

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

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
JOHN MONTGOMERY	:	NO. 18-68-1

MEMORANDUM

Bartle, J.

August 14, 2019

Before the court is the motion of defendant John Montgomery ("Montgomery"), acting pro se, to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255.

On December 13, 2018, Montgomery pleaded guilty to Count One of an indictment charging him with conspiracy to commit health care fraud in violation of 18 U.S.C. § 1349. Montgomery admitted he was part of a conspiracy to defraud Medicare of \$548,115. The Government agreed to dismiss Count Two of the indictment. On May 1, 2019, the court sentenced Montgomery to a term of imprisonment of 27 months. The United States Sentencing Guideline range for his offense was 27 to 33 months' imprisonment while the statutory maximum was 10 years.

Montgomery filed a notice of appeal on May 6, 2019 which he then withdrew on May 23, 2019. On May 31, 2019, he filed the present motion under 28 U.S.C. § 2255. Relief did not become available under § 2255 until he surrendered to the Bureau of Prisons on June 4, 2019.

I

Section 2255(a) provides that a federal prisoner "claiming the right to be released . . . may move the court which imposed the sentence to vacate, set aside or correct the sentence." 28 U.S.C. § 2255(a). Such a prisoner may attack his sentence on any of the following grounds: (1) the sentence was imposed in violation of the Constitution or laws of the United States; (2) the court was without jurisdiction to impose the sentence; or (3) the sentence was in excess of the maximum authorized by law. Id.

The court must hold an evidentiary hearing on a motion under § 2255 "unless the motion and files and records of the case show conclusively that the movant is not entitled to relief." United States v. Lilly, 536 F.3d 190, 195 (3d Cir. 2008) (internal quotation marks and citations omitted). However, "bald assertions and conclusory allegations do not afford a sufficient ground for an evidentiary hearing." Mayberry v. Petsock, 821 F.2d 179, 185 (3d Cir. 1987). Thus, the court may, without further investigation, dispose of "vague and conclusory allegations contained in a § 2255 petition" without granting a hearing. United States v. Thomas, 221 F.3d 430, 437 (3d Cir. 2000).

II

We first turn to Montgomery's claim that his guilty plea was "unlawfully induced or not made voluntarily or with understanding of the nature of the charge or the consequences of the plea." In support of this contention, he asserts that his attorney told him that he would get 15 to 18 months at the most for the plea deal and that his attorney failed to ensure that he understood all of its terms and the consequences.

Montgomery's claim is blatantly contradicted by his statements under oath at his change of plea hearing. The court conducted a thorough colloquy. In response to the court's questioning, Montgomery, an educated individual, stated that he had read, understood, and discussed his plea agreement with his attorney. He also told the court that he changed his plea to guilty of his own free will, that no one had made "any threat or promise or assurance" to him to induce him to sign the agreement, and that no other plea agreement existed other than the one in the record. When asked by the court if anyone had told or promised him what sentence the court would impose, he assured the court, "No."

The court further explained to Montgomery that it could impose a sentence that was more or less severe than what the sentencing guidelines recommend and that he always faced the possibility of a sentence up to the maximum permitted by law.

Both counsel for the Government and Montgomery assured the court that they were satisfied that Montgomery's plea was based only on the plea agreement in the record and not any outside agreement or promise. Based on these statements and Montgomery's testimony, the court found that Montgomery's plea was knowing and voluntary and not the result of any promises beyond the record.

We have no trouble concluding that Montgomery's claim that his plea was involuntary, unlawful, or uninformed is belied by the record and his statements under oath made in open court. Montgomery is therefore not entitled to relief under § 2255 on this basis.

III

Montgomery also asserts that he is entitled to relief under § 2255 on the ground that his attorney provided ineffective assistance of counsel. He lists the following reasons in support of this contention:

- (1) that counsel was "misleading on his understanding of health care case law;"
- (2) that counsel "failed to disclose discovery material for my review that was sent from the prosecution;"
- (3) that counsel "did not fully inform me of the plea agreement in its entirety" such that "I was

- under a different impression of the plea agreement terms based on what he explained;"
- (4) that counsel "disregarded" concerns that he voiced throughout the case; and
- (5) that counsel had explained to him that "he felt threatened today on the phone with the prosecution" which led to his inability to defend him properly.

In order to succeed on a claim of ineffective assistance of counsel, a defendant must meet the two-pronged standard set forth by the Supreme Court in Strickland v. Washington, 466 U.S. 668 (1984). A defendant must show:

(1) that his counsel's performance was deficient, that is, "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment" and (2) that this deficient performance prejudiced him, which "requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial." Id. at 687.

"Judicial scrutiny of counsel's performance must be highly deferential." Strickland, 466 U.S. at 689. When evaluating a claim that counsel was ineffective, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is,

the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" Id. (quoting Michel v. Louisiana, 350 U.S. 91, 101 (1955)).

In the context of a guilty plea, the prejudice prong requires that defendant "show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59 (1985). Where the court has conducted an adequate change-of-plea colloquy of the defendant, an erroneous prediction or assurance by counsel regarding the defendant's likely sentence does not constitute grounds for invalidating a guilty plea on grounds of ineffective assistance of counsel. See Masciola v. United States, 469 F.2d 1057, 1059 (3d Cir. 1972); Sepulveda v. United States, 69 F. Supp. 2d 633, 641 (D.N.J. 1999).

If either prong of this test is not satisfied, then defendant's claim must be rejected. "[T]here is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697.

Montgomery's purported dissatisfaction with his counsel directly contradicts his representations made under oath

at his change of plea hearing. When asked by the court if he had "ample opportunity to discuss" his case with his attorney and if he was satisfied with his attorney's representation, Montgomery responded "Yes." As recounted in detail above, Montgomery also assured the court that he had discussed his guilty plea agreement with his counsel and that he understood it. Montgomery did not raise any of his present concerns with the court despite being given the opportunity to do so.

We now turn to each of Montgomery's examples of ineffective assistance of counsel. Montgomery contends that his counsel "did not fully inform him of the plea agreement in its entirety." This is totally without merit. As discussed above, the court conducted a fulsome colloquy to ensure Montgomery understood the consequences of his plea. Montgomery testified under oath that he had read and understood the plea agreement and had discussed it with his attorney. Montgomery cannot now credibly claim to the contrary.

The remainder of Montgomery's claims are "bald assertions" and "vague and conclusory allegations" that the court can quickly dismiss. See Thomas, 221 F.3d at 437; Mayberry, 821 F.2d at 185. For example, Montgomery claims that counsel had told Montgomery that "he felt threatened . . . on the phone with the prosecution" and was therefore unable to defend Montgomery properly. Montgomery provides no context to

demonstrate how counsel's performance was deficient as a result. This bald assertion cannot entitle Montgomery to relief.

Montgomery also maintains that that his counsel ignored concerns that he raised throughout the case. Again, Montgomery does not provide specifics, such as identifying what concerns he raised or how counsel's actions impacted Montgomery's decision to plead guilty. We must "indulge a strong presumption" that the conduct of Montgomery's counsel "falls within the wide range of reasonable professional assistance." We cannot find that his counsel's representation was deficient based on this vague assertion. Strickland, 466 U.S. at 689.

Montgomery's claim that his counsel was ineffective because he did not share discovery material with Montgomery to review is similarly without merit. Montgomery does not explain how this prejudiced him in any way.

Montgomery further contends that his counsel was "misleading" as to his understanding of healthcare law but does not buttress this with any factual support. This contention cannot support a finding that his counsel was objectively unreasonable or that this prejudiced Montgomery such that he would not have entered a plea of guilty. Montgomery is not entitled to relief on this ground.

IV

For the reasons set forth above, we will deny Montgomery's motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. The motion and record of the action show conclusively that Montgomery is not entitled to relief. As a result, we will not hold an evidentiary hearing. See United States v. Lilly, 536 F.3d at 195.

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ORDER

AND NOW, this 14th day of August, 2019, for the reasons set forth in the accompanying memorandum, it is hereby ORDERED that:

(1) The motion of defendant to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (Doc. # 72) is DENIED; and

(2) No certificate of appealability shall issue.

BY THE COURT:

/s/ Harvey Bartle III

J.