

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

UNITED STATES OF AMERICA : CRIMINAL ACTION  
 :  
v. :  
 : No. 91-CR-00497-2  
MAYOBANEX DEJESUS ADAMES :  
a/k/a MARTIN VELOZ : (Civil Action 10-cv-880)

**MEMORANDUM**

Ludwig, J.

November 23, 2010

Defendant Mayobanex DeJesus Adames a/k/a Martin Veloz moves to vacate, set aside or correct his sentence under 28 U.S.C. § 2255. His conviction and sentence assertedly were obtained in violation of his Fifth Amendment rights, his guilty plea was not voluntary because he was misinformed as to the nature of the charge to which he was pleading guilty, and he was deprived of the right to effective assistance of counsel. These claims are not supported by the record, and no basis exists for an evidentiary hearing. Defendant's motion will be denied.

On July 24, 1992, defendant pleaded guilty to "attempting to possess with [sic] cocaine weighing in excess of five hundred (500) grams, with the intent to manufacture cocaine base." Guilty Plea Agreement, ¶ 1; Transcript of Plea Hearing, July 24, 1992, p.11. Prior to sentencing, while free on bail, defendant left the country and remained a fugitive in the Dominican Republic until his capture there and extradition to this district in July 2005. Subsequent to his return and before sentencing, he filed a "Motion for Ineffective Assistance of Counsel," which alleged that he did not understand the charge to which he pleaded guilty.

On September 9, 2005, that motion, which was treated as one to withdraw the guilty plea, was denied. United States v. Adames [a/k/a Veloz], 2005 WL 3274377 (Sept. 9, 2005). On May 1, 2006, his request for reconsideration was denied after hearing. On June 1, 2007, defendant's second motion for reconsideration was denied. On June 20, 2007, defendant was sentenced to 103 months incarceration. At each juncture, defendant was represented by counsel.

Upon appeal, the Court of Appeals affirmed both the denial of the motion to withdraw the guilty plea and the reasonableness of the sentence imposed. United States v. Veloz, 306 Fed. Appx. 768 (3d Cir. 2009).

Defendant now moves to set aside his sentence.

The first claim is that defendant's conviction was obtained in violation of his Fifth Amendment rights because he was convicted of a charge for which he had not been indicted. Specifically, he was not indicted for attempt to possess cocaine with intent to manufacture cocaine base, as reflected on the docket sheet and the clerk's arraignment notes (Exhibits B and C, defendant's motion). However, the controlling document is the superseding indictment, filed on May 18, 1992. That document explicitly charged defendant with "attempt to possess cocaine, a Schedule II, narcotic, controlled substance, weighing in excess of 500 grams, with intent to manufacture cocaine base. . . ." Superseding Indictment, Count Five, Exhibit 1, respondent's memorandum.

Moreover, the record establishes that defendant should have been fully aware of being

charged with attempt to possess cocaine with intent to manufacture cocaine base. Defendant, represented by Thomas Quinn, Esquire, signed a plea agreement that quoted the above language from the indictment. See Guilty Plea Agreement, ¶ 1, Exhibit 2, respondent’s memorandum. During the plea colloquy, defendant stated under oath that his counsel had read the plea agreement to him and that he understood it, and Mr. Quinn confirmed that he had read each paragraph to defendant. Transcript of Plea Hearing, p. 5-6, Exhibit 3, respondent’s memorandum. Additionally, defendant, while under oath, stated that he understood the factual basis of the charge against him, and that the facts recited by the Assistant United States Attorney made him “guilty of the charge of attempt to possess cocaine in excess of 500 grams . . .with intent to manufacture.” Id., p. 11.

The second claim is that defendant’s guilty plea was not voluntary because he was misinformed of the nature of the charge to which he was pleading guilty. No one, his motion avers, “explained to him that intent to convert cocaine into crack, was an element of the offense to which he pleaded guilty.” Defendant’s memorandum, at 16. During the plea colloquy, however, it was clearly explained that intent to manufacture cocaine base was an element of the charge to which he was pleading guilty, as well as the concept of “intent to manufacture.” Transcript of Plea Hearing, p. 13-14. Additionally, the Court of Appeals rejected this argument in his previous appeal.<sup>1</sup>

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<sup>1</sup> “Veloz claims that he did not understand that he was pleading guilty to possession of cocaine with intent to manufacture cocaine base. He again ignores that he knowingly admitted to facts that establish culpability as an aidor and abettor, and he does not claim that his sentencing exposure was not explained to him before he pled guilty.” United States v. Veloz, 306 Fed.

The third claim for relief is that defendant was denied the right to effective assistance of counsel. His motion contends that Mr. Quinn, who represented him prior to and at the time of defendant's guilty plea, did not move for a severance and did not advise him as to the facts and law relevant to his guilty plea decision. Moreover, the motion recites, Mr. Adamo, who represented him at sentencing, did not investigate or present available evidence and did not object to unlawful and unreliable evidence.

The rule on ineffective assistance of counsel sufficient to overturn a conviction is that counsel's performance must be shown to be deficient, and that defendant was thereby prejudiced. Strickland v. Washington, 466 U.S. 668, 687 (1984). "Deficient" performance occurs when "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. This is an objective standard, and there is "a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Id. at 689. "Prejudice" occurs when "counsel's errors were so serious as to deprive the defendant of a fair trial whose result is reliable." Id. There must be a reasonable probability that a different outcome would have resulted in the absence of the alleged conduct. Id. at 690.

The prejudice prong of the Strickland test is considered first. With respect to Mr. Quinn's representation, the record reflects that among the four individuals charged as co-defendants, defendant's case was the last to be resolved. The other three pleaded guilty on

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Appx. 768, 770 (3d Cir. 2009).

July 1, 8, and 15. By the time of defendant's plea on July 24, 1992, his case had been effectively severed. The alleged failure to move for a severance of defendant's charges from the others' therefore resulted in no prejudice to this defendant.

As to Mr. Quinn's not having advised defendant of the facts and law relevant to his decision to plead guilty, defendant's own testimony during the plea colloquy belies this claim. Defendant acknowledged having reviewed the plea agreement with Mr. Quinn, and he affirmed as true the government's recitation of facts underlying the charge against him. After being advised of the elements of the charge, defendant acknowledged that he understood the elements and the charge, and entered the guilty plea. Defendant does not dispute this.

With respect to Mr. Adamo's representation during the sentencing phase of the case, the motion states that Mr. Adamo did not "compel the Government to establish, by a preponderance of the evidence, that Veloz possessed cocaine to manufacture cocaine base or that he aided and abetted other persons in their attempt to manufacture cocaine base." Defendant's memorandum, at 26.

Again, the claim is belied by the record. The charge to which defendant entered a guilty plea was attempt to possess cocaine, with the intent to manufacture cocaine base. Superseding indictment, Count Five; Transcript of Plea Hearing, p.13. During the colloquy, defendant agreed that he possessed cash and participated in a meeting the goal of which was to exchange the cash for cocaine that was "good to cook" - which would then be sold to

someone else who would manufacture the cocaine base. Transcript of Plea Hearing, p. 9-10. The concepts of “possession” and “intent to manufacture” were explained to defendant by the court in the context of these facts, which, as noted, defendant had agreed were correct. The motion does not identify any facts not presented by Mr. Adamo that would have affected the sentence that was imposed. No basis exists for the claim of ineffective assistance of counsel on Mr. Adamo’s part.

The motion requests an evidentiary hearing. “[A] district court need not hold a hearing where the record as it stands decisively answers the § 2255 motion.” United States v. Leiby, 820 F.2d 70, 73 (3d Cir. 1987) (citations omitted). In this case, the record “decisively answers” defendant’s § 2255 motion. Accordingly, the request for an evidentiary hearing is denied.

BY THE COURT:

/s/ Edmund V. Ludwig  
Edmund V. Ludwig, J.

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**ORDER**

AND NOW, this 23rd day of November, 2010, defendant's "Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence" (docket no. 104) is denied. A memorandum accompanies this order.

BY THE COURT:

/s/ Edmund V. Ludwig  
Edmund V. Ludwig, J.