

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

UNITED STATES OF AMERICA v. MOHIT VOHRA	CRIMINAL NO. 09-546-1
MOHIT VOHRA v. UNITED STATES OF AMERICA	CIVIL NO. 14-7257

MEMORANDUM OPINION RE: POST CONVICTION PETITION

Baylson, District Judge

March 17, 2016

The defendant in this case has filed a petition for relief under 28 U.S.C. § 2255. The government has filed a response and the defendant has filed a reply brief as of January 19, 2016. The government's response accurately describes the history of this case, including the jury's verdict, the post-trial motions, and the appeal, following which the Third Circuit affirmed the conviction on October 7, 2013, and a prior motion by defendant to modify his sentence, which was denied by order dated November 19, 2014.

In the motion, defendant raises four claims summarized as follows:

1. Trial counsel was ineffective because he failed to file a motion to suppress recorded telephone calls and permitted inaccurate English translations of the calls to be presented to the jury.
2. Appellate counsel was ineffective for failing to raise the issue of inaccurate translations.
3. Trial counsel was ineffective for failure to advise defendant of a plea offer.

4. Trial counsel was ineffective for failing to get paperwork from a conviction in California for a summary offense.

As to the first ground, defense counsel did file a motion to suppress physical evidence and statements, which included by reference the telephone calls. Judge Fullam of this court resolved those motions. After a mistrial at the first trial, Judge Fullam then ordered a severance of counts one and two (the drug counts) from count three through fifteen (the money laundering counts). Following the severance of Counts I and II, Vohra entered an open plea (i.e., without a plea agreement) to counts one and two before Judge Fullam. The plea colloquy before Judge Fullam shows that defendant admitted that no promises had been made to him.

The case was then transferred to the undersigned. A jury trial took place on Counts III through XV charging money laundering. The jury convicted Vohra and his co-defendant. As to the claims in the post-conviction memorandum, the Court finds that the petitioner has failed to show that any of his Constitutional rights were violated or that he is entitled to any relief.

The record does not support defendant's claim that his counsel was ineffective for failing to object to inaccurate translations. A review of the transcripts show that there is no basis for the defendant's claims. Initially, the government has documented in its response a showing that the translations of the telephone calls admitted into trial were done by a certified translator.

In addition, a review of the trial transcript shows that the defendant had a translator of the Punjabi language present during the trial. This can be shown by a review of the transcript of the first day of trial, August 15, 2011 (ECF 160). The opening address of petitioner's counsel, Perry Demarco, Esquire, states, referring to the petitioner as follows:

My client's English is not excellent. He can speak it, he understands it, but as you all can see today, he sits here with the assistance – this young lady sitting to his right is a Punjabi interpreter. So if there's anything that is said that

he doesn't fully understand, he relies on her to help him interpret. That's not to say that he doesn't understand English.

N.T. 19, Transcript of August 15, 2011.

Furthermore, although the transcript of August 15th does not show the name of the interpreter, it is shown on the transcript for August 16th where the translator is identified as Upi Sharma.

Furthermore, at an argument on the post-trial motions on March 7, 2012, a translator was provided, but the defendant admitted that he did understand some English.

The record is devoid of any indication, at the trial, that there was any inaccurate translation. This Court would have to expect, given the seriousness of the charges, because defendant and his counsel consistently admitted that he did understand some English, that he would have made some mention of this to his counsel, or to the Court, of the inaccurate translation.

As the Court stated in United States v. Hernandez, 994 F. Supp. 627, 630-31 (E.D. Pa. 1998):

[T]he Court Interpreters Act does not create new constitutional rights for criminal defendants, but rather serves to create parameters for accurate and competent translation so the quality of the translation does not fall beneath a constitutionally permissible threshold. **Objections to the adequacy of translation may be waived, and the ultimate question for the court is whether the translator's performance has rendered the trial fundamentally unfair.** Minor deviations or occasional lapses in translation will not render a trial fundamentally unfair.

Defendant waived this issue, as she made no objection at trial. Even when the court examines the substance of the allegations, however, it finds that a new trial is not warranted. The bulk of Ms. Aleman's stated concerns fall

within the category of minor deviations or occasional lapses in translation. In such situations, any confusion created by the lapse in translation was cured by further questioning, a colloquy and agreement between counsel, or, when read in context, cannot be said to affect the substance of the witness's testimony. The totality of the prejudice to Hernandez did not render her trial fundamentally unfair."

The translators that were used by both the government and the Court are certified to give accurate translations in Court, and the belated of inaccurate translations, is not cognizable.

There was no allegation on the direct appeal about inaccurate translations. There is nothing in the record to support such a claim. As the government points out, defendant was present during the entire trial and never made any indication or alleged he instructed his counsel to bring to the Court's attention that the translator was not translating accurately. Although petitioner may not be fully fluent in English, he did have some understanding of English. There is no support in the petition for any finding of an inaccurate translation, and no details, and certainly no showing his constitutional rights were violated.

The Court rejects petitioner's claims about inaccurate translations.

As to the second ground, which is related, defendant was represented by Walter Batty, former appellate chief of the United States Attorney's Office in Philadelphia, who raised three legal issues concerning the phone call. In a direct appeal, the Third Circuit does not consider any claims that trial counsel was ineffective, but there is no basis to conclude that Mr. Batty was ineffective on the issues that were or could have been raised on appeal.

Concerning the third claim, the defendant is relying on what he sentence he thinks a judge would have imposed if he had pled guilty, but he ignores the fact that no plea negotiations between the defendant and prosecution can bind the judge unless it is an agreed upon sentence pursuant to the terms of Criminal Rule 11(c)(1)(c). There is no such claim in this case.

The Supreme Court's decision in *Missouri v. Frye*, 132 S. Ct. 1399 (2012) is at all relevant to this scenario.

The fourth ground relates to his trial counsel's failure to get certain paperwork, which related to a conviction for disorderly conduct in San Jose, California in 2002. For the reasons shown in the government's memorandum, even if this is error, it would not have changed the sentence.

Fundamentally, defendant has failed to show the second prong under *Strickland v. Washington*, 466 U.S. 668 (1984), (i.e., that he was prejudiced by any of his allegations of ineffective counsel). The guilty plea on the drug offenses, plus the evidence produced by the government at the trial on money laundering, was overwhelming and the defendant cannot show any prejudice from the alleged errors of counsel, even assuming they were true.

The Court has also reviewed the reply memorandum filed by Petitioner. The Petitioner does not make any comment on the translation issue, but continues to challenge appellate counsel's failure to allege erroneous admission of evidence. The Court also notes that the Petitioner still claims that his guilty plea on Counts I and II before Judge Fullam was not voluntary and that there was a failure by his counsel to challenge the incorrect guideline calculation.

However, Petitioner still does not show that there was any prejudice from any of these alleged lapses of counsel in view of the overwhelming evidence against the Petitioner at trial.

The petitioner has failed to show there are any grounds upon which a certificate of appealability should issue.

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

UNITED STATES OF AMERICA v. MOHIT VOHRA	CRIMINAL NO. 09-546-1
MOHIT VOHRA v. UNITED STATES OF AMERICA	CIVIL NO. 14-7257

ORDER

Following the review of the defendant's Petition for Relief under 28 U.S.C. § 2255, and for the reasons stated in the foregoing memorandum, it is on this 17th day of March, 2016, hereby **ORDERED**:

1. The petition is **DISMISSED**.
2. There are no grounds to issue a certificate of appealability.
3. The Clerk of Court shall close this case.

BY THE COURT:

/s/ **Michael M. Baylson**

MICHAEL M. BAYLSON
United States District Court Judge