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

UNITED STATES OF AMERICA	:	CIVIL ACTION
	:	No. 97-2312
v.	:	
	:	CRIMINAL ACTION
SONNY SIGNO	:	No. 96-562-1

M E M O R A N D U M

This memorandum follows an order dated July 21, 1997, denying petitioner Sonny Signo's motion to vacate, set aside or correct sentence, 28 U.S.C. § 2255.[1]

Petitioner asserts four grounds for setting aside or modifying his February 27, 1997 sentence:[2] (1) petitioner is innocent; (2) his guilty plea was unlawfully induced and was involuntary and without an understanding of the charges and consequences of the plea; (3) the government withheld exculpatory material; and (4) his counsel was ineffective.

On November 14, 1996, the government filed an information charging petitioner with one count of mail fraud, 18 U.S.C. § 1341.

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[1] Probable cause does not appear to exist for a certificate of appealability. 28 U.S.C. § 2253(c)(1). In addition, petitioner does not raise an issue of material fact to justify a hearing. See United States v. Essig, 10 F.3d 968, 976 (3d Cir. 1994). Before looking at materiality, it must first be determined whether the failure to object at sentencing or on direct appeal constituted a procedural waiver. Id. If no waiver, it then becomes necessary to inquire whether the alleged error is serious enough for consideration under § 2255. Id. at 976-77.

[2] On February 27, 1997, defendant was sentenced to 12 months and one day imprisonment, followed by three years of supervised release.

The criminal conduct involved was the creation, using various aliases, of a series of fake companies. Each company had no office but was merely a telephone answering service and a post office box. The companies solicited businesses that use industrial cutting blades with the promise of a "revolutionary sharpening process" at a significantly higher price than the industry standard. The process, however, was nothing more than ordinary sharpening plus a coat of black spray paint. When businesses discovered the fraud or creditors came knocking, petitioner would create a new company using a different alias.

On January 7, 1997, a guilty plea hearing was held at which petitioner acknowledged that the government's proffer of the criminal facts was accurate. He also admitted his guilt during the hearing and in a written plea agreement that he testified to having read, understood and signed.[3] According to his Presentence Investigation Report, during his post-plea interview —

> [t]he subject admitted his guilt noting he learned this scam from other Gypsies. Given his guilty plea, his statements to authorities with regard to his role in the offense, and the statements made to this office, it has been determined that the defendant has demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct . . . .

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[3] Rule 11(c) of the Federal Rules of Criminal Procedure requires the district court to "inform the defendant of, and determine that the defendant understands," a "laundry list of information regarding defendant's rights and the consequences of his or her plea." United States v. Cleary, 46 F.3d 307, 310 (3d Cir. 1995). At the guilty plea hearing, the meaning and consequences of the plea were fully reviewed.

PSR ¶ 25. No objection was made to the Presentence Report before or at sentencing.[4]

I — Actual Innocence: Under 28 U.S.C. § 2255, petitioner must assert "a fundamental defect which inherently results in a complete miscarriage of justice." United States v. Essig, 10 F.3d 968, 977 (3d Cir. 1994) (citing Hill v. United States, 368 U.S. 424, 428, 82 S. Ct. 468, 471, 7 L. Ed. 2d 417 (1962)). Here, the claim is that petitioner is "actually innocent" because a person named Steve Stevers created the fictitious businesses. In his statement to the FBI, however, petitioner stated that he used the alias "Steve Stevers" and that no such individual existed. FBI Statement at 5 (Aug. 28, 1993). Petitioner did not object to the Presentence Report, which identified "Steve Stevers" as one of his aliases. PSR, Identifying Data. Petitioner has admitted his guilt — and to having used various aliases — on no fewer than four occasions: in his confession to the FBI, at the plea hearing, in the interview with the probation office, and at sentencing.[5] It cannot be said that "a fundamental defect" in the nature of "actual innocence" occurred in these proceedings.

II — Unlawfully Induced Guilty Plea: "A habeas petitioner faces a heavy burden in challenging the voluntary nature

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[4] At sentencing, petitioner filed a motion for downward departure for extraordinary family responsibilities, which was denied. Guidelines Manual, § 5H1.6.

[5] Facts set forth in a presentence report may be relied on when their accuracy is not challenged. United States v. Watkins, 54 F.3d 163, 166-67 (3d Cir. 1995).

of his guilty plea, for the plea hearing is specifically designed to uncover hidden promises or representations as to the consequences of a guilty plea." Lesko v. Lehman, 925 F.2d 1527, 1537 (3d Cir. 1991). "'[T]he representations of the defendant, his lawyer, and the prosecutor at [a plea] hearing, as well as any findings made by the judge accepting the plea, constitute a formidable barrier in any subsequent collateral proceedings. Solemn declarations in open court carry a strong presumption of veracity.'"[6] Id. (quoting Blackredge v. Allison, 431 U.S. 63, 73-74, 97 S. Ct. 1621, 1629, 52 L. Ed. 2d 136 (1977)). Nevertheless, misunderstanding, duress or misrepresentation by others may make the guilty plea constitutionally inadequate. Blackredge, 431 U.S. at 75, 97 S. Ct. at 1629-30.

Here, petitioner claims having had difficulty understanding the plea proceeding, which was conducted in English, because Romanian is his primary language.[7] Yet, a careful review of the transcript does not disclose any lack of comprehension on his part — and this complaint is set forth for the first time in his petition. At the plea hearing, he answered a series of questions

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[6] The same judge who presides over the original conviction and sentencing is in a unique position to review and dismiss conclusory allegations in a subsequent § 2255 proceeding. Blackredge, 431 U.S. at 74 n.4, 97 S. Ct. at 1629 n.4.

[7] At a brief point during the hearing, petitioner may have had difficulty hearing. Tr. at 7 (Jan. 7, 1997). When later asked whether he could read, write and understand English, he answered "Yes." Id. at 12-13. His § 2255 now claims ineffective assistance of counsel in part because of the need for an interpreter. Nothing in the course of the proceedings, however, suggests that such a need existed.

clearly and competently without any indication of a problem in understanding English. Tr. at 7, 12-13 (Jan. 7, 1997). Accordingly, his claimed inability to understand the nature and consequences of the plea must be rejected as not credible. Cf. Gonzalez v. United States, 33 F.3d 1047, 1051 (9th Cir. 1994) (Court Interpreters Act); Valladares v. United States, 871 F.2d 1564, 1566 (11th Cir. 1989) ("To allow a defendant to remain silent throughout the trial and then . . . assert a claim of inadequate translation would be an open invitation to abuse.").

The petition also states that petitioner was under duress — the fear of an individual named Steve Stevers — throughout the plea and sentencing proceedings. At the plea hearing, however, the following exchange occurred:

> THE COURT: . . . Whose decision is it to plead guilty to this charge of mail fraud?
>
> THE DEFENDANT: My decision.
>
> . . .
>
> THE COURT: And have you had enough time to think about it and decide whether or not pleading guilty here is the right and best thing for you to do under all the circumstances?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: Is it correct that nobody has pushed you or forced you or required you in any way to plead guilty, is that correct?
>
> THE DEFENDANT: That's correct.
>
> THE COURT: Is it also correct that nobody has offered or promised you anything of any kind to get you to plead guilty, except what it says in so many words in the guilty plea agreement that you signed. Is that also correct?
>
> THE DEFENDANT: That is correct.

Tr. at 11-12 (Jan. 7. 1997). There has been no showing of involuntariness or duress in regard to the plea hearing or the sentencing, and the record does not support this claim.

III — Government Withheld Exculpatory Evidence: In order to prevail on a Brady claim, a petitioner must prove: 1) prosecutorial suppression after a defense request; 2) the evidence was exculpatory or favorable to defendant; and 3) the evidence was material to issues at trial. Moore v. Illinois, 408 U.S. 786, 794-95, 92 S. Ct. 2562, 2568, 33 L. Ed. 2d 706 (1972); United States v. Perdomo, 929 F.2d 967, 970 (3d Cir. 1991). Here, the claim must fail because of procedural waiver or, in the alternative, lack of exculpatory effect and materiality.

Petitioner did not make this argument heretofore. See supra note 1; Essig, 10 F.3d at 976, 977 n.25. Even if not procedurally waived, the handwriting evidence in question does not appear to have been exculpatory. Moreover, it is unlikely that it would have made a difference at a trial given the overwhelming evidence against petitioner.

IV — Ineffective Assistance of Counsel: The two-step analysis of ineffective assistance of counsel is, first, that counsel's representation was below an objective standard of reasonableness and, if so, second, a reasonable probability that, but for counsel's errors, the result would have been altered. Strickland v. Washington, 466 U.S. 668, 687-88, 694, 104 S. Ct. 2052, 2064, 2068, 80 L. Ed. 2d 674 (1984); see Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985) (applying

Strickland to ineffective assistance claim arising out of plea process). The burden of proof upon a petitioner is heavy inasmuch as there is a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance . . . ." Strickland, 466 U.S. at 689, 104 S. Ct. at 2065.

Petitioner contends that his counsel was ineffective for not conducting an investigation to establish that petitioner was not "Steve Stevers," the individual now alleged to have created the fictitious businesses, opened business accounts with vendors and defrauded customers.[8] In applying the "reasonableness" standard of Strickland, our Court of Appeals has stated that —

> The reasonableness of counsel's actions may be affected by the defendant's actions and choices, and counsel's failure to pursue certain investigations cannot be later challenged as unreasonable when the defendant has given counsel reason to believe that a line of investigation should not be pursued.

United States v. Gray, 878 F.2d 702, 710 (3d Cir. 1989).

As noted above, petitioner gave the FBI a statement in which he admitted using the alias "Steve Stevers" and that no such person existed. See FBI statement at 5, 9 (Aug. 28, 1993). Nor did petitioner object to the Presentence Report's statement that he used this alias. PSR, Identifying Data. Therefore, his counsel had no reason to conduct an investigation into whether another individual named Steve Stevers was actually responsible for the fraud.

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[8] At the plea hearing, petitioner testified that he was satisfied with his attorney. Tr. at 13 (Jan. 7, 1997).

Petitioner also contends that his counsel should have contested the admissibility of his statement to the FBI. Again, he does not provide any evidence that he requested his counsel to challenge the admissibility of the FBI statement. In short, petitioner has not "overcome the strong presumption that . . . the challenged action 'might be considered sound trial strategy.'" Gray, 878 F.2d at 710 (quoting Strickland, supra).

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Edmund V. Ludwig, S.J.