

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

<hr/> <b>UNITED STATES OF AMERICA</b>	:	
	:	
v.	:	<b>CRIMINAL ACTION NO. 13-cr-25-01</b>
	:	
<b>LINDA WESTON</b>	:	<b>CIVIL ACTION NO. 16-5673</b>
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**MEMORANDUM OPINION**

**Rufe, J.**

**May 31, 2018**

Defendant Linda Weston filed a *pro se* motion and amended motion under § 2255, alleging that she did not understand the proceedings surrounding her guilty plea and that her former attorneys gave her false information, used “scare tactics,” told her to plead guilty, and refused to arrange for a mental health evaluation. The Court appointed counsel to represent Defendant in the § 2255 proceeding, and held hearings on April 30, 2018 and May 24, 2018. For the following reasons, the petition will be denied.

**I. BACKGROUND**

On January 22, 2013, Defendant and four other individuals were indicted in connection with a decade-long criminal conspiracy to defraud Social Security by stealing benefits from people with mental and physical disabilities. The victims were tortured over a period of years: confined in inhumane conditions, beaten, forced into prostitution, and forcibly moved from place to place in Pennsylvania, Virginia, Florida, and Texas. Two of the victims died as a result of the severe abuse. The victims also included children born into this captivity and raised by Defendants alongside Ms. Weston’s own younger children. The charges against Defendant included murder in aid of racketeering, sex trafficking, forced human labor, commission of a hate crime, kidnapping, involuntary servitude, commission of a violent crime in aid of

racketeering, use of a firearm in furtherance of a violent crime, theft from the government, false statements, mail and wire fraud, and conspiracy. Defendant, as the charged ringleader, faced the possibility of the death penalty. Eventually Defendant pleaded guilty, as did three of the other Defendants; the fifth Defendant has been found incompetent to stand trial.<sup>1</sup>

Attorneys Paul George and Patricia McKinney, both qualified as counsel for a capital case, represented Ms. Weston from January 28, 2013 (shortly after the indictment was filed) through the guilty plea on September 9, 2015 and sentencing on November 15, 2015. Numerous motions were filed during this time, including a motion for appointment of a mental health consultant, for which funds were authorized. Counsel engaged a fact investigator and technical services support, sought extensive records relating to potential mitigation issues, and filed motions to dismiss certain counts, for discovery, and for other relief. Defendant and the Government reached a written plea agreement, whereby Ms. Weston would face a sentence of life imprisonment plus eighty years, and the Government would not pursue the death penalty. After a lengthy change-of-plea colloquy, the Court accepted the guilty plea, finding that Ms. Weston “is alert. She is competent, and she is capable of entering an informed plea.”<sup>2</sup>

Ms. Weston seems to have first raised issues regarding her counsel shortly after pleading guilty, in a letter dated September 26, 2015, which was apparently written by another inmate.<sup>3</sup>

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<sup>1</sup> This Defendant, Gregory Thomas, was scheduled to enter a plea of guilty to the charges against him. During the plea colloquy, the Court became concerned that Mr. Thomas was not able to understand the proceeding and halted it pending further evaluation. This Court would not have hesitated to do the same with Ms. Weston had there been any basis for such action.

<sup>2</sup> Tr. Sept. 9, 2015 at 93 [Doc. No. 319]. Apparently because of an error by the transcriber, the transcripts for the change- of- plea and sentencing hearings have the wrong cover sheets and therefore are reversed on the docket. *See* docket entries 318 and 319.

<sup>3</sup> Doc. No. 253. Ms. Weston sometimes maintains that she cannot read and write; the writing on this letter differs from others received from Defendant.

That letter stated that Defendant wanted to withdraw her guilty plea and to have a competency hearing, and that her attorneys had “pushed” her to plead guilty. The Court held a hearing on October 9, 2015, at which Defendant withdrew the motions, which were therefore dismissed.<sup>4</sup> The case proceeded to sentencing. Defendant did not file a direct appeal, but shortly after sentencing, she filed a *pro se* motion seeking counsel to file a § 2255 motion, although no motion was filed at that time.<sup>5</sup> In response, Ms. McKinney and Mr. George moved to withdraw, stating that Ms. Weston had never told them she wanted to withdraw her guilty plea or appeal her sentence, and because of the allegations being raised, they sought leave to withdraw.<sup>6</sup> Ms. Weston then sent another letter stating that she was mentally unstable, that her attorney made her take the plea, and that she could not read or write, did not understand any of the paperwork, was “railroaded in the courtroom,” is a “loving person,” is “not a monster” and wanted to plead insanity.<sup>7</sup> The motion to withdraw and motion to appoint new counsel were granted, and Paul Hetznecker was appointed to represent Defendant.<sup>8</sup> Ms. Weston timely filed a *pro se* § 2255 motion and the Court appointed Mr. Hetznecker as counsel for the § 2255 motion.<sup>9</sup> In April of 2017, Ms. Weston sent yet another uncounseled letter in which she stated that her former attorneys directed her to say “yes” to any questions she was asked in Court at the time of her guilty plea.<sup>10</sup>

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<sup>4</sup> Doc. No. 254. It appears that this hearing has not been transcribed.

<sup>5</sup> Doc. No. 267.

<sup>6</sup> Doc. No. 271.

<sup>7</sup> Doc. No. 272.

<sup>8</sup> Doc. Nos. 274, 275, 284.

<sup>9</sup> Doc. No. 330.

<sup>10</sup> Doc. No. 341.

## II. LEGAL STANDARD

Under the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), a prisoner serving a sentence in federal custody may petition the court which imposed the sentence to vacate, set aside, or correct the sentence by asserting that “the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack.”<sup>11</sup> “Habeas corpus relief is generally available only to protect against a fundamental defect which inherently results in a complete miscarriage of justice or an omission inconsistent with the rudimentary demands of fair procedure.”<sup>12</sup>

As set forth in the Supreme Court’s decision in *Strickland v. Washington*, establishing that counsel was ineffective requires the defendant to show first “that counsel’s performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.”<sup>13</sup> Under this prong, “the defendant must show that counsel’s representation fell below an objective standard of reasonableness” under “prevailing professional norms.”<sup>14</sup> Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel’s errors were so serious as to deprive the defendant of a fair hearing.<sup>15</sup> To satisfy this prong, “[t]he defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a

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<sup>11</sup> 28 U.S.C. § 2255(a).

<sup>12</sup> *United States v. DeLuca*, 889 F.2d 503, 506 (3d Cir. 1989).

<sup>13</sup> *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

<sup>14</sup> *Id.* at 688.

<sup>15</sup> *Id.* at 687.

probability sufficient to undermine confidence in the outcome.”<sup>16</sup> When a defendant enters a plea of guilty upon the advice of counsel, “the voluntariness of the plea depends on whether counsel’s advice was within the range of competence demanded of attorneys in criminal cases.”<sup>17</sup>

### III. DISCUSSION

In this case, Defendant pleaded guilty pursuant to a written plea agreement. Although the plea agreement included a waiver of appellate and collateral attack rights, it excluded claims “that an attorney who represented the defendant during the course of this criminal case provided constitutionally ineffective assistance of counsel.”<sup>18</sup> Moreover, under Third Circuit law, “it would constitute a miscarriage of justice to enforce a guilty plea made pursuant to a plea agreement ... the defendant should have been permitted to withdraw.”<sup>19</sup> Therefore, the waiver does not bar the present claim.

Substantively, at the outset, it is important to note that even “a plea agreement that gains nothing for a defendant is not *per se* ineffective under *Strickland*; to hold otherwise would seriously disrupt the existing plea negotiation market.”<sup>20</sup> However, “[a] guilty plea, if induced by promises or threats which deprive it of the character of a voluntary act, is void. A conviction based upon such a plea is open to collateral attack.”<sup>21</sup> Here, by agreeing to plead guilty, Ms.

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<sup>16</sup> *Id.* at 694.

<sup>17</sup> *Hill v. Lockhart*, 474 U.S. 52, 56 (1985) (internal quotation marks omitted).

<sup>18</sup> Doc. No. 249 at ¶ 10(b)(4).

<sup>19</sup> *United States v. Wilson*, 429 F.3d 455, 458 (3d Cir. 2005).

<sup>20</sup> *United States v. Smack*, 347 F.3d 533, 538 (3d Cir. 2003).

<sup>21</sup> *Machibroda v. United States*, 368 U.S. 487, 493 (1962).

Weston avoided a potential death sentence, so the plea agreement contained definite benefits for Defendant. The Court scheduled a hearing as to the issue of whether counsel had been ineffective and had directed Ms. Weston to plead guilty against her wishes. Ms. Weston participated by videoconference from her place of incarceration and was given the opportunity to speak with Mr. Hetznecker in private whenever she wished, and did so several times before, during, and after the hearing. Ms. McKinney testified at the first part of the hearing on April 30, 2018, and Ms. Weston testified when the hearing resumed on May 24, 2018.

Ms. McKinney testified that she or another member of the defense team met with Defendant at least once a week through sentencing. Ms. McKinney spoke with Ms. Weston very specifically about the case, and Ms. Weston understood and replied, and Ms. McKinney understood her comments. Ms. Weston did not want to put her younger children through a trial (the Government intended to call them as witnesses). Counsel believed that there was a very strong case in mitigation but that the possibility of the death penalty was very real. Ms. McKinney testified that Ms. Weston agreed with the non-trial disposition of the case and that Ms. Weston was making peace with the situation at the time of sentencing. Ms. McKinney testified that she read the plea agreement and the facts contained in the Government's plea memorandum to Defendant and answered any questions and concerns. Ms. McKinney testified definitively that Ms. Weston understood the plea agreement, understood what she was pleading guilty to, and understood both at the time of the guilty plea and at sentencing that she would receive a sentence of life imprisonment plus 80 years. Ms. McKinney also testified that in her opinion Ms. Weston was competent and able to participate in her defense. According to Ms. McKinney's own review of the evidence, Ms. Weston was not the most culpable defendant, but regardless of the level of responsibility, the evidence was sufficient for conviction and the

imposition of the death penalty. Ms. McKinney also testified that she took care so that Ms. Weston's life-long mental health problems would not interfere with the representation. Ms. McKinney testified that she did not engage in scare tactics or direct Defendant to plead guilty.

Ms. Weston testified in narrative form as to anything she wished to say. Ms. Weston testified that she did not understand what was going on at the time she pleaded guilty, that her lawyer told her to say "yes" when she was asked questions, and that she was trying not to upset the Court. On cross-examination by the Government, Ms. Weston denied that Ms. McKinney had discussed the case with her, although she did acknowledge at another point in her testimony that Ms. McKinney had talked about the death penalty, that Ms. Weston told her attorney she would rather face death than say something she didn't do but that Ms. McKinney told her "over my dead body" and that Ms. Weston went along with her. Ms. Weston testified that she told both Ms. McKinney and Mr. George that she would rather die than plead guilty and spend the rest of her life in prison and that she did not know that her children would testify.

The Court finds that Ms. McKinney's testimony was credible and supported by the facts of record, where Ms. Weston's testimony was neither. During the change-of-plea hearing, Ms. Weston did far more than say "yes" to any questions asked. Ms. Weston told the Court that she had never gone by the name "Brenda Williams" (an alias listed on the Indictment);<sup>22</sup> explained that her lawyers had helped her read the plea agreement and the Government's plea memorandum;<sup>23</sup> discussed in detail her medications and the fact that they did not cause any side effects such as fuzzy thinking;<sup>24</sup> and stated that she had no questions about the plea agreement.<sup>25</sup>

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<sup>22</sup> Doc. No. 319 at 8-9.

<sup>23</sup> *Id.* at 10-11.

<sup>24</sup> *Id.* at 14-16, 22-23.

Significantly, Ms. Weston did tell the Court when she did not understand something:

Q In the plea agreement, you, as well as the Government, agreed to a specific resolution of this case, that is, the recommendation that the Government will make, and one that you and your attorney have asked me to accept of a life sentence, followed by a consecutive 80 years imprisonment, correct?

A Yes.

Q Do you understand it will be up to me as to whether or not I accept this part of your agreement, and any other part of your agreement, even though you both agree?

Do you understand it's the Court's decision whether to accept it? Do you understand that?

A Yes.

Q If I do not, this resolution will not be binding on the Court and you will have an option to withdraw your plea.

Do you understand that?

A **No.**

Q All right. I'll explain that to you again, because I think that's how this plea is being entered, pursuant to 11(c)(1)(C).

If I do not accept the recommendation of both of the parties, to this sentence, if I do not agree with it, I will give you a chance to withdraw your plea. Do you understand that?

A Yes.<sup>26</sup>

This exchange highlights that Ms. Weston was carefully following the proceeding and spoke up when she did not understand, and it belies Ms. Weston's present contention that she followed a directive of counsel to say "yes" to each and every one of the Court's questions. Ms. Weston also contested several points in the Government's oral summary of the facts during the

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<sup>25</sup> *Id.* at 27.

<sup>26</sup> *Id.* at 30-31 (emphasis added).

plea hearing, including that she did not know how to drive and had not driven anyone herself and (through counsel) that she herself had never carried a gun.<sup>27</sup>

The Court's colloquy with Defendant before accepting the guilty plea included questions regarding her counsel:

Q So I am clear, you've talked for several years with your attorneys, right?

A Yes.

Q They've been representing you intensely for several years now, since you were [indicted]?

A Yes.

Q Do you still need more time to talk to them? Do you need more time or not?

A No.

Q All right. So far, have your lawyers done everything for you that you wanted them to do in this case?

A Yes.

Q Are you satisfied, then, with their legal assistance?

A Yes.

Q Now, did you sign a plea agreement, Ms. Weston?

A Yes.

Q If you signed this plea agreement, did you do so voluntarily?

A Yes.

Q Did you sign it – let me – strike that. Did you read this and review it with your attorneys before you signed it?

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<sup>27</sup> *Id.* at 81-86.

A Yes.

Q Do you have any questions about what you read or what you signed?

A No.

Q Would you please identify, for me, your signature on the plea agreement?

A Right there at the top.<sup>28</sup>

Had there been any concerns, Defendant had every opportunity to raise them before pleading guilty, and the Court does not find credible Ms. Weston's current statements that she simply went along to avoid causing upset. Defendant has not shown that the "representations at the time [her] guilty plea was accepted were so much the product of such factors as misunderstanding, duress, or misrepresentation by others as to make the guilty plea a constitutionally inadequate basis for imprisonment."<sup>29</sup> Instead, after reviewing all of Ms. Weston's submissions and carefully considering the testimony of Ms. Weston and Ms. McKinney, the Court remains firmly convinced that counsel acted diligently and effectively, and that Ms. Weston was fully apprised of all of the circumstances of her case, understood and was fully engaged in the proceedings, and freely pleaded guilty to the charges against her.

#### **IV. CONCLUSION**

The credible evidence adduced during the present § 2255 proceedings affirms what the Court noted during the change-of-plea hearing, that since 2013:

we have been in constant status conferences with counsel, some in Court, some out of Court, to be apprised of the status of the Government seeking, or not, the death penalty and going through the procedures available to the defendant and the Government, before the Attorney General of the United States. . . .

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<sup>28</sup> *Id.* at 26-27.

<sup>29</sup> *Blackledge v. Allison*, 431 U.S. 63, 75 (1977).

And that was a long and prolonged process that involved mitigation specialists, multiple discovery requests and documents, and I know that counsel were quite diligent in ferreting out each and every fact that was necessary to come to this point today.

So we have no question that counsel were prepared to recommend this resolution to their client and no question that she was fully apprised of the status of her matter and the exposure she had to being charged with the death penalty and possibly convicted and put to death by a jury.

Therefore, we feel that the record in this case reflects all of those efforts by the Government and the defense to fully prepare Ms. Weston for this today and, also, fully prepare the victims.<sup>30</sup>

The petition will be denied.<sup>31</sup> Because Defendant has not made a substantial showing of the denial of a constitutional right, a certificate of appealability shall not issue.<sup>32</sup>

An order will be entered.

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<sup>30</sup> Doc. No. 319 at 94-95.

<sup>31</sup> The United States Supreme Court recently held that “counsel may not admit her client’s guilt of a charged crime over the client’s intransigent objection to that admission,” holding that this right is one of client autonomy, not counsel’s competence. *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018). As Ms. Weston freely admitted her guilt, the case does not apply here.

<sup>32</sup> 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

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<b>LINDA WESTON</b>	:	<b>CIVIL ACTION NO. 16-5673</b>
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**ORDER**

**AND NOW**, this 31<sup>st</sup> day of May 2018, upon consideration of Defendant's *Pro Se* Corrected Motion to Vacate, Set Aside, or Correct his Sentence Pursuant to 28 U.S.C. § 2255 [Doc. No. 326], and the Government's response, and after a hearing held on April 30, 2018, and May 24, 2018, and for the reasons set forth in the Court's memorandum opinion, it is hereby

**ORDERED** that:

1. The Motion is **DENIED**;
2. No certificate of appealability shall issue; and
3. The Clerk is directed to **CLOSE** Civil Action No. 16-5673.

It is so **ORDERED**.

**BY THE COURT:**

/s/ **Cynthia M. Rufe**

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**CYNTHIA M. RUFÉ, J.**