

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

JOSE POSADA : CIVIL ACTION
 :
 v. : NO. 02-637
 :
 UNITED STATES OF AMERICA : (Criminal No. 96-00102-09)

MEMORANDUM ORDER

Petitioner has filed a petition to vacate, correct or set aside his sentence pursuant to 28 U.S.C. § 2255. Petitioner was one of nine defendants indicted for their participation in a drug trafficking network which imported cocaine from Columbia through Mexico for distribution in Philadelphia and other cities across the nation. Three of the co-defendants are fugitives. The case against one was transferred to the Southern District of Florida. Petitioner and three co-defendants pled guilty to charges against them.

Pursuant to a plea agreement, petitioner pled guilty to conspiring to distribute cocaine in violation of 21 U.S.C. § 846 and using a communication facility to facilitate a drug offense in violation of 21 U.S.C. § 843(b). The agreement provided that petitioner would cooperate with and testify for the government, and would qualify for a downward departure motion if the government determined that he had provided substantial assistance in the investigation or prosecution of another. The agreement provided that "sentencing be postponed until [petitioner's] cooperation is complete."

Petitioner was ultimately sentenced to imprisonment for thirty-three months to be followed by four years on supervised release. As a deportable alien, petitioner also faces deportation to Columbia. Pending sentencing, petitioner was released on bail. He was permitted to engage in full-time employment and restricted during non-working hours to his home where he resided with his wife and three children.

Petitioner asserts that the court lacked jurisdiction to adjudicate this case because "Title 21 is unenacted" and "facially unconstitutional" as it effects an exercise of federal authority "over the territory of the State of Pennsylvania without its assent," and "the Eastern District of Pennsylvania is not subject to the jurisdiction of the United States." The Comprehensive Drug Abuse Prevention and Control Act was indeed enacted and is constitutional, even when employed to prosecute offenders federally in states which have not expressly assented. See U.S. v. Walker, 142 F.3d 103, 111 (2d Cir.), cert. denied, 525 U.S. 896 (1998); U.S. v. Patterson, 140 F.3d 767, 772 (8th Cir.), cert. denied, 525 U.S. 907 (1998); U.S. v. Westbrook, 125 F.3d 996, 1009-10 (7th Cir.), cert. denied, 522 U.S. 1036 (1997); U.S. v. Walker, 72 F.3d 1453, 1475 (10th Cir. 1995); U.S. v. Leshuk, 65 F.3d 1105, 1112 (4th Cir. 1995). This district is in fact part of the United States and persons within the district are subject to applicable federal laws.

Petitioner asserts that he was convicted of offenses with which he was not charged by the grand jury. A simple comparison of the charging instrument and charges to which petitioner pled guilty belies that contention.

Petitioner asserts that his prosecution by federal authorities created the appearance of a conflict of interest which mandated their disqualification because "employees of the U.S. Department of Justice can earn cash-based performance awards." The job of a federal prosecutor is to represent the interests of the government in criminal cases. That he or she is compensated by that government for performing conscientiously does not create a disqualifying appearance of a conflict of interest. The logical extension of petitioner's contention would be that all Department of Justice attorneys should be disqualified from representing the government in any criminal case. Petitioner's contention is unsound.

Petitioner also asserts that he should receive credit pursuant to 18 U.S.C. § 3585(b) for the time he was subject to home confinement. A defendant is entitled under this statute to receive credit for time spent in "official detention." This credit is available only to a defendant who was detained in a penal or correctional facility subject to the control of the federal Bureau of Prisons. Reno v. Koray, 515 U.S. 50, 68 (1995).

Petitioner claims that his counsel was ineffective in recommending a guilty plea "without first challenging before the Court the basis for federal criminal jurisdiction" and failing to raise the issues now presented by petitioner. None of petitioner's contentions has merit. Counsel was not professionally deficient in failing to assert them and there is no probability whatsoever that the result of any proceeding would have been different if he had. See Strickland v. Washington, 466 U.S. 668, 694 (1984). Indeed, petitioner had as counsel a highly experienced and able criminal attorney who obtained for him the best result under the circumstances.

ACCORDINGLY, this day of April, 2002, upon consideration of petitioner's petition to vacate, correct or set aside sentence pursuant to 28 U.S.C. § 2255 (Doc. #193) and consistent with the foregoing, **IT IS HEREBY ORDERED** that the petition is **DENIED** and the above action is **DISMISSED**, without a certificate of appealability.

BY THE COURT:

JAY C. WALDMAN, J.