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

UNITED STATES OF AMERICA	)	
	)	CRIMINAL ACTION NO. 01-545-3
v.	)	CIVIL ACTION NO. 03-5602
	)	
HASAN MORRISON	)	

Padova, J. **MEMORANDUM** **December __, 2003**

Defendant Hasan Morrison has filed a pro se Motion to vacate, set aside, or correct his sentence, pursuant to 28 U.S.C. § 2255. For the reasons that follow, the Court denies Mr. Morrison's Motion in its entirety.

I. PROCEDURAL HISTORY

On December 19, 2001, Mr. Morrison was indicted for conspiracy to distribute a controlled substance, in violation of 21 U.S.C. § 846, and related charges. Mr. Morrison initially pled not guilty and, through his attorney, filed motions to sever the trial and to suppress physical evidence, both of which were denied by this Court. After his motions were denied, Mr. Morrison continued to request a jury trial, and never indicated to the Court that he wished to plead guilty to the charges against him. On September 5, 2002, jury trial proceedings began in the case against Mr. Morrison and Donald Berry, one of Mr. Morrison co-conspirators. On September 9, 2002, the fourth day of the trial, Mr. Morrison changed his plea to guilty. According to the Government, subsequent to his change of plea, Mr. Morrison met with federal

agents and provided information to the Government regarding the criminal conspiracy and his role in it.

At sentencing, Mr. Morrison received a two point reduction in offense level for acceptance of responsibility, pursuant to U.S.S.G. § 3E1.1(a). Mr. Morrison also received a two point reduction in offense level, pursuant to U.S.S.G. § 2D1.1(b)(6), and a waiver of the 120 month mandatory statutory minimum sentence, for satisfying the requirements found in U.S.S.G. § 5C1.2. Mr. Morrison was sentenced to 97 months of imprisonment, at the bottom of applicable guideline range of 97-120 months. Mr. Morrison did not, however, receive an additional one point reduction in offense level for timely acceptance of responsibility, pursuant to U.S.S.G. § 3E1.1(b). Mr. Morrison now argues that his counsel was constitutionally ineffective for failing to argue for this additional one point reduction at Mr. Morrison's sentencing.

II. DISCUSSION

In Strickland v. Washington, 466 U.S. 668 (1984), the United States Supreme Court held that criminal defendants have a Sixth Amendment right to "reasonably effective" legal assistance, id. at 687, and set forth a two-prong test for determining ineffective assistance of counsel. A defendant first must show that counsel's performance was so deficient that it fell below an objective standard of reasonableness under prevailing professional norms. Strickland, 466 U.S. at 688. "This requires showing that counsel

made errors so serious that counsel was not functioning as the 'counsel' guaranteed by the Sixth Amendment." Id. at 687. "In evaluating counsel's performance, [the Court is] 'highly deferential' and 'indulge[s] a strong presumption' that, under the circumstances, counsel's challenged actions 'might be considered sound . . . strategy,'" Buehl v. Vaughn, 166 F.3d 163, 169 (3d Cir. 1999)(quoting Strickland, 466 U.S. at 689). "Because counsel is afforded a wide range within which to make decisions without fear of judicial second-guessing, [] it is 'only the rare claim of ineffectiveness of counsel that should succeed under the properly deferential standard to be applied in scrutinizing counsel's performance.'" Id. (quoting United States v. Gray, 878 F.2d 702, 711 (3d Cir. 1989)).

If a defendant shows that counsel's performance was deficient, he then must show that the deficient performance prejudiced the defense. Strickland, 466 U.S. at 687. "This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Id. Defendant must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694.

Mr. Morrison is clearly unable to satisfy the Strickland test, because there is no merit to his argument that he was entitled to

the offense level reduction that he claims his counsel was ineffective for failing to seek. Pursuant to § 3E1.1(b) of the United States Sentencing Guidelines,

> If the defendant qualifies for a decrease under [§ 3E1.1A] . . . and the defendant has assisted authorities in the investigation or prosecution of his own misconduct by taking one or more of the following steps:
>
> (1) timely providing complete information to the government concerning his own involvement in the offense; or
>
> (2) timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the court to allocate its resources efficiently,
>
> decrease the offense level by one level.

U.S.S.G. § 3E1.1(b). Although this section of the sentencing guidelines does not provide a definition for the word "timely," the application notes to this section state that "In general, the conduct qualifying for a decrease in offense level under [§3E1.1(b)(1) or (2)] will occur particularly early in the case. For example, to qualify under subsection (b)(2), the defendant must have notified authorities of his intention to plead guilty at a sufficiently early point in the process so that the government may avoid preparing for trial and the court may schedule its calender efficiently." U.S.S.G. § 3E1.1, Application Note 6.

Deciding to plead guilty on the fourth day of trial clearly does not qualify as the type of timely notification of one's intention to plead guilty that is contemplated by § 3E1.1(b)(2). Furthermore, there is no evidence in the record that Mr. Morrison

made any attempt to provide information to the Government concerning his role in the drug conspiracy before his decision to plead guilty. Consequently, there is no basis on which to argue that Mr. Morrison was entitled to the additional one point reduction pursuant to § 3E1.1(b). See United States v. Hernandez, 218 F.3d 272 (3d Cir. 2000)(defendant who offered to provide information concerning his involvement in the offense approximately three weeks before trial and who waited to plead guilty until the day before trial held to not meet the timeliness requirements of § 3E1.1(b)). Thus, had Mr. Morrison's attorney raised this argument at trial, the Court would have rejected it.[1]

The cases that Mr. Morrison cites in support of his argument are easily distinguishable from the instant case. In United States v. Paster, 173 F.3d 206 (3d Cir. 1999), the defendant, immediately after murdering his wife, dialed 911 and informed the operator of his name, his address, the crime he had committed and the location of the murder weapon. When law enforcement officers subsequently arrived on the scene, the defendant immediately confessed to them. Based upon these facts, the United States Court of Appeals for the Third Circuit ("Third Circuit") held that the defendant qualified

[1] Indeed, one of Mr. Morrison's co-conspirators, Julian Gonzalez, did argue for a §3E1.1(b) reduction at sentencing after he pled guilty following the denial of his suppression motion and immediately before his trial was to begin. The Court rejected Mr. Gonzalez's argument and refused to grant the reduction. (See 12/12/02 N.T. at 8.)

for a reduction under § 3E1.1(b)(1) for timely providing law enforcement authorities with complete information concerning his involvement in the case, notwithstanding the fact that the defendant did not plead guilty to the crime until the eve of trial. Id. at 215. Similarly, in United States v. Euler, 67 F.3d 1386 (9th Cir. 1995), from the moment of his arrest the defendant fully admitted his involvement in a weapons offense and his desire to plead guilty to charges brought in connection with that offense. The government, however, demanded that the defendant also plead guilty to drug charges, and the defendant refused, asserting that he was innocent of those charges. The defendant was subsequently tried on both drug and weapons charges. At trial, the defendant again admitted to the weapons charges, but continued to deny his guilt in connection with the drug charges. The defendant was eventually found guilty of the weapons charges, but acquitted of the drug charges. Under this unusual set of facts, the United States Court of Appeals for the Ninth Circuit held that the defendant's actions qualified him for the offense level reduction under § 3E1.1(b)(1), because the defendant's actions "had the practical effect of obviating the need for Government authorities to investigate the weapons matter." Id. at 1392. The court further noted that the defendant's refusal to timely provide information to authorities or plead guilty in connection with the drug charges was irrelevant, as the defendant had been acquitted of those charges.

Id.

By contrast, in this case, there is no evidence in the record that Mr. Morrison ever attempted to provide information to the Government concerning his role in the drug conspiracy before he chose to plead guilty in the middle of his trial.

Thus, the Court finds that Mr. Morrison's ineffective assistance of counsel claim "clearly fail[s] to demonstrate either deficiency of counsel's performance or prejudice to the defendant." United States v. Dawson, 857 F.2d 923, 928 (3d Cir. 1988). Therefore, to the extent that Morrison's Motion can be read to request an evidentiary hearing on his ineffective assistance of counsel claims, this request is denied. Furthermore, as Mr. Morrison's claim of ineffective assistance of counsel has no merit, Mr. Morrison's Motion to vacate his sentence based upon this ground is denied.

III. CONCLUSION

For the foregoing reasons, the Court denies Defendant Hasan Morrison's Motion to vacate, set aside or correct his sentence in its entirety.

An appropriate order follows.

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ORDER

AND NOW, this 15th day of December, 2003, **IT IS HEREBY ORDERED** that Defendant Hasan Morrison's pro se Motion to Vacate, Set Aside or Correct Sentence (Docket # 230) is **DENIED** in its entirety.

BY THE COURT:

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John R. Padova, J.