

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

UNITED STATES OF AMERICA	:	CRIMINAL NO. 00-CR-758-1
	:	
v.	:	CIVIL ACTION NO. 02-CV-7784
	:	
PAMELA SUPERVILLE	:	

MEMORANDUM AND ORDER

Kauffman, J.

March 4 , 2005

On June 29, 2001, Petitioner Pamela Superville (“Superville”) pled guilty to theft from an organization receiving federal funds in violation of 18 U.S.C. § 666. The Court sentenced her to 14 months imprisonment, three years supervised release, and restitution in the amount of \$36,500. Superville completed her prison term and was released to the INS on November 15, 2002. After a deportation hearing, INS ordered Superville removed as a result of her conviction. Now before the Court is Superville’s Motion to Vacate Sentence pursuant to 28 U.S.C. § 2255. For the reasons that follow, her Petition will be denied.

I. ANALYSIS

Superville argues that her sentence should be vacated on the grounds that she received ineffective assistance of counsel in violation of her Sixth Amendment rights. She advances three independent arguments as to why her counsel was ineffective. First, her counsel failed to move for a downward departure at sentencing. However, the matter is now moot, because has been released from prison. The Court will not entertain a collateral attack on a sentence that has already been served. See Lane v. Williams, 455 U.S. 624, 631 (1982) (collateral attack of a sentence becomes moot when a prisoner is released from custody before the court has addressed the merits of the petition). Accordingly, any potential error counsel may have committed in not

requesting a downward departure cannot serve as a basis for vacating Superville's sentence.

Next, Superville argues that her trial counsel was ineffective because he failed to advise her in advance that her sentence might involve a restitution component. Such an omission would rise to the level of a Sixth Amendment violation only if Superville could establish (1) that her counsel's representation during the plea negotiations fell below an objective standard of reasonableness, and if so (2) "that there is a reasonable probability that, but for counsel's errors, [she] would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); see also United States v. Ordaz, 2004 WL 2278716, at *3 (3d. Cir. Oct. 6, 2004). It is indisputable that restitution was extensively discussed at Superville's plea hearing before she entered her plea. During the hearing, the Court stated "[a]nd when it comes time of sentencing, counsel and the Defendant are both aware that the Government will take a position that the restitution figure will be higher. They don't agree with it but...they know you're going to take that position and you're not waiving it[.]" The lengthy discussion of restitution at the plea hearing is compelling evidence that Superville was aware of the restitution possibility before she entered her plea and, in fact, that the Government intended to seek an even higher restitution number.

Superville's express statements at the plea hearing also support the conclusion that she knew she might face restitution obligations and undermine the credibility of her claim that counsel did not discuss that possibility with her. Paragraph 3 of the Plea Agreement clearly states that "[t]he defendant agrees to complete a financial affidavit at or before the time of sentencing and *to make full restitution as determined by the Court.*" See Guilty Plea Agreement at ¶ 3 (emphasis added). Before taking her plea, the Court inquired as to Superville's familiarity with the Plea Agreement. In response to the Court's questions, she indicated that she had read and understood the document, and

that she had discussed it with counsel before executing it. See Tr. of Plea Hearing at 20. Thus, Superville cannot meet her burden of showing “that there is a reasonable probability that, but for counsel’s errors, [she] would not have pleaded guilty and would have insisted on going to trial.” Hill, 474 U.S. at 58-59.

Superville’s final argument is that her counsel failed to inform her of the effect her guilty plea would have on her immigration status. However, even if this allegation were true, it would not rise to a Sixth Amendment violation. United States v. Oyeyinka, 1998 WL 964222 at *1-2 (E.D. Pa. Oct. 9, 1998) (holding that defense counsel’s failure to advise client that his plea might lead to deportation does not constitute ineffective assistance of counsel).

II. CONCLUSION

Superville has failed to establish any violation of her Sixth Amendment rights. An appropriate Order follows.

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

UNITED STATES OF AMERICA	:	CRIMINAL NO. 00-CR-758-1
	:	
v.	:	
	:	CIVIL ACTION NO. 02-CV-7784
PAMELA SUPERVILLE	:	
	:	
	<u>ORDER</u>	

AND NOW, this 4th day of March, 2005 upon consideration of Petitioner Pamela Superville’s Motion to Vacate, Set Aside, or Correct Sentence (docket no. 61) and pursuant to Rule 8(a) of the Rules Governing § 2255 Proceedings, it is **ORDERED** that the Motion is **DENIED**.

BY THE COURT:

S/Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.