



home (pursuant to a warrant) and recovered a 9mm semi-automatic pistol, ammunition, two bullet proof vests, \$5,000 in cash, seven grams of "crack" cocaine and drug paraphernalia. Police officers also searched Williams' car and recovered additional "crack" cocaine and marijuana.

Williams entered his guilty plea pursuant to a written Guilty Plea Agreement with the Government. The Guilty Plea Agreement includes the following summary of the maximum and mandatory minimum sentence Williams faced:

The defendant understands, agrees and has had explained to him by counsel that the Court may impose the following statutory maximum and mandatory minimum sentences: Count 3 (distribution of crack), 20 years imprisonment, a mandatory minimum 3 years supervised release up to lifetime supervised release, a \$1,000,000 fine, and a \$100 special assessment; Count 4 (possession with intent to distribute 5 grams or more of cocaine base ("crack")), 40 years imprisonment, a 5 year mandatory minimum term of imprisonment, a mandatory minimum 4 years of supervised release up to lifetime supervised release, a \$2,000,000 fine, and a \$100 special assessment; Count 5 (possession of a firearm in furtherance of a drug trafficking crime), life imprisonment with a 5 year mandatory minimum term of imprisonment consecutive to that imposed for the underlying drug offenses, 5 years supervised release, a \$250,000 fine, and a \$100 special assessment.

(Guilty Plea Agreement at 3.) The Guilty Plea Agreement also provides that seven (7) grams of cocaine base was possessed by Williams in furtherance of the criminal activity subject to the Indictment, resulting in a base offense level of 26 pursuant to

United States Sentencing Guidelines § 2D1.1(c)(7). (Guilty Plea Agreement at 5.) The Guilty Plea Agreement also provides that Williams was eligible for a 2 level downward adjustment to the base offense level for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a) and for a 1 level downward adjustment for assisting authorities in the investigation or prosecution of his own misconduct pursuant to U.S.S.G. § 3E1.1(b). (Id.) The Guilty Plea Agreement also contains the following provision in which Williams waived his right to appeal or collaterally attack his conviction or sentence:

In exchange for the undertakings made by the government in entering this plea agreement, the defendant voluntarily and expressly waives all rights to appeal or collaterally attack the defendant's conviction, sentence, or any other matter relating to this prosecution, whether such a right to appeal or collateral attack arises under 18 U.S.C. § 3742, 28 U.S.C. § 1291, 28 U.S.C. § 2255, or any other provision of law.

(Id.)

During the February 5, 2003 hearing, the Government summarized the charges against Williams, the evidence upon which those charges were based, the maximum and minimum sentences he faced, and the terms of his Guilty Plea Agreement with the Government. (2/5/03 N.T. at 4-6 and 13-14.) Williams, having first been sworn and placed under oath, agreed that the Government had accurately summarized the terms of his Guilty Plea Agreement, that he had discussed the Guilty Plea Agreement with counsel prior to signing

it, and that he signed the Guilty Plea Agreement. (Id. at 2-6.) During the hearing, the Government also summarized the critical facts upon which Williams' conviction was based. (Id. at 11-13.) Those facts included the purchase of 9 bags of crack from Williams by an undercover police officer between January 10 and January 15, 2002; that Williams had controlled buy money on his person when he was arrested; and that a police officer who executed a search warrant on Williams' home immediately after his arrest recovered a loaded semi-automatic pistol, a box of ammunition, \$5,000 cash, chunks of crack, two bullet proof vests, and various identification records. (Id. at 11-13.) Williams agreed, under oath, that those facts were accurately summarized. (Id. at 13.) Williams also agreed, under oath, that he had discussed with his attorney, to his satisfaction, the charges made against him, his right to contest those charges, and the maximum and mandatory minimum penalties that he faced. (Id. at 15.) The Court accepted Williams' plea of guilty. (Id. at 18.)

Williams was sentenced on May 7, 2003. He had, at sentencing, a Total Offense Level of 23 and a Criminal History Category of IV. The sentencing range was, therefore, 70-87 months pursuant to the Sentencing Table, U.S.S.G. Ch.5, Pt. A. However, his conviction for Count V required a mandatory minimum sentence of 5 years, pursuant to 18 U.S.C. § 924(c), which must run consecutively to any other sentence imposed by the Court. He was sentenced to 70 months

as to Counts III and IV and to a term of 60 months on Count V, to run consecutively to the term imposed as to Counts III and IV. His 130 month sentence was the lowest term of imprisonment which could have been imposed pursuant to the Sentencing Guidelines. He was also sentenced to five years of supervised release, a \$1,000 fine and a \$300 special assessment. He was represented by Guy Sciolla, Esquire at both his guilty plea on February 5, 2003 and at his sentencing on May 7, 2003.

## II. LEGAL STANDARD

Williams has moved for relief pursuant to 18 U.S.C. § 2255, which provides as follows:

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, 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.A. § 2255 (West Supp. 2001).

"Section 2255 does not provide habeas petitioners with a panacea for all alleged trial or sentencing errors." United States v. Rishell, Civ.A.Nos. 97-294-1, 01-486, 2002 WL 4638, at \*1 (E.D. Pa. Dec. 21, 2001) (citation omitted). In order to prevail on a Section 2255 motion, the movant's claimed errors of law must be constitutional, jurisdictional, "a fundamental defect which

inherently results in a complete miscarriage of justice," or "an omission inconsistent with the rudimentary demands of fair procedure." Hill v. United States, 368 U.S. 424, 428 (1962).

### III. DISCUSSION

Williams has asserted two grounds for relief pursuant to 28 U.S.C. § 2255. The first ground is misrepresentation of counsel. He states that:

My attorney lead me to believe that I was facing the maximum term under criminal guildeline [sic] when in fact I was not eligible for sentence guildeline [sic] at all and that was my reason for the plea bargain.

(Mot. at 5.) The second ground is that the prosecutor withheld exculpatory evidence that could have been used in a suppression hearing to suppress evidence seized by police during the search of his home. (Id.) Williams withdrew the second ground for relief at the hearing held on December 18, 2003. (12/18/03 N.T. at 8.) Accordingly, the sole ground for Williams' Motion is misrepresentation of counsel.

Williams explained his claim of misrepresentation of counsel during the December 18, 2003 hearing. He contends that his counsel misled him to believe that he faced career criminal status in this proceeding which would result in his being incarcerated for at least 15 years if he went to trial. (Id. at 3-4.) He also stated that he agreed to plead guilty in this case based upon that misrepresentation of counsel. (Id. at 4.)

The Government argues that the Motion should be denied for two reasons. The Government contends that the evidence establishes that Guy Sciolla did not misrepresent to Williams that he faced career criminal status in this proceeding. The Government further maintains that Williams' waiver of his right to collaterally attack his conviction and sentence should be enforced.

A. Misrepresentation

Sciolla testified under oath, during the December 18, 2003 hearing, regarding his discussions with Williams prior to his guilty plea:

I emphatically will state that I never told Nafis Williams nor his father that he was facing career criminal status. Indeed I went over the guidelines numerous times with Mr. Williams. . . . And I explained to Mr. Williams and to Nafis that the amount of time that Nafis was facing was a component of the quantities involved as well as his prior criminal record.

\* \* \*

I explained to Nafis in person and on the phone . . . what he was faced with, specifically with reference to the guideline recommended sentences and the two mandatories. He was looking at two mandatory five-year jail sentences. I told him that there was no way out from under the mandatories unless he was going to cooperate. . . .

\* \* \*

Q. One question, to recap, there was never any discussion regarding the career offender status?

A. Never, never.

(Id. at 13-14, 15, 17.) The Court finds that Sciolla was a credible witness. Williams did not testify under oath during the December 18, 2003 hearing, but stated on the record that he believed, at the time of his guilty plea, that if he had not pled guilty, he would have faced career offender status and a fifteen year term of imprisonment at sentencing. The Court finds, based upon Sciolla's testimony, that Sciolla did not misrepresent to Williams that he faced career offender status if he did not plead guilty.

B. Waiver

The Court has also considered the Government's argument that Williams' waiver of his right to collaterally attack his conviction and sentence should be enforced in this proceeding. The Government relies on United States v. Khattak, 273 F.3d 556 (3d Cir. 2001), which holds that waivers of the right to appeal are valid if they are entered into knowingly and voluntarily. Id. at 562. However, the Khattak court noted that there "may be an unusual circumstance where an error amounting to a miscarriage of justice may invalidate the waiver." Id. The Court finds that there were no unusual circumstances regarding Williams' plea of guilty, conviction or sentencing which could amount to a miscarriage of justice and invalidate his waiver of his right to collaterally attack his conviction and sentence in this case. Accordingly, Williams'

Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 is denied.<sup>1</sup>

An appropriate order follows.

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<sup>1</sup>The Court observes that Williams would not benefit if the Motion were granted. Were the Court to grant the Motion and vacate William's sentence and conviction, and if Williams was subsequently successful in moving to vacate his guilty plea, he has still agreed, under oath, to the facts underlying his conviction. If Williams were to go to trial on the charges contained in Indictment 02-613, having agreed to the four sales of crack cocaine to an undercover police officer, his possession of a firearm and ammunition, and to his possession of 7 grams of crack cocaine, he would be convicted. In that event, he would have, at sentencing, a Total Offense Level of 26 (since he would no longer be eligible for a three level adjustment pursuant to U.S.S.G. § 3E1.1(a) and (b)). With a Total Offense Level of 26 and a Criminal History Category of IV, he would face a sentencing range of 92-115 months pursuant to the Sentencing Table, U.S.S.G. Ch. 5, Pt. A, and a mandatory minimum consecutive sentence of 60 months pursuant to 18 U.S.C. § 924(c). In that event, he would face a sentence of between 152 and 175 months imprisonment, rather than the 130 months to which he was sentenced by this Court.

