demonstrate that “counsel’s representation fell below an objective standard of reasonableness.” *Id.* at 687–88. The defendant’s burden is a heavy one because “counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* at 690.

Mr. Floyd argues that his counsel should not have agreed to the application of Section 2D1.1(b)(1) because the Plea Agreement’s factual proffer failed to connect the firearms and ammunition he mailed to Sint Maarten to the drug-trafficking conduct. Mr. Floyd’s argument is undermined by two facts: that he agreed to include this offense characteristic in the Statement of Offense, and that at multiple stages he did not object to the sentencing calculation estimates that included the gun enhancement (i.e., at the plea hearing after conferring with defense counsel on the exact topic, in the pre-sentencing report, and at the sentencing hearing when the District Court announced its Sentencing Guidelines calculations). Moreover, the sentencing calculation estimates in the Plea Agreement were simply the Government’s estimate, and Mr. Floyd was rightly told that ultimately the sentencing calculation would be run by the District Court and it would decide on the sentence. The Plea Agreement allowed Mr. Floyd to reserve the right to argue that the Guidelines calculations overstated the seriousness of his offense. *See* J.A. 25. And that is exactly what his defense counsel argued in their sentencing memorandum. *See* J.A. 77–78. In particular, defense counsel made many of the same gun enhancement arguments at sentencing that Mr. Floyd now makes on appeal.

While there was nothing requiring the District Court to impose a sentence within the Guidelines range, and indeed, defense counsel was able to argue against the District Court’s doing so, the District Court nonetheless imposed a sentence at the high end of the Guidelines range. Mr. Floyd asserts that his counsel should not have agreed to the application of the firearms enhancement, but this concession was reasonable given the benefits the Plea Agreement offered Mr. Floyd. Mr. Floyd avoided mandatory minimums, avoided a handful of other gun-related charges, and secured a three-point reduction in the offense level. Mr. Floyd and his counsel may have very reasonably decided that not fighting the gun enhancement battle was worth it for all those benefits. Moreover, the factual proffer included other evidence of firearms more closely

aligned with the offense at hand, which could have just as easily been the basis for the gun enhancement, so defense counsel reasonably may have determined that this was a futile battle.

Therefore, Mr. Floyd has failed to meet his heavy burden of overcoming the strong presumption that his defense counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Strickland*, 466 U.S. at 690. There are no facts to suggest that defense counsel’s strategic judgment as to the gun enhancement was unreasonable, let alone facts suggesting that such a decision fell below any objective standard of reasonableness. As such, there is no showing of deficiency, and Mr. Floyd’s claim ends here. *See id.* at 700.

* * *

For the foregoing reasons, we affirm the District Court’s ruling and deny Mr. Floyd’s ineffective assistance of counsel claim.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate until seven days after resolution of any timely petition for rehearing or rehearing *en banc*. *See* Fed. R. App. P. 41(b); D.C. Cir. R. 41(a)(1).

Per Curiam

FOR THE COURT:
Clifton B. Cislak, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk