

1. No investigation into medical history was done, no examination to confirm diagnosis, no expert produced to argue state of mind or clarity at “crime.” There was a general failure to argue or preserve issues regarding downward departure or diminished capacity, all were items in the record.

2. Prepare for sentencing – Counsel failed to produced evidence necessary to argue effectively at sentencing hearing, did not comprehend state/federal law applications, did not argue or preserve the issues for appeal.

3. Failure to argue or preserve issues for post-trial remedy. Counsel did not motion, not make a record of complaints to preserve issues for Defendant.

4. Failure to argue or preserve appeal issues and complaints – appeal counsel did not argue nor preserve issues clearly within the record, thus ripe for appeal court review, and thus failed to preserve the complaint for § 2255 review as well.

II. Summary of Evidence at Trial

The evidence at trial against Robinson was simply overwhelming. On April 20, 2006, an individual entered a grocery store at 4022 Lancaster Avenue in West Philadelphia armed with a loaded revolver, pointed it at one of the store employees and demanded money. Although the immediate victim of the robbery was not positive of Robinson’s identification, another employee in the store who observed the robbery positively identified Robinson as the robber. This witness followed Robinson out of the store, flagged down a police officer who immediately engaged in “hot pursuit” of Robinson. Several police cars entered the neighborhood and observed Robinson walking on the street not far from the grocery market. As Defendant was approached by police officers, he fired three shots at the approaching police officer who returned the fire. Robinson

continued to run, but was finally arrested and his gun recovered.

Robinson did not testify at trial, and his counsel's arguments were rejected by the jury.

III. Ineffective Assistance of Counsel Claims

The leading case for this claim is Strickland v. Washington, 466 U.S. 668, 687 (1984)

holding:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not function as the "counsel" guaranteed by the Sixth Amendment. Second, the defendant must show that the deficient errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.

The defendant bears the heavy burden of overcoming the "strong presumption" that counsel's conduct falls within the wide range of reasonable professional assistance. Id. at 689. In addition, the defendant must also show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. The Third Circuit has stressed that the second part of the Strickland test should be addressed first. See, McAleese v. Mazurkiewicz, 1 F.3d 159 (3d Ci.), cert denied, 510 U.S. 1028 (1993); United States v. Fulford, 825 F.2d 3 (3d Cir. 1987), McNeil v. Cuyler, 782. F.2d 443 (3d Cir.) cert denied, 479 U.S. 110 (1986).

Although this Court, presiding at the trial, observed both defense counsel perform in a thoroughly professional manner, the Court need not rule on the first prong of Strickland. Because of the overwhelming evidence of guilt, the errors alleged by Defendant, even if true, had no effect on the outcome of the case, and were not so serious as to deprive the Defendant of a fair trial. This is truly a case in which no defense counsel, however skilled or imaginative, could

have secured a not guilty verdict given the nature of the government's overwhelming evidence.

In addition, the Court notes that one of his defense counsel, Nina Spizer, Esquire, a highly skilled and experienced defense attorney, has filed an affidavit which is attached to the government's brief in which she reiterates that she objected to each piece of evidence that could be considered inadmissible. She also notes that the Defendant was "completely competent and assisted in his defense throughout the pretrial preparation and throughout the jury trial, never informed counsel of any physiological or medical issues which would interfere with the preparation of this defense, was coherent throughout, assisted in his defense, and understood every aspect of the legal process." She further asserts that at no time did the Defendant inform defense counsel of any prior mental health treatment or did he assert that at the time of the criminal event, he was operating under diminished capacity.

Although Defendant did advise counsel that he had suffered some strokes, and had depression, he stated to her that his depression did not interfere with his ability to comprehend, understand, or know right from wrong. Defense counsel found no basis to have Defendant evaluated for competency. Further, defense counsel hired an investigator who visited the crime scene and spoke to various witnesses.

Defense counsel also consulted with two experts prior to trial, one on firearms and one on drugs, and determined that their testimony would not have aided in the defense at trial. Although defense counsel knew that Robinson had a drug habit, the expert would have testified that the effects of crack cocaine in Defendant's system would have been minimal.

The record shows that defense counsel did attempt to enter into evidence the fact that cocaine was present in Robinson's system at the time of the shooting, because the defense

intended to argue that the crack cocaine effected his response when approached by police and intended to make this argument without an expert. Ms. Spizer's affidavit concludes by noting, as the record reflects, that the Court deemed the presence of crack cocaine in Robinson's body irrelevant as to whether the robbery occurred and if Robinson committed the robbery. The Court is not aware of, and Defendant does not cite, any case that would allow as a defense to a charge of Hobbs Act robbery, that a defendant had ingested crack cocaine into his body. Why Defendant shot at a police officer was not relevant.

Concerning specific other allegations made by Defendant, the Court notes the following:

1. The record shows that defense counsel made numerous objections at the trial and made the best arguments possible given the overwhelming evidence introduced by the government against the Defendant.

2. Although the Defendant complains about inadequate preparation and representation in connection with sentencing, the Court notes that the sentence imposed was a mandatory sentence under a statute enacted by Congress and the Court had no discretion to impose a lesser sentence, and no effort by defense counsel could have changed this.

3. Reduced mental capacity is not admissible as evidence in a trial for Hobbs Act robbery.

Robinson has filed a reply brief on August 27, 2010 (Doc. No. 91). This brief largely repeats the prior arguments and is not supported by any legal authority warranting relief to the Defendant. In the brief, Defendant makes a new claim that defense counsel should have brought forth the defense of insanity. This is a fanciful notion completely unsupported by any circumstances that took place as revealed in the trial record.

Defendant asserts that defense counsel has been inaccurate in her recollection about discussion with the Defendant concerning his mental health history. Suffice it to say that even if Defendant is correct in his recollection, this would not entitle him to an evidentiary hearing at this time because the evidence, even if it existed, would have been inadmissible, and even if it were admissible, would have been insufficient to show prejudice under the Strickland standard.

Defendant's allegation, three-plus years following the trial, that he had diminished capacity, is not sufficient to warrant an evidentiary hearing despite the conflict between the Defendant's assertions and defense counsel's affidavit. The Third Circuit has set forth the careful standard for District Courts to determine when an evidentiary hearing is necessary. In United States v. Lilly, 536 F.3d 190 (2008), the court held as follows:

While the District Court has discretion to conduct an evidentiary hearing on a § 2255 claim, exercise of that discretion has been constrained by our case law. See id. "The District Court is required to hold an evidentiary hearing 'unless the motion and files and records of the case show conclusively that the movant is not entitled relief.'" Id. (quoting Gov't of Virgin Islands v. Forte, 856 F.2d 59, 62 (3d Cir. 1989)). This is not a high for habeas petitioners to meet. See id. Moreover, "[i]n considering a motion to vacate a defendant's sentence, 'the court must accept the truth of the movant's factual allegations unless they are clearly frivolous on the basis of the existing record.'" Id. (quoting Forte, 856 F.2d at 62).

With this in mind, the District court's decision not to hold an evidentiary hearing will be an abuse of discretion unless it can be conclusively shown that Lilly cannot make out a claim for ineffective assistance of counsel.

The context of the Lilly case was an argument that the defendant did not knowingly waive his right to a jury trial. The situation involving mental condition and insanity is very different. To the extent that the defendant claims that he had ineffective assistance of counsel because counsel did not argue for "diminished capacity," the Court must consider the Strickland standard that such error was not prejudicial because evidence of diminished capacity was not admissible.

Defendant cites no precedent that would have allowed admission of his diminished capacity as a defense of the charges.

The claim that defense counsel was ineffective for not bringing forth a defense of insanity is clearly frivolous. The Court observed Defendant during the trial, he conferred with his counsel, the Court observed him at the sentencing in which he participated, and there was no indication that he was insane. The Court must rely on experienced defense counsel, two of which were at Defendant's side throughout this trial and sentencing, to bring forth a potential claim of insanity, and none was made. The mere assertion of a claim of insanity some three years after a trial, while Defendant is serving life imprisonment, does not warrant an evidentiary hearing under established Third Circuit standard.

There is no authority for this Court to have a post-conviction competency hearing when there is no evidence in the record to suggest incompetency and the Defendant belatedly makes such a claim after conviction, sentencing and appeal.

There is no reasonable cause to believe that Defendant was unable to assist properly in his defense or was incapable of understanding the consequences or nature of the proceeding against him, 18 U.S.C. § 4241(a). See United States v. Morgano, 39 F.3d 1358 (3d Cir. 1994). The Court is entitled to rely on prominent and experienced criminal defense counsel, such as Mr. Cooper and Ms. Spizer, and also the prosecutor, Mr. Astolfi, to suggest that a competency evaluation might be necessary. In the absence thereof, there is no reason to revisit that issue at this time.

Though Defendant makes certain claims concerning the admissibility of evidence, that is not proper grounds to raise on a § 2255 Petition. Applying the Strickland test, even if

considered, and even if the Court had sustained the defense objections to certain of the testimony, there was still abundant and overwhelming evidence against the Defendant, and thus any errors were not prejudicial.

Lastly, Defendant's claim that his sentence of life imprisonment is unconstitutional is unsupported by any appropriate citation, and the Court rejects it, relying on the government's discussion of the applicable law at pages 20-23 of its Memorandum.

Wherefore, the Court will deny the Defendant's § 2255 Petition.

An appropriate Order follows.

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