



The present Motion was filed on March 7, 2005, with a Pro Se Motion for Leave to Supplement, filed on May 4, 2005.

In his Petition, Roane asserts that his guilty plea was not made voluntarily and that the government did not plead the elements of the career offender adjustment or give notice under 21 U.S.C. § 851(a)(1), the Court erred in determining that Roane was a career offender, he is entitled to resentencing under Booker v. United States, 125 F. Ct. 738 (2005), he did not have the appropriate amount of time to review his presentence report, and his confession to the underlying crimes was not voluntary.

The Court will deny the Petition. In both the guilty plea agreement, which was personally signed by the Defendant and his lawyer, and also during the colloquy at the time of the guilty plea, Defendant expressly and unequivocally waived his right to appeal or collaterally attack his conviction or sentence. See Guilty Plea Agreement, ¶ 10 and transcript on July 7, 2003, N.T., pp. 10, 13.

After reviewing the terms of the guilty plea, the motion for departure and the procedures that will be followed with the presentence report, and advising the Defendant that the plea cannot be withdrawn even if the Defendant disagreed with rulings on objections or with the sentence itself, the following took place:

THE COURT: And even if you disagree with all these things, you still are stuck with the guilty plea you're entering today. Do you understand that?

MR. ROANE: Yes.

THE COURT: Okay. So tell me what – in your own words what you understand about what's going to happen.

MR. ROANE: I understand that I took responsibility for a crime that I committed, and I understand that by signing this guilty plea, my rights is – is diminished, and I know that – and I understand that whatever I get from – whatever you give me that day, I would have to really literally be stuck with that, and I can't appeal it. I can't appeal my sentence, and I can't appeal the guilty plea because I signed it already and I agreed to it.

THE COURT: And you can't withdraw the guilty plea.

MR. ROANE: Right.

THE COURT: You want to plead guilty today.

MR. ROANE: Yes.

THE COURT: You're sure about that, even though you may get a sentence that you think is too much or is wrong.

MR. ROANE: Yes.

(N.T. 7/7/03, pp. 18-19).

Thus, not only did the Defendant give up any right to file the matters asserted in his 2255 Petition, but he also has no grounds to complain about being characterized in career offender status because his prior convictions qualified for career offender status, but he was not prejudice because the Court granted him a departure from the Sentencing Guidelines that would have applied in the absence of the departure motion, and thus, Defendant was not sentenced as a career offender.

In United States v. Khattak, 273 F.3d 557 (3d Cir. 2001), the Third Circuit held that waivers of appeal must be strictly construed, but are valid as long as the court finds they were entered into knowingly and voluntarily. This Court makes such a finding, from the colloquy at the time of the sentencing, the fact that the Defendant read and signed the Guilty Plea

Agreement, and the Defendant's own statement as quoted above. Thus, the Defendant, who received significant value from the plea agreement considering his record of criminal violence as reflected in his criminal history, received a sentence that was fair under all the circumstances.

Although Khattak does not specifically address waivers of the right to file collateral attacks, there is no reason in this case not to enforce the waiver which the Defendant signed and acknowledged.

Plaintiff's request for re-sentencing under Booker will be denied because it has been held non-retroactive.

The Court also does not find any reason to allow a certificate of appeal in this case in that the authority is well settled that the Defendant's waiver is valid and his substantive claims are without merit.

An appropriate Order follows.

