

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

<p>UNITED STATES OF AMERICA</p> <p style="text-align:center">v.</p> <p>LAWRENCE WILSON</p>	<p>CRIMINAL ACTION NO. 11-465-5 CIVIL ACTION NO. 15-490</p>
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MEMORANDUM

Baylson, J.

October 23, 2015

Defendant/petitioner Lawrence Wilson has filed a motion under 28 U.S.C. §2255 to vacate, set aside or correct sentence imposed by this Court.

The government has filed a detailed response, and the defendant has filed a reply (ECF 508), all of which the Court has reviewed.

In summary, defendant pled guilty to serious drug and firearm charges on the day that jury selection was scheduled to begin. Defendant has very seriously misrepresented the procedural history of this case and the factual record of the underlying Indictment. The government's reply has accurately, and in significant detail, explained the procedural history and the factual background. The Court will rely on the government's extensive response to the motion in deciding to deny the petitioner's motion.

Defendant was represented in the trial court by Christopher Warren, Esquire, a very experienced criminal defense attorney. Initially, the Court learned that there were some serious potential conflict of interest issues concerning Mr. Warren and the defendant. Therefore, the Court held a pretrial hearing at which testimony was taken. The testimony showed that defendant and his brother Michael Wilson, both defendants in this case, had an acquaintance with a third party who had been represented by Mr. Warren in a state court prosecution. The government had

identified this third party as a potential witness in this federal prosecution. Prior to the evidentiary hearing, the Court appointed separate counsel for the third party to advise him if he was going to be a witness for the government in this case. The Court then took testimony and also gave the defendant an opportunity to testify, or to raise a conflict issue as to Mr. Warren continuing as his attorney in this case.

Defendant indicated he was willing to waive any conflict (the testimony did not disclose an actual conflict), and testified that he understood that, if he was convicted, he would not be able to raise this conflict of interest issue in any post-trial proceedings.

At the plea hearing, the defendant was thoroughly questioned about his understanding of his rights, the nature of the evidence against him, and agreed knowingly and voluntarily, to plead guilty to all charges, knowing there was a mandatory and consecutive seven year sentence for the firearm charge that would be added on to any sentence on the other counts.

The Court imposed a sentence of 194 months imprisonment which included the 84 months under the mandatory consecutive Section 924(c) firearms violation charged in Count V. Defendant then took an appeal despite the waiver of appeal in the Plea Agreement, and the Third Circuit granted the government's motion to enforce the appellate waiver, and dismissed the appeal.

Under the *Strickland v. Washington*, 466 U.S. 668 (1984), the defendant has the burden of showing that his counsel's performance was constitutionally deficient, and also that he was prejudiced by this deficient performance. In order to prove prejudice, defendant "must show that there was some reasonable possibility that, but for counsel's unprofessional error, the result would have been different." *Id.* at 687, 694.

The factual record, which defendant ignores, requires that his petition be denied. The hearing on the asserted conflict of interest issue was thorough, and defendant fully understood what the issues of Mr. Warren's prior representation were, and agreed to have Mr. Warren continue as his counsel.

In addition, the record clearly showed that defendant had rejected a prior government plea offer, and had told Mr. Warren that he insisted on going to trial. Third, Mr. Warren did submit an objection to the Presentence Report concerning the defendant's criminal history, and effectively argued for the lowest possible sentence.

The Court also notes that defendant stated at his sentencing hearing, that he was satisfied with Mr. Warren's representation.

The Court's sentence was in accordance with the law, was within the guideline range as found by the Court, and reflected the Section 3553 factors, as this was a serious crime, the defendant was a threat to public safety, and deterrence required an appropriate prison sentence.

Defendant also claims that his appellate counsel was ineffective and erroneously asserts that she filed an *Anders* brief. Having pled guilty and having received a guideline sentence, there was not much room for effective oral advocacy and the defendant cannot show any prejudice in that the result would have been any different with a different counsel.

Considering all of the arguments made by the defendant, the Court will reject them and deny the motion. There are no grounds for a certificate of appealability.

An appropriate Order follows.