

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

UNITED STATES OF AMERICA :

 v. :
 :
 :
BABOUARR SAGNIA :

CR. NO. 01-238-01
CIVIL NO. 02-1809

MEMORANDUM

ROBERT F. KELLY, SR. J.

JUNE 27, 2002

Baboucarr Sagnia has filed a Motion under 28 U.S.C. § 2255. The record discloses that on May 3, 2001, a federal Grand Jury returned a one-count indictment charging defendant Baboucarr Sagnia with assaulting a Special Agent of the Immigration and Naturalization Service (INS). On July 2, 2001 the defendant pleaded guilty to Count 1 of the indictment. On October 26, 2001, the Defendant was sentenced to six months in prison, to be followed by one year of supervised release. The gist of Sagnia's motion is that he contends that his counsel was ineffective for not advising him of the consequences of his plea of guilty with respect to deportation and, at least by implication, the Court's colloquy was deficient because it did not advise the defendant of the possibility of deportation.

The Motion will be denied for the following reasons.

1. Attached to the Government's response to defendant's motion is a declaration of defendant's attorney, Fortunato N. Perri, Jr., Esquire, stating that prior to the time Mr. Sagnia entered a guilty plea in this matter, he advised him that he might be deported as a result of the plea and stating further that at no time did counsel advise Mr. Sagnia that by pleading guilty he

would avoid possible deportation. Because of all the surrounding circumstances indicating that deportation was in Mr. Sagnia's future, I accept the declaration of Attorney Perri and find that he, in fact, advised defendant of the possibility of deportation and that he never advised him that he might possibly avoid it by entering a plea of guilty.

2. At the time the guilty plea was entered, Lesley Bonney, Esquire, Assistant United States Attorney, made the following statement in supplying the factual basis for the plea.

“If this case were to go to trial, the Government would present the following evidence and prove beyond a reasonable doubt that in or about May of 2000, INS Special Agent William Aqualoni (ph), arrested the defendant without incident on an outstanding deportation warrant.

The defendant was permitted to stay in the United States because he was cooperating with the Philadelphia Police Department regarding a fraud case in which he was a defendant. Because of his cooperation, the defendant was let out on INS supervision to complete his cooperation. At the end of the cooperation, the defendant's supervision was to end and he was to be deported.

On April 4th, 2001, the defendant's INS supervision was revoked based on the completion of his cooperation. Special Agent Aqualoni and his partner, INS Special Agent Michael Rommelo (ph) went to the Mobile Gas Station at 2401 Allegheny Avenue in Philadelphia, the defendant's place of employment, to arrest him on the outstanding deportation order. At approximately 4:00 p.m. on that day, Special Agent Aqualoni and Special Agent Rommelo approached the defendant. He was working inside the Mobile Station at the check-out counter. The defendant saw the agents approaching and started to flee towards the rear of the store. Special Agent Rommelo ran towards the rear of the gas station and Special Agent Aqualoni continued toward the front. The defendant's only route of escape was the front door to the building.
. . .”

When the entire factual basis was completed, the Court asked the defendant, “Do you understand that by entering a plea of guilty, you are admitting those facts that were just

recited?” The Defendant responded “Yes”.

It is obvious from the quoted portions of the factual basis that defendant was not only already under an order of deportation because of prior activity but that he was made aware of it during the sentencing colloquy.

3. A sentencing court is not required to inform a defendant that he might face possible deportation as a collateral consequence of his guilty plea. A collateral consequence of a guilty plea is one that is not related to the length or nature of the sentence imposed on the basis of the plea. See U.S. v. Romero-Vilca, 850 F.2d 177, 179 (3d Cir. 1988), where the Court of Appeals held that potential deportation is a collateral consequence of a guilty plea and, therefore, a District Court is not required to advise a defendant of this consequence during the guilty plea colloquy.

For all of the foregoing reasons, I enter the following Order.

