

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

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	NO. 16-271
v.	:	
	:	CIVIL ACTION
WILLIAM JOSEPH BOYLE	:	NO. 18-4700

MEMORANDUM

Bartle, J.

January 31, 2019

Defendant William Joseph Boyle pleaded guilty on August 30, 2017, to: five counts of mail fraud (18 U.S.C. § 1341); three counts of wire fraud (18 U.S.C. § 1343); one count of securities fraud (15 U.S.C. §§ 78j(b) and 78ff); and one count of investment advisor fraud (15 U.S.C. §§ 80b-6 and 80b-17). As a result of his crimes, his client victims suffered losses totaling in excess of \$400,000. The court imposed a sentence of 78 months, which was affirmed on appeal. United States v. Boyle, 723 F. App'x 111 (3d Cir. 2018). Now he has pending a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. The Government opposes the motion.

Boyle first maintains that his initial lawyer, who represented him at his guilty plea hearing, was ineffective for failing to inform the court that the Government had extended a plea offer of 41 months and that based on this offer "I reasonably understood that I would serve 41 months in jail, not

78." He now contends that he may not have pleaded guilty if he had known that his sentence would have exceeded that time period.

Boyle relies on emails between his lawyer and an assistant United States Attorney ("AUSA") shortly after the indictment was handed down. On August 18, 2016, his lawyer sent the following email to the AUSA:

Mike [AUSA Michael Lowe], I see in your press release the calculation of the guidelines. How did you get to that level?

Mr. Lowe responded on August 19, 2016:

Here's how I came up with the sentencing range stated in the press release. There may be other enhancement[s] that apply but these were certainly the most reasonable ones that I felt good about. There's also potentially sophisticated means.

Base Offense Level (2B1.1(a))	7
More than \$250,000 in loss (2B1.1(b)(1)(G))	+12
Violation of securities law and defendant Was registered Broker/Dealer/Investment Adviser (§ 2B1.1(b)(19)(A))	+4
Vulnerable Victims (§ 3A1.1(b))	+2
Total Offense Level (without acceptance):	25
Total Offense Level (with acceptance):	22

There is no way that Mr. Lowe's response can reasonably be characterized or understood as a plea offer by the Government. It was very early in the case, and Mr. Lowe clearly stated that "other enhancement[s]" may apply, including "potentially sophisticated means." The Government certainly was not bound by what were obviously preliminary calculations. It did not promise - and could not promise - that Boyle would receive only a 41-month sentence if he pleaded guilty.

The lack of merit of Boyle's argument is confirmed by the court's colloquy with him under oath at his guilty plea hearing on August 30, 2016.

The court advised him at the outset that it would assume that his answers would be truthful and that if he should give false answers he would be subject to possible prosecution for perjury, that is, lying under oath. He replied that he understood.

He also answered that he understood that he faced a total statutory maximum of 185 years imprisonment and that the court would not be able to determine how the Advisory Sentencing Guidelines or other applicable law would be applied until after a presentence report had been prepared and both the Government and defendant had an opportunity to challenge it. The court also advised him that it could "impose a sentence which is more severe or less severe than the sentence which the Advisory

Sentencing Guidelines recommend." He was told that it was always possible that he could receive a sentence up to the maximum permitted by law and that he could not withdraw any guilty plea if his sentence turned out to be more severe than he expected or anyone else recommended. He agreed that no one had threatened him, coerced him, or forced him to plead guilty. Significantly, he answered "No" when asked, "Have any agreements been entered into which have not up to this point been disclosed on the record?" He readily acknowledged that his decision to change his plea to guilty was made of his own free will and that he was pleading guilty because he was in fact guilty as charged.

In sum, Boyle's responses at the guilty plea hearing make it clear that he knew there was no side deal or promise that he would receive a sentence of only 41 months if he pleaded guilty. If Boyle had been promised a 41-month prison sentence, he had every opportunity to have made this known to the court at his guilty plea hearing. Yet he remained silent.

Boyle's assertion that his counsel at the guilty plea hearing was ineffective for not calling to the court's attention a non-existent plea deal for a 41-month sentence is without merit. He has not established that he was prejudiced or that his lawyer's performance was deficient. He has not shown he would not have pleaded guilty and instead have gone to trial had

his lawyer acted differently. Strickland v. Washington,
466 U.S. 668, 694-96 (1984).

Boyle engaged a new lawyer for his sentencing. He claims that this lawyer was ineffective for failing to "alert the Court that the government promised a sentence of 41 months." This argument fails for the reasons stated above. Again, if there had been such a promise, Boyle certainly could have told the court about it at his sentencing. The truth is that Boyle knew at the time of his guilty plea and thereafter that the court and the court alone was to determine his sentence, regardless of what anyone else may have said or done. His current version of the facts is not credible.¹

1. In his reply brief, Boyle refers for the first time to an additional email between the Government and defense counsel to support his claim that his lawyers were ineffective.

Before the indictment was handed down, the Government and defense counsel had discussions about the filing of an information against Boyle and the filing of a guilty plea. Contrary to what Boyle contends, the Government made no promises to him about his sentence at that time. While the Government outlined "a very basic timeline" about the Government's case against Boyle in a May 24, 2016 email to his lawyer, the Government made it clear that it may contain "mistakes/typos/errors" and was only "a rough draft." The Government emphasized that "this is not a plea offer, nor can it be construed as a plea offer or an offer to plead to only this conduct."

Boyle also submitted an undated affidavit with his reply brief. In essence, he reiterates that the emails from the Government constituted a promise that his sentence would be between 41 and 51 months and that he would not have pleaded guilty without such a promise. Significantly, Boyle says nothing in his reply brief or his affidavit about his answers

In addition, Boyle claims that his lawyer at his sentencing was ineffective for failing to object to a four-point enhancement under § 2B1.1(b)(19)(A)(iii) of the then existing Advisory U.S. Sentencing Guidelines (2016). This enhancement applied to a person who committed securities fraud and investment advisor fraud while an investment advisor. Contrary to his contention, his lawyer did object to this enhancement at the sentencing hearing. The court overruled his objection because the record clearly established that its application was proper as a matter of law under the undisputed facts. See United States v. Miller, 833 F.3d 274, 281-83 (3d Cir. 2016). In his reply brief, Boyle belatedly argues that his lawyer was deficient because he did not call any witnesses. However, he never identifies who they might be or explain what they would say. The calling of any witnesses by Boyle's lawyer would have been of no avail with respect to the application of the sentencing enhancement at issue. Under the circumstances, his contention fails that his lawyer at sentencing and on appeal was ineffective.

Accordingly, Boyle's motion under 28 U.S.C. § 2255 will be denied, and no certificate of appealability will issue.

under oath to the questions the court asked him during his guilty plea hearing. For the reasons stated above, the affidavit is clearly contrary to the undisputed facts and is not credible.

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ORDER

AND NOW, this 31st day of January, 2019, for the reasons set forth in the foregoing Memorandum, it is hereby ORDERED that:

(1) the motion of William Joseph Boyle under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence is DENIED; and

(2) no certificate of appealability issues.

BY THE COURT:

/s/ Harvey Bartle III

J.