

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

UNITED STATES OF AMERICA	:	
	:	
v.	:	CRIMINAL NO. 99-437-01
	:	
MARCUS REDRICK	:	

MEMORANDUM AND ORDER

BUCKWALTER, J.

April 14, 2005

I. BACKGROUND

Petitioner filed a habeas corpus motion under 28 U.S.C. § 2255 (Docket No. 106) on December 5, 2002. The government responded to it on January 27, 2003, and thereafter counsel was appointed for petitioner on March 4, 2003.

An evidentiary hearing was held on the issues raised by petitioner; namely, that (1) trial counsel failed to advise petitioner of his right to testify which he would have exercised if he knew about it; (2) trial counsel never investigated petitioner’s mental condition; and (3) trial counsel failed to advise him to accept a plea offer before the information was filed.

At the hearing, petitioner testified that trial counsel never told him he could “get out of a mandatory life sentence and mandatory aspects of the guidelines by cooperating with the government (N.T. at 16). He also testified he “didn’t know I had a right or not, I was just told I shouldn’t” (N.T. at 16) with regard to testifying on his own behalf. He also testified about his

head injury (N.T. at 13-14) and its effects; *i.e.*, migraine headaches, sensitivity to light; “memory kind of shot.”

On cross examination, petitioner said his lawyer told him he would be facing life but his memory is somewhat vague as to plea negotiations (N.T. at 25).

As to his not knowing he had a right to testify, petitioner said it’s possible his lawyer could have told him this (N.T. at 26), but maintains he wanted to testify but was told not to (N.T. at 26). Also, he never said during the trial that he wanted to raise the insanity defense (N.T. at 34). He told the probation officer that he was never treated for mental or emotional illness (N.T. at 35).

Petitioner’s trial attorney, an experienced attorney in the field of criminal law at the time of this trial (*See* N.T. at 38-42) testified that he explained to petitioner the sentence he was facing and the need to provide substantial assistance to get a sentence less than life (N.T. at 44-45). Petitioner understood (N.T. at 45). Trial counsel also explained to petitioner as he did all clients that it was solely his (petitioner’s) decision as to whether he wants to testify (*See* N.T. at 49). Petitioner never told his trial attorney that he wanted to testify (N.T. at 52).

As to plea negotiations, trial counsel told petitioner that if he “pled guilty straight up that he would be looking at a probable 25 year sentence and he was not interested in it” (N.T. at 59). Trial counsel had no questions about petitioner’s ability to understand the discussions with him and the issues he faced (N.T. at 59).

Finally, trial counsel testified that he had prior experience in pursuing insanity defenses and had no indication that petitioner suffered from any identifiable mental illness that would have been the threshold requirement for an insanity defense (N.T. at 60).

II. CONCLUSION

I find the testimony of trial counsel to be believable in its entirety. Thus, I find that trial counsel did advise petitioner of his right alone to decide whether to testify and of the chance to avoid a mandatory life sentence by pleading to certain charges as offered by the government. Also, no insanity defense was available for the reasons stated in the background aforesaid.

Petitioner's claims of ineffective assistance of counsel are not supported by the testimony of trial counsel. As to petitioner's testimony, it simply defies belief that he did not understand his rights or the plea negotiations. Among other things, he was not a novice to criminal proceedings. His testimony was generally not believable, suffering many times from convenient lack of memory.

Petitioner, facing a mandatory life sentence, was entitled to competent counsel. The record is clear in this case that he received that.

There being no basis in fact for his claim of ineffective assistance of counsel, the following order is entered:

AND NOW, this 14th day of April, 2005, it is hereby **ORDERED** that petitioner's habeas corpus motion under 28 U.S.C. § 2255 (Docket No. 106) is **DENIED**.

Since petitioner has failed to make a substantial showing of the denial of any constitutional right, no certificate of appealability will issue.

BY THE COURT:

RONALD L. BUCKWALTER, S.J.