

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL NO. 91-529-4
 : :
 : CIVIL NO. 01-1821
 : :
CARLOS CRUZ : :

MEMORANDUM

BUCKWALTER, J.

March 15, 2002

Petitioner has alleged that:

(1) his trial attorney was ineffective for failing to warn him of the collateral consequences of his guilty plea being a possible consecutive sentence for violation of his supervised release; and

(2) his trial counsel and the AUSA promised that the government would recommend a concurrent sentence.

The latter charge has in effect been withdrawn at the hearing held on March 15, 2002.

As to the first allegation, assuming petitioner's counsel did not advise him of the possible consequence of his plea, it is hard to see how this would constitute ineffective assistance of trial counsel under the circumstances. The petitioner faced a guideline range of 120 to 135 months, but trial counsel was successful in having a 5K1.1

motion filed by the government and persuading the trial court to impose a sentence of 51 months. Moreover, petitioner has never suggested that he would want to withdraw his plea because of the alleged error of trial counsel.

Although not raised at the hearing, the government filed a supplemental memorandum relative to the issue of petitioner's counsel failing to file an appeal from the sentence imposed at the supervised release hearing of one year consecutive to the 51 months.

The record reveals that petitioner was informed of his right to appeal the supervised release sentence but did not. Apparently, petitioner is claiming that his supervised release counsel was ineffective by not filing an appeal, thereby excusing his default.

There is no evidence to suggest that his counsel's performance fell below an objective standard of reasonableness and that petitioner suffered prejudice as a result.

An order follows.

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	:	
v.	:	CIVIL NO. 01-1821
	:	
CARLOS CRUZ	:	

ORDER

AND NOW, this 15th day of March, 2002, it is hereby ORDERED that
Petitioner's § 2255 Motion (Docket No. 21) is DENIED.

No certificate of appealability will issue since petitioner has made no
substantial showing of the denial of any constitutional right.

BY THE COURT:

RONALD L. BUCKWALTER, J.