

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

SAMUEL BETO : CRIMINAL ACTION  
 : NO. 98-131-4  
 v. :  
 : (CIVIL ACTION  
 UNITED STATES OF AMERICA : NO. 01-1669)

**MEMORANDUM AND ORDER**

HUTTON, J.

June 25, 2002

Currently before the Court is Petitioner Samuel Beto's Motion to Vacate, Set Aside or Correct a Sentence pursuant to 28 U.S.C. § 2255 (Docket No. 159), the Government's Response to Beto's Petition to Vacate, Set Aside or Correct his Sentence Pursuant to § 2255 (Docket No. 169), Petitioner's Reply to Government's Opposition to His §2255 Habeas Corpus Petition (Docket No. 180), Petitioner's First Supplement to His Motion Under §2255 (Docket No. 157), and Petitioner's Second Supplement to His Motion Under §2255 (Docket No. 182). For the following reasons, the Court denies Petitioner the relief sought.

**I. BACKGROUND**

On March 24, 1998, a Federal Grand Jury in the Eastern District of Pennsylvania returned an Indictment which charged Samuel Beto with the following crimes: one count of conspiracy to commit Hobbs Act robbery, in violation of 18 U.S.C. § 1951; one count of conspiracy to commit interstate transportation of stolen

property, in violation of 18 U.S.C. § 371; three counts of Hobbs Act Robbery, in violation of 18 U.S.C. § 1951; one count of using and a firearm in furtherance of a violent crime, in violation of 18 U.S.C. § 924(c); three counts of interstate transportation of stolen property, in violation of 18 U.S.C. § 2314; and one count of possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g).

On May 11, 1998, Petitioner appeared with his counsel, Neil Jokelson, before this Court and pled guilty to nine of the ten counts. On October 26, 1998, after granting the government's motion for a downward departure pursuant to U.S.S.G. § 5K1.1, Petitioner was sentenced by this Court to 204 months imprisonment and three years supervised release. Petitioner was also ordered to pay \$443,130.00 in restitution and a \$900.00 assessment fine. Appeal was taken to the United States Court of Appeals for the Third Circuit on October 29, 1998, who affirmed this Court's sentence. Petitioner subsequently moved for a reduction of sentence and to withdraw his guilty plea, which motion was denied by the Court on March 31, 1999.

On May 4, 2001, Petitioner filed the instant Motion pursuant to 28 U.S.C. § 2255, which Petitioner amended on May 4, 2001, and again on December 3, 2001. From what the Court can tell, Petitioner raises the following grounds for relief: 1) The Court lacked Subject Matter Jurisdiction over this case; 2) Petitioner's

rights against self-incrimination and due process rights were violated because his plea negotiations and agreement preceded the grand jury indictment; 3) Petitioner's plea was not knowing and voluntary; 4) the Court's restitution Order violated Petitioner's due process rights; 5) the Court abused its discretion in denying Petitioner's Motion to Withdraw his Guilty Plea; and 6) ineffective assistance of counsel for failure to investigate. The Court now considers Petitioner's claims.

## II. LEGAL STANDARD

A prisoner who is in custody pursuant to a sentence imposed by a federal court who believes "that the sentence was imposed in violation of the Constitution or laws of the United States, . . . or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence." 28 U.S.C. § 2255 (West 2001); see also Daniels v. U.S., 532 U.S. 374, 377, 121 S.Ct. 1578, 149 L.Ed.2d 590 (2001). The district court is given discretion in determining whether to hold an evidentiary hearing on a petitioner's motion under section 2255. See Gov't of the Virgin Islands v. Forte, 865 F.2d 59, 62 (3d Cir. 1989). In exercising that discretion, the court must determine whether the petitioner's claims, if proven, would entitle him to relief and then consider whether an evidentiary hearing is needed to determine the truth of the allegations. See Gov't of the Virgin Islands v. Weatherwax, 20 F.3d 572, 574 (3d Cir. 1994).

Accordingly, a district court may summarily dismiss a motion brought under section 2255 without a hearing where the "motion, files, and records, 'show conclusively that the movant is not entitled to relief.'" U.S. v. Nahodil, 36 F.3d 323, 326 (3d Cir. 1994) (quoting U.S. v. Day, 969 F.2d 39, 41-42 (3d Cir. 1992)); Forte, 865 F.2d at 62. For the reasons outlined below, the Court finds that there is no need in the instant case for an evidentiary hearing because the evidence of record conclusively demonstrates that Petitioner is not entitled to the relief sought.

### **III. DISCUSSION**

The Petitioner's claims can be summarily addressed because the Court finds each of the Petitioner's claims to be without merit. Petitioner's first claim is that the Court lacked subject matter jurisdiction over the instant case. The Court, however, had subject matter jurisdiction pursuant to 18 U.S.C. § 3231. The Court of Appeals so found in their opinion dated March 17, 2000.

Petitioner next claims that his rights against self-incrimination and due process rights were violated because his plea negotiations and agreement preceded the grand jury indictment. This claim concerning the pre-indictment plea agreement was rejected by the Court of Appeals in their opinion dated March 17, 2000. As the Third Circuit noted, Petitioner was represented by counsel during the plea negotiations, and the cooperation provision of his plea agreement contemplated his testimony before the grand

jury, testimony for which he received the benefit of a downward departure at sentencing under U.S.S.G. § 5K1.1. Moreover, Petitioner did not object to this procedure at any time before this Court. This issue, therefore, is waived by virtue of Petitioner's plea of guilty. See Boykin v. Alabama, 395 U.S. 238, 243 (1969) (waiver of self-incrimination claim by guilty plea); see also May 11, 1998 Change of Plea Trans., at 20-21 (guilty plea colloquy concerning waiver of appeal rights).

It is well-settled that a defendant's properly counseled and entered plea of guilty admits all of the elements of a formal criminal charge and waives a multitude of federal constitutional rights, including the privilege against compulsory self-incrimination, the right to confront one's accusers, the right to a jury trial, the right to a speedy trial, and the right to require the prosecutor to prove the crime beyond a reasonable doubt. Tollett v. Henderson, 411 U.S. 258, 267 (1973) ("When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea."); Miller v. Angliker, 848 F.2d 1312, 1319 (2d Cir.) ("When a defendant pleads guilty, he waives ... the right to confront his accusers and the privilege against compulsory self-incrimination."), cert. denied, 488 U.S. 890 (1988); United

States v. Manni, 810 F.2d 80, 84 (6th Cir.1987) (defendant's argument regarding the sufficiency of the evidence that might have been produced at trial was waived by his guilty plea); United States v. Freed, 688 F.2d 24, 25-26 (6th Cir.1982) (defendant who pleaded nolo contendere could not later argue that the evidence was insufficient to support a conviction).

Petitioner next claims that his counsel was ineffective for failing to conduct a proper investigation, and that his guilty plea was not knowing, voluntary and intelligent. The longstanding test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." See North Carolina v. Alford, 400 U.S. 25, 31 (1970). The Strickland two-part test for ineffectiveness of counsel applies to claims arising out of the plea process. See Hill v. Lockhard, 474 U.S. 52, 57 (1985).

The Sixth Amendment to the United States Constitution provides that a criminal defendant is entitled to reasonably effective assistance of counsel. See U.S. Const. amend. VI. A petitioner's claim of ineffective assistance of counsel is governed by the standard promulgated by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984). In Strickland, the Supreme Court stated that an ineffective assistance of counsel claim requires the petitioner to show that their counsel's performance was defective and that the

deficient performance prejudiced the defense. See id.; see also Meyers v. Gillis, 142 F.3d 664, 666 (3d Cir. 1998) (stating that to be entitled to habeas relief, the defendant must establish ineffectiveness as well as resultant prejudice). Counsel's performance is to be measured against a standard of reasonableness. In analyzing that performance, the court must make "every effort . . . to eliminate the distorting effects of hindsight," and determine whether "in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." See Strickland, 466 U.S. at 690.

Once it is determined that counsel's performance was deficient, the court must determine if "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different." Id. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. Only after both prongs of the analysis have been met will the petitioner have asserted a successful ineffective assistance of counsel claim. Moreover, "judicial scrutiny of an attorney's competence is highly deferential." Diggs v. Owens, 833 F.2d 439, 444-45 (3d Cir. 1987). "[A]n attorney is presumed to possess skill and knowledge in sufficient degree to preserve the reliability of the adversarial process and afford his client the benefit of a fair trial." Id. at

445. "Nevertheless, if 'from counsel's perspective at the time of the alleged error and in light of all the circumstances' it appears that counsel's actions were unreasonable, the court must consider whether that error had a prejudicial effect on the judgment." Id. (citation omitted).

Regarding Petitioner's argument that his plea was not knowing or voluntary, the Court need not address whether counsel's advice was indeed deficient because, even if it was, Petitioner is unable to satisfy the prejudice prong. At the May 11, 1998 plea hearing, the Court went to great lengths to ensure that Petitioner understood the nature and consequences of his plea of guilty. The Court advised Petitioner that the maximum sentence was 120 years imprisonment, five years supervised release, a \$2,250,000.00 fine, restitution and a \$900.00 mandatory special assessment. See May 11, 1998 Plea Hearing Trans. at 9. Petitioner acknowledged his understanding of this maximum sentence. Id. The Court asked Petitioner if he understood the guideline range, and Petitioner answered "Yes, I do." Id. The Court then reminded Petitioner that the Court had no discretion to sentence Petitioner outside the stated guideline range. Id. at 16. Petitioner then restated his desire to plead guilty. Id. at 17. Therefore, based on the dialogue that transpired during the May 11, 1998 plea hearing, Petitioner cannot claim that his plea of guilty was not knowing or voluntary.

Moreover, Petitioner's remaining allegation of ineffective assistance of counsel is without merit. In his Motion, Petitioner claims that his counsel failed to conduct a proper factual investigation. However, Petitioner fails to identify what facts his lawyers would have found during such an investigation that would have improved his situation. Petitioner states that his lawyers should have moved to dismiss the indictment, but fails to identify any valid grounds that would allow for the indictment to be dismissed.

As the government points out, Petitioner's lawyers were faced with a case featuring eyewitness identification of the Petitioner by both victims and co-conspirators, as well as a confession by the Petitioner. Petitioner's lawyers negotiated a plea agreement which allowed Petitioner to receive a sentence below the guideline range. It cannot be said, therefore, that Petitioner's counsel was ineffective.

Regarding the Court's restitution Order, Petitioner challenges the Court's calculation of the \$443,130.00 which it required the Petitioner to pay to the victims. This claim has already been rejected on appeal by the Third Circuit in their opinion dated March 17, 2000. The factual basis for the Court's restitution order was the offense conduct and the victim's statement of loss, the accuracy of which was not challenged by Petitioner. See PSI ¶ 11-22. The Court adopted this portion of the PSI at the Sentencing

Hearing on October 26, 1998. The Court offered Petitioner the opportunity to object to the PSI's restitution recommendation, and Petitioner failed to do so. Moreover, Petitioner has not provided this Court with any support for his argument that the PSI's restitution calculation was incorrect. The Court's restitution order, therefore, will not be vacated.

Finally, Petitioner alleges that the Court abused its discretion in denying Petitioner's Motion to Withdraw his guilty plea. The Third Circuit previously denied this same claim raised by Petitioner in their opinion dated March 17, 2000. Petitioner initially filed this motion pro se on August 7, 1998. At Sentencing, however, counsel for Petitioner indicated to the Court that the matter had been resolved. See October 26, 1998 Sentencing Trans. at 9-10. Petitioner did not contradict the representation of his counsel and did not state that he wished to withdraw his guilty plea. Id. Moreover, as is discussed above, the Court has found that Petitioner's plea of guilty was knowing, voluntary and intelligent.

#### **IV. CONCLUSION**

For the foregoing reasons, the Court declines to grant Petitioner the relief sought. No evidentiary hearing is necessary since the records before this Court establish that Petitioner is not entitled to relief under section 2255. Moreover, since Petitioner has failed to make a "substantial showing of the denial

of a constitutional right," 28 U.S.C. § 2253(c)(2), no certificate of appealability will issue.

An appropriate Order follows.

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

SAMUEL BETO	:	CRIMINAL ACTION
	:	NO. 98-131-4
v.	:	
	:	(CIVIL ACTION
UNITED STATES OF AMERICA	:	NO. 01-1669)

**ORDER**

AND NOW, this 25<sup>th</sup> day of June, 2002, upon consideration of Petitioner Samuel Beto's Motion to Vacate, Set Aside or Correct a Sentence pursuant to 28 U.S.C. § 2255 (Docket No. 159), the Government's Response to Beto's Petition to Vacate, Set Aside or Correct his Sentence Pursuant to § 2255 (Docket No. 169), Petitioner's Reply to Government's Opposition to His §2255 Habeas Corpus Petition (Docket No. 180), Petitioner's First Supplement to His Motion Under §2255 (Docket No. 157), and Petitioner's Second Supplement to His Motion Under §2255 (Docket No. 182)<sup>1</sup>, IT IS HEREBY ORDERED that:

- 1) Petitioner's Motion to Vacate, Set Aside or Correct a Sentence pursuant to 28 U.S.C. § 2255 (Docket No. 159) is **DENIED**;
- 2) The Court finds that there are no grounds to issue a certificate of appealability;
- 3) The Clerk of the Court shall mark this case as **CLOSED**.

BY THE COURT:

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HERBERT J. HUTTON, J.

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<sup>1</sup> Petitioner filed his Second Amendment to his Habeas Petition (Docket No. 182) in the form of a motion. The Court, therefore, grants Petitioner's Second Motion to Amend Habeas Petition and has addressed these claims raised by Petitioner in the instant Memorandum and Order.