

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

UNITED STATES OF AMERICA : CRIMINAL ACTION No. 96-415  
v. :  
FITZGERALD FRENCH : CIVIL ACTION No. 97-3901

O R D E R - M E M O R A N D U M

AND NOW, this 24th day of July, 1997, defendant's motion to vacate, set aside or correct sentence under 28 U.S.C. § 2255 is denied.

Defendant Fitzgerald French, a Haitian national and permanent resident alien, claims that his trial counsel did not advise him of the deportation consequences of pleading guilty and, as a result, his entry of the plea was involuntary.<sup>1</sup> Defendant contends that if he had he known the consequences, he would have chosen to go to trial. The government maintains that defendant was aware of the possibility of deportation at the time of his plea and that he was therefore not denied effective assistance of counsel.<sup>2</sup>

When a defendant enters a counseled plea of guilty, the

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1. On October 10, 1996 defendant pleaded guilty to a one-count information charging illegally cloning cellular telephones in violation of 18 U.S.C. § 1029(a)(6) and on January 6, 1997 was sentenced to four months imprisonment, four months of home confinement, and three years of supervised release. He did not file a direct appeal.

2. The government submitted an affidavit from trial counsel stating that prior to entering into the plea, defendant knew that deportation was a problem and that counsel instructed defendant to consult an immigration attorney about the possibility of deportation. Gov't Response Ex. A. Additionally, at the sentencing hearing colloquy, counsel stated on the record that defendant has "known from the beginning" that he faces deportation problems. Id. Ex. B, 1/6/97 at 3.

voluntariness of the plea depends, in part, on the adequacy of counsel's advice. Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369, 88 L. Ed. 2d 203 (1985); see United States v. Day, 969 F.2d 39, 43 (3d Cir. 1992) (defendant has right to make a reasonably informed decision whether to plead). In order for the plea to be made voluntarily, defendant must be aware of its "direct consequences." United States v. Salmon, 994 F.2d 1106, 1130 (3d Cir. 1991) (only consequences considered "direct" are maximum prison term and fine for offense charged). Due process does not require knowledge of the collateral consequences of a guilty plea, even if they are foreseeable. Parry v. Rosemeyer, 64 F.3d 110, 113 (3d Cir. 1995) (counsel not required to inform defendant of collateral consequence of imprisonment that could result from a violation of parole); United States v. Campbell, 778 F.2d 764, 768 (11th Cir. 1985) ("Although it may be highly desirable that . . . counsel develop the practice of advising defendants of the collateral consequences of pleading guilty, what is desirable is not the issue before us.").

Potential deportation is a collateral consequence of a guilty plea in that it does not relate to the length or nature of the sentence. See United States v. Romero-Vilca, 850 F.2d 177, 179 (3d Cir. 1988). Accordingly, even if defendant lacked awareness or information as to its immigration consequences, his entry of the plea did not affect its requisite voluntariness or rise to the level of constitutionally ineffective assistance of counsel. See Valera v. Kaiser, 976 F.2d 1357, 1358 (10th Cir. 1992) (failure to

advise of deportation consequences of plea is not ineffective assistance of counsel); United States v. George, 869 F.2d 333, 337 (7th Cir. 1989) (same). Furthermore, in this instance, defendant appears to have had knowledge. Supra note 2.<sup>3</sup>

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Edmund V. Ludwig, S.J.

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3. Defendant denies knowledge as to the deportation consequences of the plea and has requested a hearing on that issue. Def.'s reply to response by gov't. Since knowledge of the collateral consequences of a plea is immaterial, that request is denied.