

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

WILLIAM RINICK,	:	CIVIL ACTION
Petitioner,	:	NO. 07-4539
	:	
	:	
v.	:	
	:	
UNITED STATES OF AMERICA,	:	CRIMINAL ACTION
	:	NO. 02-492
Respondent.	:	

M E M O R A N D U M

EDUARDO C. ROBRENO, J.

DECEMBER 3, 2008

Petitioner William Rinick filed this habeas corpus petition under 28 U.S.C. § 2255, collaterally attacking his sentence and asking the Court to vacate, set aside, or correct his sentence. Petitioner alleges that he was denied effective assistance of counsel, in violation of his Sixth Amendment rights. For the following reasons, Petitioner's motion will be denied.

I. BACKGROUND

Petitioner was charged by an indictment with multiple violations of the Controlled Substances Act. At the time of the indictment, Petitioner was held in the custody of the Commonwealth of Pennsylvania as a pre-trial detainee, awaiting trial on first degree murder charges. The Court ordered transfer of Petitioner to federal custody to answer the indictment in this case. Petitioner proceeded to a jury trial and was convicted of

nine counts of the indictment.¹ Petitioner was sentenced by the Court to 360 months imprisonment, 8 years supervised release, special assessment of \$900, and a \$25,000 fine. On appeal, the Court's judgment was affirmed by the Third Circuit, but remanded for re-sentencing under United States v. Booker, 543 U.S. 220(2005). The Court re-sentenced Petitioner to 360 months imprisonment and the sentence was affirmed by the Third Circuit. Later, in a separate jury trial in the Philadelphia Common Pleas Court, Petitioner was convicted of first degree murder and sentenced to life imprisonment.

II. ANALYSIS

Section 2255 allows a prisoner in custody to attack his sentence if it was imposed in violation of the Constitution or statute, the court lacked jurisdiction to impose it, it exceeds the maximum allowed by law, or it is otherwise subject to collateral attack. See 28 U.S.C. § 2255. The petitioner is entitled to an evidentiary hearing as to the merits of his claim unless it is clear from the record that the prisoner is not

¹ Specifically, Petitioner was convicted of the following: one count of conspiracy to distribute cocaine, in violation of 21 U.S.C. § 846; six counts of distribution of cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C); one count of possession of cocaine with 1,000 feet of a school with intent to distribute, in violation of 21 U.S.C. § 860; and one count of distribution of cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B).

entitled to relief. See United States v. Victor, 878 F.2d 101, 103 (3d Cir. 1989). Here, Petitioner is not entitled to an evidentiary hearing because it is clear from the record that his § 2255 petition alleging ineffective assistance of counsel should be denied for the reasons that follow.

During the trial and his appeal, Petitioner was represented by attorney Robert J. Levant. Petitioner argues that his counsel was ineffective for the following reasons:

- a. A conflict of interest existed between Petitioner and counsel because counsel thought that Petitioner placed counsel's life in danger;
- b. Counsel failed to contact key witnesses;
- c. Counsel failed to investigate the "special plea agreement/promises" between the Government and cooperating witness Michael Focoso;
- d. Counsel failed to assert a statute of limitations defense under the Interstate Agreement on Detainers Act ("IADA");
- e. Counsel failed to advocate that the Attorney General take custody of Petitioner from the Commonwealth of Pennsylvania, where Petitioner was serving a separate sentence, so that Petitioner could begin serving federal sentence; and
- f. Counsel failed to raise these issues on appeal.

In order to prevail upon an ineffective assistance of counsel argument, a petitioner must meet the two-pronged test set forth in Strickland v. Washington, 466 U.S. 668 (1984). First, a petitioner must show that his counsel's performance was deficient. Id. at 687. This requires a showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed by the Sixth Amendment. Id. Second, a petitioner must show that the deficient performance prejudiced the defense. Id. The Court denies Petitioner's ineffective assistance of counsel claim because Petitioner fails to meet both prongs of Strickland. Even assuming that any of the examples of ineffective assistance of counsel proffered by Petitioner do constitute deficient performance to satisfy prong one of Strickland, Petitioner is unable to show that these actions were prejudicial to his defense.

First, the Court rejects the ineffective assistance of counsel claim based upon the alleged "serious conflict" between Petitioner and his counsel. In order for an attorney-client conflict to constitute a violation of a petitioner's Sixth Amendment rights, a petitioner must establish that an "actual conflict of interest adversely affected his lawyer's performance." Cuyler v. Sullivan, 446 U.S. 335, 348 (1990). In

the instant case, although Petitioner alleges a "serious conflict" existed between himself and his counsel, Petitioner provides neither specifics nor evidence to substantiate this claim. To the contrary, in an affidavit, Petitioner's counsel asserts that no such conflict existed. (Doc. no. 193, Exh. A, ¶ 4). Because Petitioner fails to establish the existence of an actual conflict between himself and his counsel, Petitioner's ineffective assistance of counsel claim on this ground fails the first prong of Strickland. Further, even assuming that an actual conflict did exist, Petitioner fails to demonstrate how any such conflict was prejudicial to his case.

Second, the Court rejects Petitioner's ineffective assistance of counsel claim based upon counsel's failure to contact key witnesses. Petitioner alleges that he "gave [counsel] many witnesses to interview, their names, and he failed to contact even one." However, Petitioner fails to articulate, or even suggest in general terms, the substance of the testimony of such witnesses that his counsel failed to call. To obtain relief on this ground, a petitioner must, at the very least, "make a specific affirmative showing as to what the evidence would have been. . . ." Blout v. United States, 330 F. Supp 2d 493, 497 (E.D. Pa. 2004) (citing Patel v. United States, 19 F.3d 1231, 1237 (7th Cir. 1994)). Under these circumstances, Petitioner has made no such showing.

Third, the Court rejects Petitioner's ineffective assistance of counsel claim based upon counsel's failure to investigate the "special plea agreement/promises" between the Government and cooperating witness Michael Focoso. Pursuant to a plea agreement, Petitioner's co-defendant, Michael Focoso, pleaded guilty to conspiracy to distribute cocaine and to possession of cocaine within 1,000 feet of a school zone. In exchange for Focoso's cooperation, the Government agreed to file for a motion for sentencing departure under U.S.S.G. § 5K1.1, and to sponsor Focoso for the Witness Protection Program. By way of an affidavit, Petitioner's counsel asserts that a copy of this plea agreement was produced during discovery and that he "made use of the Guilty Plea Agreement to cross examine Mr. Focoso at trial." (Doc. no. 193, Exh. A, ¶ 6).

Petitioner contends that Focoso received a multitude of "special treatment" from the Government, outside of the plea agreement, which Petitioner's counsel failed to investigate. To demonstrate this alleged "special treatment," Petitioner submitted several exhibits to supplement his habeas petition.²

² Specifically, Petitioner alleges the following instances of "special treatment." First, Petitioner presents a Bail Status Sheet, entered in Focoso's criminal case on October 17, 2006, which shows that after a bail hearing, Focoso was held without bail. (Doc. no. 191). Petitioner contends that the bail hearing constituted a "special benefit." To the contrary, Focoso's right to a bail hearing is required under the Federal Rules of Criminal Procedure. Fed. R. Crim. P. 32.1(a)(6); Bail

However, after a review of this material, Petitioner still fails to establish any additional benefits, agreements, or promises to Focoso, beyond those agreements originally set forth in the Guilty Plea Agreement. Accordingly, because Petitioner fails to provide evidence to substantiate this claim and because the record is otherwise devoid of any evidence of special treatment, Petitioner's ineffective counsel claim on this ground fails.

Fourth, the Court rejects Petitioner's ineffective assistance of counsel claim based upon counsel's failure to

Reform Act, 18 U.S.C. § 3143(a).

Second, Petitioner highlights that the Government moved for downward departure at Focoso's sentencing hearing, and the Court granted this motion. Rather than special treatment by the Government, the Government's motion was filed in adherence to the Guilty Plea Agreement, to which Petitioner's counsel was privy.

Finally, Petitioner asserts that a petition filed by the Probation Office charging Focoso with a violation of supervised release demonstrates that Focoso received "hidden promises." Petitioner does not aver how a petition charging Focoso with a violation of supervised release suggests any proof of a hidden promise to Focoso.

In addition, Petitioner lists the existence of three other documents which he alleges that his counsel failed to investigate: (1) "envelope received in FOIA info from Mr. Henry G. Bynes and addressed to Mr. Harry L. Beckett, Sr. in Estill, S.C. 29918;" (2) "Letter from a Mr. Lewis Manor, Dauphin County Prison, to the Dauphin County District Attorney, agreeing to accept a plea and testify against individuals Ursula Gore and Harry Beckett for charges against this Manor to be dropped;" and (3) "Order from Judge Robreno on 2-13-03." Petitioner admits that he is "unsure of the significance" of each of the aforementioned documents, but nonetheless contends that his counsel should have explored each document.

assert a statute of limitations defense under the IADA. The IADA is a compact among 48 states, the District of Columbia, and the federal government, which enables a participating state to gain custody of a prisoner, incarcerated in another jurisdiction, in order to try him on criminal charges. 18 U.S.C. App. § 2.³ Article IV(c) of the Act provides that trial of a transferred prisoner "shall be commenced within 120 days of the arrival of the prisoner in the receiving State, but for good cause shown in open court, . . . the court having jurisdiction of the matter may grant any necessary or reasonable continuance." Id. In addition, Article V(c) provides that the charges shall be dismissed with prejudice where a trial does not occur within the time period prescribed. Id. Notably, the IADA applies only to defendants serving a sentence of imprisonment at the time of the transfer, and does not apply to pre-trial detainees. United States v. Dobson, 585 F.2d 55, 58 (3d Cir. 1978).

Petitioner alleges that the speedy trial provision of the IADA applied to his federal charges because at the time of his transfer to federal custody Petitioner was serving a state sentence on an assault case, and was a pre-trial defendant on state murder charges. However, an analysis of the record reveals that Petitioner's allegations are misplaced and the IADA does not

³ The IADA applies in Pennsylvania. See 42 Pa. Cons. Stat. § 9101 (2008).

apply to his case, as he was not a sentenced prisoner at the time of his transfer to federal custody. Rather, Petitioner's assault conviction in the Philadelphia Municipal Court had been vacated and Petitioner was detained in state custody as a pre-trial detainee only.⁴ Accordingly, because the IADA did not apply to Petitioner's case, Petitioner's ineffective assistance of counsel claim based upon this ground fails.

Next, the Court rejects Petitioner's ineffective assistance of counsel claim based upon counsel's failure to challenge the sequence of Petitioner's multiple federal and state sentences. Petitioner alleges that he is improperly in state custody pursuant to a life sentence imposed for his murder conviction, when he should be in federal custody pursuant to the sentence in the instant federal case. Under the principle of comity, the sovereign which arrests the defendant first has primary jurisdiction over the defendant, and the sentence imposed by the sovereign with primary jurisdiction is served first. Rios v. Wiley, 201 F.3d 257, 274 (3d Cir. 2001). When a defendant is "borrowed" from the primary jurisdiction to answer charges in

⁴ Petitioner was convicted of simple assault in January of 2002, and filed an appeal to the Court of Common Pleas. (Doc. no. 202, p. A007). Upon so doing, the judgment of the conviction was vacated. See Johnson v. Commonwealth, 511 A.2d 894, 897 (Pa. Commw. Ct. 1986) (noting that the effect of an appeal of conviction in Philadelphia Municipal Court is to vacate municipal court conviction).

another jurisdiction, comity requires the return of the defendant to the primary jurisdiction when the prosecution in the other jurisdiction is completed. Id. at 275. The defendant has no standing to challenge the comity rules or the decisions of sovereigns applying them, with respect to the sequence of multiple prosecutions and sentences. Ponzi v. Fessenden, 258 U.S. 254, 260 (1922). Accordingly, because Petitioner has no standing to challenge the sequence in which his sentences are served, his ineffective assistance of counsel claim based upon this ground fails.

Finally, the Court rejects Petitioner's ineffective assistance of counsel claim based upon counsel's failure to pursue any of the grounds of error asserted in this § 2255 motion on appeal. For the reasons set forth above, none of the alleged errors have merit and thus Petitioner was not prejudiced by counsel's failure to raise these frivolous arguments. Because Petitioner fails to satisfy Stickland, Petitioner's § 2255 motion is denied.

An appropriate order follows.

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

WILLIAM RINICK	:	CIVIL ACTION
Petitioner,	:	NO. 07-4539
	:	
	:	
v.	:	
	:	
UNITED STATES OF AMERICA,	:	CRIMINAL ACTION
	:	NO. 02-492
Respondent.	:	

O R D E R

AND NOW, this 3rd day of **December 2008**, upon consideration of the petition for writ of habeas corpus (doc. no. 183), it is hereby **ORDERED** that the petition is **DENIED**.

IT IS FURTHER ORDERED that there is no probable cause to issue a Certificate of Appealability.⁵

IT IS FURTHER ORDERED that the case shall be marked **CLOSED**.

AND IT IS SO ORDERED.

S/Eduardo C. Robreno
EDUARDO C. ROBRENO, J.

⁵ A prisoner seeking a certificate of appealability must demonstrate "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 327 (2003). No basis for a certificate of appealability exists in this case, as Petitioner is unable to meet this standard.

