

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

<b>UNITED STATES OF AMERICA</b>	:	<b>CIVIL ACTION NO. 02-1117</b>
	:	
<b>v.</b>	:	
	:	<b>CRIMINAL NO. 94-534-02</b>
<b>OSSIE R. TRADER</b>	:	
	:	
<b>Reed, S.J.</b>		<b>June 11, 2002</b>

**MEMORANDUM**

Currently before the Court is a motion by *pro se* petitioner Ossie R. Trader (“Mr. Trader”) to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 (Document No. 96) and his motion for declaratory judgement (Document No. 98). For the following reasons, both of the petitioner’s motions will be denied.

**PROCEDURAL BACKGROUND**

On March 20, 2000 this Court sentenced Mr. Trader to 248 months incarceration after he pled guilty to armed bank robbery and use of a firearm during a crime of violence, in violation of 18 U.S.C. § § 2113(d) and 924(c). The Court of Appeals for the Third Circuit affirmed the judgement of conviction and sentence. See United States v. Trader, 261 F.3d 494 (3d Cir. 2001). Petitioner filed this Section 2255 motion to vacate his sentence on March 18, 2002.<sup>1</sup> (Document No. 96). Petitioner also filed a motion for declaratory judgement on April 5, 2002. (Document 98).

**DISCUSSION**

Mr. Trader asserts that the government failed to disclose exculpatory evidence as required under Brady v. Maryland, 373 U.S. 83 (1963), because it did not inform petitioner that the

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<sup>1</sup>Because petitioner improperly filed this motion to vacate his sentence on March 1, 2002 (Document No. 94), this Court ordered petitioner to refile his motion in the proper form. (Document No. 95).

Federal Deposit Insurance Corporation (“FDIC”) only covers depositors against losses incurred through the insolvency of an institution, not against losses incurred as a result of theft or robbery. Petitioner does not deny that he committed the robbery for which he was convicted; he merely contends that the proceeds of his robbery were not insured against theft or robbery by the FDIC. Thus, petitioner argues that his sentence should be vacated because this Court lacked subject matter jurisdiction over the offense, he was deprived of effective assistance of counsel and because he did not knowingly and intelligently enter his guilty plea.

Under Brady, prosecutors have an affirmative obligation to disclose evidence to the defendant that tends to exculpate or reduce the penalty imposed upon him. See Brady, 373 U.S. at 87-88. “There are three components of a true Brady violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued.” Strickler v. Greene, 527 U.S. 263, 281-282 (1999). The information garnered from the FDIC by the petitioner fails to satisfy the first condition of a true Brady violation because it is not favorable to him.<sup>2</sup>

Petitioner’s argument that this information is exculpatory derives from his improvidently narrow interpretation of 18 U.S.C. § 2113(f), in which a “bank” is defined as, *inter alia*, “any institution the deposits of which are insured by the Federal Deposit Insurance Corporation.” 18 U.S.C. § 2113(f). According to the petitioner’s reading of this section, a bank is only a “bank” for purposes of the bank robbery statute if its deposits are insured by the FDIC against theft.

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<sup>2</sup>Petitioner obtained the information upon which he relies from the FDIC pursuant to his written requests under the Freedom of Information Act, 5 U.S.C. § 552 dated October 2, 2000 and October 17, 2001.

However, the plain and unambiguous language of Section 2113(f) only requires that the deposits be FDIC insured. Section 2113(f) does not specify the types of losses against which a bank must be insured, only that a bank must be insured by the FDIC in order to fall under federal subject matter jurisdiction for purposes of 18 U.S.C. § 2113. See United States v. Snead, 447 F. Supp. 1321, 1325 (E.D. Pa. 1978), aff'd, 577 F.2d 730 (3d Cir. 1978), cert. denied, 439 U.S. 851 (1978); Lord v. United States, 746 F.2d 942, 942 (2d Cir. 1984); Roberts v. United States, 472 F.2d 1195, 1196 (5<sup>th</sup> Cir. 1973); Faines v. United States, Civ. No. 96-6957, 1997 WL 53190 (S.D.N.Y. February 10, 1997). See also United States v. Homan, 482 F. Supp. 344, 346 (E.D. Okla. 1977). Because the deposits of the bank Mr. Trader robbed were FDIC insured at the time of the robbery (Document No. 96, attached letter from FDIC, FDIC Log # 00-0628), the information he obtained from the FDIC is not exculpatory evidence. Therefore, there was no Brady violation and the petitioner's motion must be denied.

#### CONCLUSION

As Mr. Trader does not dispute any of the other legal or factual bases upon which his conviction rests, there is no need to hold an evidentiary hearing. Petitioner's motion to vacate his sentence under Section 2255 as well as his motion for declaratory judgment,<sup>3</sup> are summarily denied for the foregoing reasons.

An appropriate order follows.

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<sup>3</sup>In his motion for declaratory judgment petitioner relies upon essentially the same arguments that he made in the Section 2255 motion.

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**ORDER**

**AND NOW**, this 11<sup>th</sup> day of June, 2002, upon consideration of petitioner's motion to vacate, set aside or correct his sentence under 28 U.S.C. § 2255 (Document No. 96), the government's response thereto (Document No. 99), the petitioner's traverse in reply to government's response (Document No. 100), and the petitioner's motion for declaratory judgement (Document No. 98), and for the reasons set forth in the foregoing memorandum, it is hereby **ORDERED** that the motion to vacate, set aside or correct sentence as well as the motion for declaratory judgement are **DENIED**. It is **FURTHER ORDERED** that, there having been no substantial showing of the denial of a constitutional right, a certificate of appealability shall not issue. See 18 U.S.C. § 2253(c)(2).

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**LOWELL A. REED, JR., S.J.**