

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

UNITED STATES OF AMERICA :
 :
 :
 v. : **CRIMINAL ACTION NO. 16-CR-0023-3**
 : **CIVIL ACTION NO. 18-CV-3688**
 :
SEKOU MALIEK DAVENPORT :

MEMORANDUM

Baylson, J.

June 18, 2019

Defendant Sekou Maliek Davenport has filed a Motion for Relief Pursuant to 28 U.S.C. § 2255, based on asserted ineffective assistance of counsel in connection with his guilty plea and at sentencing.

The Government’s response, filed February 11, 2019, contains an accurate history of this case. Briefly stated, the Defendant made an “open plea” (without any plea agreement) to two charges relating to firearms on December 8, 2016 and on March 23, 2017 and was sentenced to 87 months in prison plus supervised release and a fine and special assessment. On direct appeal, the Third Circuit denied Davenport’s appeal. The Motion for Relief under § 2255 was filed on August 27, 2018.

The Petitioner has asserted several different grounds to support his claim of ineffective counsel. Petitioner has seriously misrepresented the record. In the first place, after the Defendant was sworn, the Court asked him its usual questions, one of which is whether Mr. Davenport was satisfied with his counsel to which he responded in the affirmative (N.T. 4). Petitioner’s counsel, Salvatore Adamo, Esquire, argued vigorously for Petitioner on all issues that were presented. Mr. Adamo had secured agreement from the Government to agree to some lesser Guideline computations and was successful on several of his efforts. In addition, the

ultimate sentence imposed on Petitioner was a downward variance from the Guideline range. This in and of itself showed the very professional arguments that Mr. Adamo made on Petitioner's behalf. The sentence imposed was the same as that of another co-defendant. As the Court noted at the hearing, one of the very serious facts about the Petitioner's criminal record was that he was on probation in state court at the time he committed the instant offense, a circumstance that every judge considers as a very serious indicia of recidivism.

Mr. Adamo was successful in arguing for reduction in the Petitioner's criminal history from III to II, although the presentence report calculation of the criminal history was basically accurate. The Court will now turn to the specific arguments made by Petitioner.

First, Petitioner asserts his counsel was ineffective for failing to develop an argument that Davenport's conduct was not proportional to that of a co-defendant, which is unsupported by the record. At sentencing, Petitioner's counsel requested a term of imprisonment that was below the sentence issued to each of his co-defendants. The Court rejected this request and noted reasons for the sentence imposed on Petitioner.

Petitioner also asserts there was a due process violation for the Government not to provide or his counsel to secure the co-defendants' criminal history. There was nothing in the record that shows that Petitioner's counsel could have done anything more than he attempted to do on behalf of Petitioner at the time of the sentencing.

Another contention is that Petitioner's counsel was ineffective during the negotiations for a plea bargain with the U.S. Attorney's Office. The Court finds that this assertion is not supported by any facts that would warrant an evidentiary hearing in this case. The Assistant United States Attorney indicated that there had been plea negotiations and that the Government had offered the Defendant a "C" plea, which the Petitioner rejected. However, there is nothing

in the facts of the case that would lead to any conclusion that Petitioner would have gotten a lower sentence if he had agreed to a “C” plea. There was no specific statement as to what the negotiations between counsel were concerning the “C” plea. There is no support for granting §2255 relief merely because a defendant in a criminal case with court-appointed counsel is unhappy that his counsel did not reach an agreement with the government. Petitioner makes no showing that his sentence would have been any different if an agreement had been reached on a guilty plea. Petitioner omits the important fact that the Court, in imposing sentence, is never bound by any guilty plea agreement, and any discussions between Defendant and the Government about pleading guilty, do not result in any agreement binding on the Court as to what sentence would be imposed.

Petitioner’s last argument is that counsel was ineffective for withdrawing an objection to a minor role enhancement in the presentence report. Once again, this argument fails to show that counsel was ineffective because the facts of this case and the discussion of the facts in the presentence report, and at sentencing, showed that Petitioner was equally culpable with his co-defendants for this very serious criminal conduct.

For these reasons, the Petition will be **DENIED** and the Court will decline to find any grounds for certification of an appeal.

O:\Criminal Cases\16-23 US v Thompson\16cr23 Memorandum.docx

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

UNITED STATES OF AMERICA

v.

SEKOU MALIEK DAVENPORT

:
:
:
:
:
:
:
:
:
:

**CRIMINAL ACTION NO. 16-CR-0023-3
CIVIL ACTION NO. 18-CV-3688**

ORDER

AND NOW, this 18th of June, 2019, for the reasons stated in the foregoing Memorandum, the Motion for Relief pursuant to 28 U.S.C. § 2255 is **DENIED**. There are no grounds for a certificate of appealability.

BY THIS COURT:

/s/ Michael M. Baylson

MICHAEL M. BAYLSON
United States District Court Judge