

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

UNITED STATES OF AMERICA : CRIMINAL ACTION
 :
 v. :
 :
 VINCENT EZEIRUAKU : NO. 90-230-01

MEMORANDUM AND ORDER

HUTTON, J.

December 7, 1998

Presently before the Court are Vincent Ezeiruaku's Petition to Vacate and Expunge Conviction Record Pursuant to the Writ of Coram Nobis (Docket No. 53), the Government's response thereto (Docket No. 56), and the Ezeiruaku's Reply (Docket No. 57).

I. BACKGROUND

On April 18, 1990, a team of U.S. Customs inspectors conducted operations at the Philadelphia International Airport. The team, consisting of Inspectors Sammaciccia, Taylor and Williams, was responsible for examining outbound shipments from the United States for currency, high technology items, munitions, stolen vehicles, and other forms of contraband. The inspectors targeted Lufthansa Flight number 415 to Frankfurt, Germany. The main focus of this operation was to uncover large amounts of unreported currency leaving the United States, but the inspectors were also looking for prohibited munitions and high technology

items. They selected the Lufthansa flight because Frankfurt has air connections to many high-risk areas for currency exportation.

To facilitate their selection of passengers who might present a suspicious profile, the inspectors obtained a list of passengers with connections out of Frankfurt. The inspectors then chose four persons for further review. The four persons included two persons going to Lagos, Nigeria, one person going to Zurich, Switzerland, and Vincent Ezeiruaku, who was ticketed to Brussels.

Inspector Sammaciccia testified that he saw an expensively dressed man and a female at the Lufthansa counter. At the man's feet were two very large brown suitcases, a suit bag, and a briefcase. The man appeared to pay the Lufthansa representative in cash. Inspector Sammaciccia stated that, based on past experience, travelers usually pay for tickets with credit cards and that he viewed passengers who pay with cash to be "highly suspect." Sammaciccia subsequently spoke to the Lufthansa representative, who advised him that although the man's ticket had not been paid for with cash, he paid cash for the overweight charges on his bags. The Lufthansa representative identified the man as Ezeiruaku.

While Sammaciccia spoke to the Lufthansa representative, Inspector Taylor noticed that the woman with Ezeiruaku acted overly concerned with that conversation and looked nervously at Inspectors Sammaciccia and Taylor. Inspector Taylor reported the woman's actions to Sammaciccia. At that point, Inspectors Day, Benedetti,

Spade, and Hughes went to question the people they had selected from the Lufthansa connection list.

In the security area for outbound international flights, Ezeiruaku approached Inspector Sammaciccia and asked him for the location of a drinking fountain. Inspector Sammaciccia determined that Ezeiruaku's accent was Nigerian. Inspector Day joined the outbound inspectors. After reviewing the list of passengers with connections out of Frankfurt, Day focused on another individual going to Nigeria, two persons going to Zurich and Ezeiruaku. Inspector Sammaciccia told Day that Ezeiruaku had paid cash for overweight luggage, and Taylor recounted that Ezeiruaku's female companion had shown an "abnormal interest in the Customs in the area." Because Ezeiruaku's name appeared twice on the connection list, Inspector Day thought that the female companion was also a passenger.

At that point, Inspectors Day and Taylor went to inspect the checked luggage that was being placed in containers to be loaded on the plane. He found Ezeiruaku's bags outside the building, ready to be loaded on the plane. The inspectors then searched the bags. In one of the bags, they found documents relating to the shipping of cars to Nigeria. In the other bag, Inspector Day found \$265,000 in cash, contained in \$2,000 packs of \$20 bills separately wrapped in carbon paper, and all wrapped in a rubber bath mat.

The officers conducted the search in an area not visible from the terminal. Day testified that bags usually are chosen for inspection based on factors such as size and destination. He gave several reasons for deciding to search Ezeiruaku's bags: (1) his destination; (2) that he paid cash at the ticket counter for the overweight charges; and (3) that the female companion was "very nervous and had excessive interest in the Customs officers." Day also said that his decision was based on previous seizures, computer information, and his nineteen years of experience. He was aware of previous cases of seizures from both Nigerian nationals and United States citizens of Nigerian descent on outbound flights.

While Inspectors Day and Taylor were inspecting checked luggage, a Lufthansa representative announced over the loudspeaker that anyone transporting more than \$10,000 in currency out of the country had to file a Customs form. Several posters, indicating that anyone transporting more than \$10,000 in currency out of the country had to file a Customs form, were also displayed at several spots in the security area.

Inspector Sammaciccia spoke with Ezeiruaku. Ezeiruaku acknowledged that he had heard the currency announcement but denied having over \$10,000 on him or in his checked luggage. He said that he owned a gas station and was going to Brussels on business. Sammaciccia considered it odd that a gas station owner would go to Brussels on business and asked Ezeiruaku why. Ezeiruaku answered

that he exported and imported beauty products and shrimp. Ezeiruaku consented to a search of his hand-carried briefcase. Looking for currency and export permits related to Ezeiruaku's claimed business, Sammaciccia found a "large wad of American money" banded and folded over. To avoid putting Ezeiruaku in danger by examining him in front of the other passengers, Sammaciccia asked him to go to a nearby room used by security personnel on their breaks. Ezeiruaku had approximately \$2,000 in \$20 bills in the briefcase.

Continuing his examination of the briefcase, Sammaciccia found documents indicating shipments to Nigeria. Ezeiruaku told Sammaciccia that he was born in Nigeria but was now a naturalized U.S. citizen. Sammaciccia then received a radio call from Inspector Day, who asked him to go to the checked luggage area, where Sammaciccia saw at least \$20,000 of what was later determined to be \$265,000 in cash. After viewing the money in the checked luggage and verifying that the bags were Ezeiruaku's, Sammaciccia returned to the break room, conferred with Special Agent Chamberlain, and advised the airline and Ezeiruaku that he would not be making the flight.

After the inspectors found the cash, they placed Ezeiruaku under arrest. They gave him Miranda warnings on more than one occasion. After saying that he wanted to think about whether he would talk with Special Agent Chamberlain, Ezeiruaku

asked to speak with Special Agent Rovello. He was readvised of his rights, and he initialed and signed a document to that effect.

Subsequently, a federal grand jury indicted Ezeiruaku, charging him with one count of exporting unreported currency, in violation of 31 U.S.C. § 5316(a)(1)(A). On September 28, 1990, Ezeiruaku filed a motion to suppress the cash seized at the airport. The Government filed a response later that same day. On October 1, 1990, this Court held an evidentiary hearing on the motion and issued a bench opinion granting the motion. It also granted the Government's request to stay the proceedings for an appeal.

On October 19, 1990, the Government filed a motion for reconsideration. On December 19, 1990, this Court filed a written opinion upholding its previous decision. The Court concluded that before the Customs officials could lawfully search Ezeiruaku's bags, they needed "reasonable suspicion" that he was engaged in conduct in violation of the currency reporting laws and that this standard had not been met in this case. See United States v. Ezeiruaku, 754 F. Supp. 420, 441 (E.D. Pa. 1990), rev'd, 936 F.2d 136 (3d Cir. 1991). The Court also determined that the search of Ezeiruaku's checked baggage was non-routine and that, even if the border exception applied, the offensive nature of the search violated the fourth amendment. See id. at 442. Concluding that the search was unlawful, the Court ordered the suppression of the

evidence and dismissal of the indictment. See id. The Third Circuit reversed this Court's decision. See United States v. Ezeiruaku, 936 F.2d 136, 137 (3d Cir. 1991). The Third Circuit held that the inspectors' search of the outbound luggage was routine and no articulable suspicion was needed to justify the search. See id. at 142.

On October 28, 1991, Ezeiruaku appeared before this Court to plead guilty to the indictment. Ezeiruaku told the Court that he signed the plea agreement. The Court held a plea colloquy and asked Ezeiruaku to read the first paragraph of the plea agreement. This paragraph stated that "the defendant agrees to plead guilty to Count One of the indictment charging him with failure to file a U.S. Customs Currency Report, in violation of Title 31, United States Code, Section 5316(a)(1)(A)." The following conversation then occurred:

Court: Now what do the words "charging him with failure to file a U.S. Customs Currency Report," mean to you? What are you pleading guilty to in your own words?

Defendant: That I -- I didn't -- that I didn't file a report for leaving the country -- for not filing a report when I was

leaving the country with more than \$10,000.

Court: All right, now this language says failure to file. Is this something that you inadvertently didn't do or is this something that you intentionally did not do?

Defendant: It is something I intentionally didn't do.

Court: You were aware that you were required to file such a report and you consciously determined not to do so; is that correct?

Defendant: No your Honor, I wasn't aware.

Court: Well, I think you should consult with your counsel because it's a critical point.

(Discussion off the record between the defendant and Mr. Kyriaszis.)

Court: All right, sir, having had the opportunity to consult with your attorney, now what's your understanding of what you're pleading guilty to in your own words?

Defendant: Yes, that I was aware of the required reporting of currency before leaving the country.

R. at 6-7 (10/28/91).

After this exchange, the Court asked Ezeiruaku whether he was satisfied with the advice of his attorney. See id. at 8. Ezeiruaku stated that he was satisfied. See id. Finally, the Court asked Ezeiruaku if anyone coerced or threatened him to sign the plea agreement. See id. at 9. Ezeiruaku answered that no one had threatened or coerced him to sign the plea agreement. See id.

On February 12, 1992, the Court sentenced Ezeiruaku to three years probation, with the first four months to be served under community confinement, a \$5,000 fine, and a \$50 special assessment. During the sentencing, Ezeiruaku did not request to

withdraw his guilty plea or state that he was innocent of the crime charged. After sentencing, Ezeiruaku filed a notice of appeal. On appeal, Ezeiruaku did not raise any of the claims that he raises in the instant petition. Ezeiruaku, pro se, now moves to vacate and expunge his conviction pursuant to a writ of coram nobis.

II. DISCUSSION

Mr. Ezeiruaku asks this Court to vacate and expunge his record pursuant to a writ of coram nobis. A writ of coram nobis is an extraordinary remedy reserved for exceptional circumstances. See United States v. Osser, 864 F.2d 1056, 1059 (3d Cir. 1988). The writ is used to correct errors in criminal cases. See id. The Supreme Court cautioned that coram nobis relief is limited to correct errors of the "most fundamental character." See United States v. Morgan, 346 U.S. 502, 512 (1954). The Supreme Court in Morgan also stated: "Continuation of litigation after final judgment and exhaustion of waiver of any statutory right of review should be allowed through this extraordinary remedy only under circumstances compelling such action to achieve justice." Id. at 511.

According to the Third Circuit, the writ of coram nobis "is used to attack allegedly invalid convictions which have continuing consequences, when the petitioner has served his sentence and is no longer 'in custody' for purposes of 28 U.S.C.A. § 2555." United States v. Stoneman, 870 F.2d 102, 105 (3d Cir. 1989). Additionally, the Third Circuit noted that:

[O]ther factors must be taken into account. The interest in finality of judgments is a weighty one that may not be casually disregarded. Where sentences have been served, the finality concept is of an overriding nature, more so than in other forms of collateral review such as habeas

corpus, where a continuance of confinement could be manifestly unjust.

Osser, 864 F.2d at 1059; see also Stoneman, 870 F.2d at 106 (holding that the standard for coram nobis is even higher than standard for habeas corpus relief). As the Supreme Court stated, "it is difficult to conceive of a situation in a federal criminal case today where [a writ of coram nobis] would be necessary or appropriate." Carlisle v. United States, 517 U.S. 416, 429 (1996) (quoting United States v. Smith, 331 U.S. 469, 475 n.4 (1947)). Ultimately, the decision to grant coram nobis relief rests in the court's discretion. See United States v. Rankin, 1 F. Supp.2d 445, 452 (E.D. Pa. 1998).

Before addressing the merits of Ezeiruaku's petition, this Court must confront the Government's argument that Ezeiruaku has not alleged sufficient "continuing penalties" to warrant consideration of a writ of coram nobis. The Supreme Court and Third Circuit have indicated that coram nobis relief is not available if a sentence has been executed unless the conviction carries continuing penalties. See Morgan, 346 U.S. at 512-13; Osser, 864 F.2d at 1059-60. In his petition, Ezeiruaku states that he "may not be allowed to bear arms, vote, take certain loans, or obtain certain jobs." The Court tends to agree with the Government that the Ezeiruaku appears not to have sufficiently alleged continuing penalties. Ezeiruaku only states that he may be unable to bear arms, vote, take loans, or obtain jobs. Nevertheless,

because it is unclear whether the mere possibility of continuing penalties is enough to warrant coram nobis relief, the Court will consider the merits of Ezeiruaku's argument.

Ezeiruaku makes three arguments in his petition for a writ of coram nobis. First, Ezeiruaku argues that he did not know that his non-reporting act was illegal. Second, Ezeiruaku argues that his attorney coerced him to enter a guilty plea at the plea hearing. Third, Ezeiruaku argues that his attorney was ineffective. The Court addresses each of these arguments in turn.

A. Ezeiruaku's Knowledge that His Non-Reporting Act Was Illegal

Ezeiruaku argues that his conviction should be expunged because he did not know that his non-reporting act was illegal. This Court finds this argument disingenuous. The Court asked Ezeiruaku if he was aware that he was required to file a report when leaving the country with more than \$10,000 in currency. See R. at 8 (10/28/91). Initially, Ezeiruaku stated that he was not aware. See id. Because this was an important fact in deciding whether to accept Ezeiruaku's guilty plea, the Court stated that this point was critical and that he should consult his counsel. See id. After consulting counsel, Ezeiruaku stated that he was aware of the reporting requirement and that he intentionally violated the requirement. See id. Based on this admission, the Court accepted Mr. Ezeiruaku's guilty plea.

The Court finds that Ezeiruaku knew of the reporting requirement. While Ezeiruaku first denied having knowledge of the law, after consulting counsel, he stated that he was aware of the reporting requirement. Moreover, after this exchange between the Court and Mr. Ezeiruaku, the Government presented the facts that supported Mr. Ezeiruaku's plea. These facts included that Ezeiruaku heard the announcement that passengers leaving the country with more than \$10,000 had to file a report with Customs. See id. at 14. After the Government's recitation of these facts, which included other facts suggesting Ezeiruaku knew of the reporting requirement, the Court asked Ezeiruaku if he understood and agreed with the facts of "your crime." Ezeiruaku responded that he understood and agreed with the facts. See id. at 16. Therefore, the Court finds that Ezeiruaku cannot now, nearly five years after sentencing, deny his knowledge of the reporting requirements. See United States v. Dickler, 64 F.3d 818, 823-24 (3d Cir. 1995) ("[W]hen a defendant under oath expressly admits facts at a plea hearing in the course of persuading the court to accept his plea, he may not thereafter deny those facts.").

B. Coercion of Ezeiruaku's Counsel

Ezeiruaku argues that he pled guilty and stated that he knew of the reporting requirement because his attorney told him that "if he did not say those things, the Court would not accept the plea, exposing him to harsh uncertainties." To show that

ineffective assistance of counsel made his or her guilty plea involuntary, the movant must show that: (1) his or her counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases and (2) there is a reasonable probability that, but for counsel's errors, he or she would have proceeded to trial instead of pleading guilty. See Hill v. Lockhart, 474 U.S. 52, 56-59 (1985).

The Court notes that initially, Ezeiruaku did not want to admit that he knew of the reporting requirement. It was only after Ezeiruaku consulted briefly with counsel that he admitted to having knowledge of the reporting requirement. Nevertheless, beside this monetary interruption of the proceeding when Ezeiruaku consulted with counsel, Ezeiruaku never expressed to the Court that he did not want to plead guilty or that he was displeased with his counsel. Indeed, the Court asked Ezeiruaku if he was satisfied with his counsel to which Ezeiruaku answered "yes." See R. at 8 (10/28/91). In addition, the Court asked Ezeiruaku if anyone coerced him to enter a plea of guilty. See id. at 9. Ezeiruaku responded that no one had coerced him to enter the guilty plea. See id.

Based upon this record, the Court cannot conclude that Ezeiruaku suffered ineffective assistance of counsel. The record indicates that Ezeiruaku was pleased with his representation and that he was not coerced into entering his plea of guilty. Further,

while the record does not reflect what Mr. Ezeiruaku's counsel told him concerning the harsh uncertainties that he would face if he did not plead guilty, the Court finds that this argument lacks merit. The Court painstakingly discussed with Mr. Ezeiruaku what would happen if he did not plead guilty. The Court told Mr. Ezeiruaku that if he decided not to plead guilty, he had the right to a trial by jury, a presumption of innocence, representation by counsel, an opportunity to cross-examine, an opportunity to put on character witnesses, and that a unanimous jury had to find him guilty beyond a reasonable doubt. See id. at 9-10. The Court also stated that only Mr. Ezeiruaku, and no one else including his counsel, could waive these rights. See id. at 10. Thus, the Court finds that any argument that Ezeiruaku's counsel coerced him to enter a plea of guilty lacks merit.

C. Ineffective Assistance of Counsel

Finally, Ezeiruaku argues that his counsel was ineffective because he failed to raise his lack of knowledge of the reporting requirement as an issue on appeal. To show ineffective assistance of counsel in this regard, Ezeiruaku must prove two components. See Strickland v. Washington, 466 U.S. 668, 687 (1984). First, Ezeiruaku must show that counsel's performance was deficient. See id. Second, Ezeiruaku must show that the deficient errors were so serious as to deprive the defendant of a fair trial

and that, but for counsel's errors, the result of the proceeding would have been different. See id. at 687, 689.

Ezeiruaku argues that, under Ratzlaf v. United States, 510 U.S. 135 (1994), his counsel should have raised his ignorance of the law as an issue on appeal. In Ratzlaf, the Supreme Court held that a defendant must have knowledge that his conduct was unlawful to be convicted of structuring financial transaction to avoid currency reporting requirements pursuant to 31 U.S.C. § 5313. See id. at 138. As support for this conclusion, the Court pointed to 31 U.S.C. § 5316-- the statute Mr. Ezeiruaku was convicted under-- as a similar statute which required knowledge of the law, that is, knowledge of the reporting requirement by the defendant to support a conviction. See id. at 141-42 ("Notable in this regard [is] . . . § 5316, concerning declaration of the transportation of more than \$10,000 into, or out of the United States [which] describe[s] a "willful" actor as one who violates 'a known legal duty.'").

This Court finds that Mr. Ezeiruaku's counsel was not ineffective in this regard. First, as noted above, the Court accepted Mr. Ezeiruaku's plea based upon his admission that he knew of the reporting requirement. See R. at 8. Therefore, he would have been unable to deny that he knew of the requirements on appeal. See Dickler, 64 F.3d at 823-24 ("[W]hen a defendant under oath expressly admits facts at a plea hearing in the course of

persuading the court to accept his plea, he may not thereafter deny those facts."). Second, even if Mr. Ezeiruaku could allege that he did not know of the reporting requirement, the Government presented sufficient evidence to suggest that Mr. Ezeiruaku was indeed aware of the reporting requirement. The Government showed that posters were present indicating that anyone leaving the country with over \$10,000 in currency had to file a report and that Mr. Ezeiruaku heard an announcement made to the same effect. Thus, even if Mr. Ezeiruaku's counsel made this argument on appeal using Ratzlaf, the Third Circuit would have most likely rejected it. Accordingly, the Court denies Ezeiruaku's petition.

An appropriate Order follows.

