

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

UNITED STATES OF AMERICA : CRIMINAL ACTION  
: NO. 00-692-01  
vs. :  
: CIVIL ACTION  
DENNIS FREEMAN : NO. 04-3683

**MEMORANDUM**

**ROBERT F. KELLY, Sr. J.**

**DECEMBER 3, 2004**

Presently before the Court is Dennis Freeman's Motion under 28 U.S.C. § 2255.

Dennis Freeman is currently serving a term of imprisonment of 270 months.

**PROCEDURAL HISTORY**

On November 15, 2000, a federal grand jury returned a 12 Count indictment charging him with conspiracy to distribute more than 50 grams of cocaine base ("crack") in violation of 21 U.S.C. § 846 together with other related charges.

On September 24, 2001, Freeman filed a motion to suppress evidence found in his apartment at 5412 Jefferson Street in Philadelphia and later searches of another residence and two vehicles. We held evidentiary hearings on the motion and it was denied by Memorandum Opinion on April 9, 2002.

On April 30, 2002, Freeman pleaded guilty to Count 1 of the indictment reserving his right to appeal our denial of his suppression motion pursuant to Federal Rule of Criminal Procedure 11(a)(2).

On November 27, 2002, Freeman filed a notice of appeal from his sentence and the Appellate Court affirmed the Judgment of Conviction and Sentence on November 13, 2003.

On December 23, 2003, Freeman filed a petition for rehearing *en banc* which was denied on January 9, 2004.

On February 24, 2004, Freeman filed for a writ of certiorari in the United States Supreme Court which was denied June 1, 2004. The pending motion was filed August 4, 2004.

### **FACTUAL HISTORY**<sup>1</sup>

On August 31, 2000, Police Officers executed a search and seizure warrant, No. 97333, at 5412 Jefferson Street, Philadelphia, Pennsylvania. They seized from that location approximately 654 grams of “crack” cocaine, three (3) firearms (two (2) were loaded), various drug trafficking paraphernalia, including scales, baggies, numerous red-capped vials, and \$7,100 in cash. In the 2000 Mercedes Benz, Defendant Freeman had a Smith & Wesson 45 caliber automatic hand gun loaded with six (6) rounds, one (1) in the chamber.

On August 31, 2000, the Officers executed a second search and seizure warrant, No. 97334 at 5507 Master Street, Philadelphia, Pennsylvania, where Defendant Freeman is alleged to have had 129 grams of cocaine powder and drug paraphernalia.

#### **Search and Seizure Warrant No. 97333 for 5412 Jefferson Street**

The affidavit submitted for this search warrant was signed by Officer Brian Reynolds and indicates that he received information from a concerned citizen regarding sales of narcotics on the highway of 5500 Lansdowne Avenue. The concerned citizen stated that the narcotics for the operation are stored at 5412 Jefferson Street and that there are several black males involved in the operation. He further states that their names are Dennis Freeman, his brother, Jamie or Jammy, and Leroy. He also stated that they have several street workers that

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<sup>1</sup>The history has been taken from this Court’s Memorandum Opinion of April 9, 2002.

work the corner of Allison and Lansdowne Avenue. He said the males used different vehicles, stating that Dennis Freeman drives a black Mercedes Benz, PA No. DKK 2310; his brother Jamie or Jammy drives a tan Cadillac Escalade, PA No. DKK2312; and that Leroy drives a black Jeep Grand Cherokee.

The affidavit goes on to state that Officer Reynolds conducted a surveillance at 5412 Jefferson Street on August 30, 2000 at approximately 2:08 PM. At that time, he observed Dennis Freeman go into the property, located at 5412 Jefferson Street, carrying a black plastic bag. At approximately 2:45 PM, Reynolds observed a black Buick with tinted windows, PA No. ALR9162, pull up to 5412 Jefferson Street, and black male #2 enter the property. At approximately 3:00 PM, black male #2 exited the property looking around and holding two (2) clear plastic baggies containing smaller red objects, which he believed to be bundles of narcotics. Black male #2 placed one bundle of narcotics in his front pants pocket and one in his rear pants pocket. He then left 5412 Jefferson Street and went to 55<sup>th</sup> and Merion Avenue, where he was picked up by the black Buick with tinted windows. That vehicle was followed to 5500 Lansdowne Avenue (Northeast corner of Allison Street and Lansdowne Avenue), where black male #2 exited the Buick and met with black male #3. Officers then observed black male #2 and black male #3 involved in four (4) narcotics transactions with unknown black males. During that time, Officers observed black males #2 and #3 having conversations with other unknown black males, at which time, the unknown black males would hand black male #3 an undetermined amount of United States currency for small objects that black male #2 would retrieve from his rear pants pocket. The unknown black males would then leave the area.

At approximately 3:22 PM, Police Officer Reynolds observed a tan Cadillac

Escalade parked at 55<sup>th</sup> and Jefferson Streets, at which time black male #4 exited, looking around and carrying a white plastic container and a brown bag. Black male #4 went into 5412 Jefferson Street. At 3:40 PM, Police Officer Stubbs was with a Confidential Informant (“C/I”), who was briefed and searched prior to going to 5500 Lansdowne Avenue (Southwest corner of Allison Street and Lansdowne Avenue) to make a narcotic purchase. At that location, Officers observed the C/I have a brief conversation with black male #3, at which time Police Officer Walker observed black male #3 point to black male #2. The C/I then had a brief conversation with black male #2, handed him \$40 in United States currency, pre-recorded buy money. At that time, black male #2 reached into his rear pants pocket and retrieved small objects handing them to the C/I. The C/I then returned to Police Officer Stubbs and turned over eight (8) clear vials with red tops, each containing an off-white chunky substance. The Affidavit goes on to allege that the C/I was kept under surveillance by Police Officers who never lost sight of him. After the purchase, the C/I was again searched by Police Officers with negative results. Officer Reynolds then conducted a field test on one of the items purchased by the C/I, which was positive for the presence of cocaine base.

The affidavit also alleges that the C/I has been used in the past and has proven to be trustworthy and reliable. Based upon all of this, Officer Reynolds requested a Search Warrant for that property.

### **DISCUSSION**

Freeman first contends that the government withheld “discovery material” which would have allowed Freeman to successfully challenge the affidavit of probable cause. Although Freeman alleges the government committed a Brady violation by withholding discovery material

“well into defendant’s suppression hearing”. Nowhere does Freeman identify this material. Conclusory allegations are not sufficient to entitle a petitioner to vacation of his conviction pursuant to Title 28 U.S.C. §2255. See Blackledge v. Allison, 431 U.S. 63, 74 (1977); United States v. Machibroda, 368 U.S. 487, 495-496 (1962). For these reasons Freeman’s argument that the government withheld discovery material is denied.

Freeman next contends that he should be given relief because of the ineffectiveness of counsel who he alleges told him that a suppression hearing was his only means of defense even though counsel found out that the government had discovered material which could have given Freeman other possible defenses. The Supreme Court established a two part test to determine whether a defendant was denied effective assistance of counsel in Strickland v. Washington, 466 U.S. 668 (1984). Under the Strickland standard, in order to prevail on a claim of ineffective assistance of counsel a petitioner must establish that: (1) counsel’s performance was deficient and (2) counsel’s deficient performance prejudiced the defendant. The defendant must show that counsel’s performance was so deficient that he was not functioning as the “counsel” guaranteed by the Sixth Amendment and that “counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable”.

If it can be shown that counsel “made errors so serious that he was not functioning as the counsel guaranteed by the Sixth Amendment” then the Court must determine whether “the deficient performance prejudiced the defense.” Id. at 687. Thus, in order to prove prejudice, the petitioner must establish that “there is a reasonable probability that, but for counsel’s unprofessional errors,” the result of the proceeding would have been different. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the

ineffectiveness claim. Freeman alleges ineffective assistance of counsel on two grounds: (1) counsel told him that a suppression hearing was the only means of defense and (2) counsel failed to move to continue the suppression hearing after learning about the discovery material that the government allegedly withheld. The record is clear that Freeman's counsel elected to defend Freeman by attempting to get the evidence recovered during the execution of the search warrants suppressed. Because this evidence comprised the bulk of the government's case against Freeman, it was not a misguided strategy. Counsel's efforts included numerous motions and two hearings in the District Court in which he challenged both the search warrant itself and the execution of the search warrant. Counsel also appealed this Court's denial of the suppression hearing to the Third Circuit Court of Appeals. Freeman now claims that counsel was ineffective because the discovery of the material withheld by the government "could [have] given defendant other avenues of defense." However, he does not state what those avenues might be. I find that counsel was not ineffective for failing to pursue "other avenues" of defense and was not ineffective for failing to move to continue the suppression hearing in order to pursue those other avenues. Indeed a review of the factual history of this case indicates that counsel's advice was accurate.

We therefore enter the following Order.

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**ORDER**

**AND NOW**, this 3rd day of December, 2004, upon consideration of the petition for writ of habeas corpus it is hereby **ORDERED** that:

1. The petition for writ of habeas corpus is **DENIED WITH PREJUDICE**.
2. There is no probable cause to issue a Certificate of Appealability.

BY THE COURT:

/s/Robert F. Kelly  
ROBERT F. KELLY  
SENIOR JUDGE