

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

UNITED STATES	:	CIVIL ACTION NO. 06-0044
	:	
v.	:	CRIMINAL ACTION NO. 99-711-18
	:	
JOSE GALAN	:	

MEMORANDUM AND ORDER

Kauffman, J.

February 27, 2007

Now before this Court is the Motion of Petitioner Jose Galan (“Petitioner”) to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. Petitioner is currently incarcerated in the Federal Correctional Institution in Fort Dix, New Jersey. For the reasons that follow, his Motion will be denied.

I. Procedural History

On November 3, 1999, Petitioner was charged by indictment along with twenty-eight co-defendants. He pled guilty on December 1, 2001 in a cooperation plea agreement to one count of conspiracy to distribute more than 1 kilogram of heroin, more than 5 kilograms of cocaine, and more than 50 grams of cocaine base, in violation of 21 U.S.C. § 846. Prior to his January 3, 2005 sentencing, Petitioner was determined to be a career criminal in criminal history category VI and his guideline total offense level was determined to be 37. The Government filed a motion for downward departure pursuant to Section 5K1.1 of the United States Sentencing Guidelines and 18 U.S.C. § 3553(e), which the Court granted at the January 3 sentencing hearing.¹ Petitioner was sentenced to 101 months imprisonment, 10 years of supervised release, a \$100 special

¹ Before departure, Petitioner’s guideline range was 360 months to life and his statutory mandatory minimum was 20 years.

assessment, and a \$1000 fine. Petitioner did not appeal.

At the time of Petitioner's initial appearance before the Court on January 6, 2000, he was serving a state sentence of two to four years for violation of parole on two drug offenses. Neither of these offenses is related to the federal charges at issue in the instant case. Petitioner was brought into federal custody on a writ, where he remained until his sentencing in this case. He completed his state sentence on October 22, 2003, while in federal custody. The Federal Bureau of Prisons began crediting Petitioner with time toward his federal sentence on October 23, 2003, the day after he finished serving his state sentence.

Petitioner filed the instant Motion on January 5, 2006. In his motion, he contends that his counsel was ineffective because he failed to raise a Speedy Trial Act motion at his sentencing. He also raises three claims related to the alleged miscalculation of his federal sentence. First, he argues that the Bureau of Prisons miscalculated his federal sentence by not crediting the time he served in federal custody from January 6, 2000 to October 22, 2003. Second, he contends that his counsel was ineffective at his sentencing for not securing his right to receive credit for that time. Finally, Petitioner alleges that the failure to appropriately credit his federal sentence constitutes cruel and unusual punishment.

II. Analysis

A. Petitioner's Speedy Trial Claim

The Sixth Amendment of the United States Constitution establishes the right to effective assistance of counsel and to a speedy trial. In order to demonstrate a violation of the right to effective assistance of counsel, Petitioner must show (1) that his "counsel's performance was deficient" and (2) that the deficient performance prejudiced him. Strickland v. Washington, 466 U.S. 668, 687 (1984). Petitioner's burden under the first prong is to show that his counsel's

representation fell below an “objective standard of reasonableness.” Id. The Court must “indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that under the circumstances, the challenged action ‘might be considered sound trial strategy.’” Id. at 689. Under the second prong of the Strickland test, the question is whether “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.

The Sixth Amendment’s guarantee of a speedy trial protects individuals from unacceptable deprivations of their liberty from the time they are arrested to the time they are sentenced. Washington v. Sobina, 2007 WL 64065, at * 2 (3d Cir. January 11, 2007). Petitioner alleges that his counsel was ineffective because he failed to make a speedy trial motion at Petitioner’s sentencing. However, Petitioner specifically agreed in his plea agreement to “waive any rights to a prompt sentencing, and [to] join any request by the government to postpone sentencing until after his cooperation was complete.” Moreover, the Third Circuit has held that the right to a speedy trial is waived by an unconditional and voluntary guilty plea. Id. Thus, by entering an unconditional plea agreement with the Government, Petitioner waived the right to raise any claim regarding a speedy trial violation.

Since Petitioner waived his right to bring a speedy trial claim, his attorney’s decision not to raise a speedy trial challenge at his sentencing was not objectively unreasonable under the first prong of the Strickland test. His counsel’s decision similarly does not satisfy the second prong of the Strickland test because Petitioner’s waiver of the right to a speedy trial insured that any speedy trial challenge would not have changed the outcome of his sentencing. Therefore,

Petitioner experienced no prejudice. Accordingly, the Court rejects Petitioner's claim that his counsel was ineffective in failing to raise a speedy trial issue at his sentencing.

B. Petitioner's Claims Regarding Calculation of His Federal Sentence

Petitioner brings three claims related to his federal sentence. First, he contends that the Bureau of Prisons did not properly credit his federal sentence for time he served in federal custody prior to his sentencing date. Second, he alleges that his counsel was ineffective because he "failed to adequately argue for time clearly spent in federal custody" at his sentencing. Finally, he alleges that the failure to properly calculate his federal sentence constitutes cruel and unusual punishment.

Although Petitioner framed his ineffective assistance of counsel and cruel and unusual punishment claims as constitutional challenges to his sentence, these claims plainly are intended to challenge the calculation of his sentence. See United States v. Doe, 200 Fed. Appx. 162, at *1 (3d Cir. 2006) ("[D]espite [Petitioner's] attempt to frame his argument as an attack on the constitutionality and legality of his federal sentence, he is clearly challenging the execution of his federal sentence, not its legality.") The exclusive remedy for challenging the calculation of a federal sentence is a habeas corpus petition filed pursuant to 28 U.S.C. § 2241, directed to the court in the federal district in which the petitioner is imprisoned, and naming the warden of the federal facility as the respondent. See United States v. Allen, 124 Fed. Appx. 718, 721 (3d Cir. 2005). Therefore, Petitioner's claims pertaining to the calculation of his federal sentence should have been filed pursuant to 28 U.S.C. § 2241 in the federal district in which he is imprisoned, the District of New Jersey. Accordingly, this Court does not have subject matter jurisdiction to hear Petitioner's challenge to the calculation of his federal sentence, and will dismiss those claims. See Doe, 200 Fed. Appx. at *1; Disla v. Hogsten, 155 Fed. Appx. 619, 620 (3d Cir. 2005).

III. Conclusion

For the foregoing reasons, Petitioner's Motion will be denied and dismissed. Because Petitioner has not made the requisite showing of the denial of a constitutional right, a certificate of appealability should not issue. See Slack v. McDaniel, 529 U.S. 473, 484 (2000).

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ORDER

AND NOW, this 27th day of February, 2007, upon consideration of Petitioner's Motion to Vacate, Set Aside, or Correct Sentence, pursuant to 28 U.S.C. § 2255 (criminal docket no. 838) and the Government's Response thereto (criminal docket no. 883), it is **ORDERED** that:

1. The Motion to Vacate, Set Aside, or Correct Sentence, pursuant to 28 U.S.C. § 2255, is **DENIED** and **DISMISSED**;
2. Because there is no probable cause to issue a certificate of appealability, no certificate of appealability shall issue.

BY THE COURT:

/s/ Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.