

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

THE UNITED STATES OF AMERICA	:	
	:	
Plaintiff,	:	CRIM. NO. 04- 87
vs.	:	
	:	
CHANCE A. JACKSON	:	CIV. NO. 06-3935
	:	
Defendant.	:	

DuBois, J.

NOVEMBER 15, 2006

MEMORANDUM

Petitioner, Chance A. Jackson (“Jackson”), filed a *pro se* Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (the “§ 2255 Motion”) in which he asks the Court to vacate a sentence imposed following a plea of *nolo contendere* on the grounds that, (1) because he was heavily medicated during his change of plea hearing, his plea was not knowing or intelligent, and (2) his counsel was ineffective for negotiating a plea when Jackson was heavily medicated.

For the reasons set forth below, the Court concludes that Jackson knowingly and intelligently entered a plea of *nolo contendere* and that his ineffective assistance of counsel arguments are without merit. Therefore, the § 2255 Motion is denied.

I. BACKGROUND

On February 24, 2004, Jackson was charged in an Indictment with one count of possessing a firearm after having been convicted of a felony, in violation of 18 U.S.C. § 922(g), and one count of possessing cocaine base (crack), in violation of 21 U.S.C. § 844(a). On January 26, 2005, at a change of plea hearing, Jackson entered a plea of *nolo contendere*. At the plea

hearing Jackson claimed that he had no recollection of the crimes for which he was charged.

The question of Jackson's competence was examined in three independent forensic evaluations. By agreement of counsel, Jackson was first evaluated by Dr. Pogos H. Voskanian on March 16, 2004 to determine whether he was competent to stand trial. Counsel stipulated to the findings of Dr. Voskanian that Jackson was competent to stand trial and Magistrate Judge James R. Melinson found Jackson competent to proceed to trial. May 6, 2004 Order. At the request of the defense, Jackson was evaluated again by Dr. Michael Helvey on September 14, 2004, who also opined that Jackson was in fact competent. At a Competency Hearing on October 28, 2004, based upon the September 14, 2006 evaluation and the statements of defense counsel made on the record, the Court found that Jackson was competent in that he understood the nature and consequences of the proceedings against him and was able to assist properly in his defense. October 28, 2004 Order.

On December 14, 2004, at the request of the defense, Dr. Kirk Heilbrun evaluated Jackson at the Federal Detention Center for the purpose of determining the availability of an insanity defense and providing information relevant to sentencing. Dr. Heilbrun ultimately concluded that "given that Mr. Jackson is unable to remember or provide any details about the alleged offense, it remains unclear what role his mental illness and associated symptoms contributed to his appreciation of the nature and quality or the wrongfulness of any acts on the night of his alleged offense." Report of Dr. Heilbrun at 12. Although Dr. Heilbrun's report did not support an insanity defense, Dr. Heilbrun did find that Jackson, though competent, was impaired by mental illness. Specifically, Dr. Heilbrun opined that Jackson was "suffering from a severe mental illness, Paranoid Schizophrenia [and] needs to take psychotropic medication in

order to manage his Schizophrenia, as when he does not take this medication, his mental health deteriorates, and he experiences active symptoms of his mental illness, such as auditory and visual hallucinations.” Report of Dr. Heilbrun at 14.

On January 16, 2005, at the change of plea hearing, the Court engaged in an extensive colloquy with Jackson pursuant to Federal Rule of Criminal Procedure 11. In this colloquy, mindful of Jackson’s mental health status, the Court frequently questioned Jackson about his ability to understand the plea-related questions. After Jackson informed the Court that he was currently on medications—Risperdal, Prozac, and Diazepam—the Court questioned Jackson as to what effects, if any, the medications had on his ability to enter his plea and to understand the proceedings. Jackson responded to these questions and affirmed that the medications improved his ability to understand the questions posed and to think clearly. At the conclusion of the hearing, the Court found that Jackson was “fully competent and capable of entering an informed plea,” and accepted Jackson’s plea of *nolo contendere*. Hearing Transcript, January 26, 2005, at 56.

Jackson was sentenced, *inter alia*, to a term of imprisonment of 48 months on April 29, 2005, almost 2 years below the Guideline sentencing range of 70 to 80 months. Jackson did not appeal this sentence.

On September 6, 2006, Jackson filed the instant § 2255 Motion. In his request for habeas relief, Jackson argues that the Court abused its **discretion by accepting a *nolo contendere* plea that was not knowing and intelligent, and that trial counsel’s negotiation of a plea while Jackson was heavily medicated violated Jackson’s due process rights.** Petition for Writ of Habeas Corpus 5.

II. DISCUSSION

A. Knowing and Intelligent Plea

Jackson argues that the Court abused its discretion in accepting the plea of *nolo contendere* because Jackson was heavily medicated and could not appreciate the nature of the proceedings. Federal Rule of Criminal Procedure 11 requires a defendant to make a knowing and competent waiver of constitutional rights when entering either a guilty or *nolo contendere* plea. A defendant has the burden of establishing by a preponderance of the evidence that a plea was neither intelligent nor voluntary. United States v. Duarte, 166 F. App'x 630, 632 (3d Cir. 2006); United States v. Stewart, 977 F.2d 81, 85 (3d Cir. 1992). The Court concludes that Jackson has failed to meet that burden.

1. Nolo Contendere Plea

On January 26, 2005, the Court accepted Jackson's plea of *nolo contendere*. "Implicit in the *nolo contendere* cases is a recognition that the Constitution does not bar imposition of a prison sentence upon an accused who is unwilling expressly to admit his guilt but who, faced with grim alternatives, is willing to waive his trial and accept the sentence." United States v. Mackins, 218 F.3d 263, 267 (3d Cir. 2000) (quoting North Carolina v. Alford, 400 U.S. 25, 36 (1970)). In light of Jackson's inability to remember his alleged crimes, trial counsel advised the Court that Jackson would be unable to knowingly and intelligently enter a guilty plea and instead urged the Court to accept a *nolo contendere* plea to enable Jackson to accept a sentence rather than facing trial. Hearing Transcript, January 26, 2005, at 2-3. **Specifically, as counsel explained the record evinces that: "Mr. Jackson does not have a specific recollection of possessing the firearm on the date alleged in the indictment. Nevertheless, Mr. Jackson is prepared to enter**

pursuant to Alford a plea where he is not contesting the facts contained in the charge.” Id. at 2.

2. Psychotropic Medications

At the change of plea hearing, Jackson disclosed that he had recently taken psychotropic drugs, Risperdal, Prozac, and Diazepam. Hearing Transcript, January 26, 2005, at 20. That petitioner was taking such medications, however, does not in itself show that he was mentally incompetent and unable to understand the proceedings. See Layne v. Moore, 90 F. App’x 418, 423 (3d Cir. 2004); Sheley v. Singletary, 955 F.2d 1434, 1439 (11th Cir. 1992) (concluding that a “bare allegation of the level of psychotropic drugs administered to petitioner before entering his plea” is not sufficient to demonstrate incompetence to enter a plea). Upon learning that a defendant is taking medication that may impair his ability to understand the plea, a Court is required to make further inquiry into the actual effects of the medication. See United States v. Cole, 813 F.2d 43, 46 (3d Cir. 1987) (“Rule 11 counsels a district court to make further inquiry into a defendant’s competence to enter a guilty plea once the court has been informed that the defendant has recently ingested drugs or other substances capable of impairing his ability to make a knowing and intelligent waiver of his constitutional rights.”).

The Court engaged in such an inquiry, extensively questioning Jackson about the effects of the medication that he had taken:

THE COURT: You were given medication in the Federal Detention Center, is that correct?

THE DEFENDANT: Yes.

THE COURT: Do you know the name of that medication?

THE DEFENDANT: Yeah, I’m on Risperdal, Prozac and Diazepam.

THE COURT: When was the last time you took this medication?

THE DEFENDANT: Last night.

THE COURT: Does this medication help you think clearly?

THE DEFENDANT: Yes.

THE COURT: You've written to me in the past about hearing voice –
THE DEFENDANT: Yes.
THE COURT: – do you hear voices when you take this medication?
THE DEFENDANT: Sometimes the medicine can slow them down and some –
sometimes I still can hear them .
THE COURT: Are you hearing any voices now?
THE DEFENDANT: No.
THE COURT: Are you okay now?
THE DEFENDANT: Yes.
THE COURT: If you begin to hear voices, I want you to tell me; do you understand that?
THE DEFENDANT: Okay.
THE COURT: Does this medication that you take prevent you from understanding
questions or does it help you understand questions?
THE DEFENDANT: It helps me.
THE COURT: Does the medication help your thinking?
THE DEFENDANT: Yes.
THE COURT: Do you feel okay now?
The DEFENDANT: A little nervous, that's it.

Hearing Transcript, January 26, 2005, at 20-21. Thus the Court was assured by Jackson that his medications did not impair his ability to enter a knowing and intelligent plea and that the medications actually improved his mental clarity. Although Jackson now claims that his medication rendered him unable to appreciate the nature of the proceedings, “solemn declarations made in open court carry a strong presumption of verity.” Zilich v. Reid, 36 F.3d 317, 320 (3d Cir. 1994); Blackledge v. Allison, 431 U.S. 63, 74 (1977) (holding that the representations of a defendant at a guilty plea hearing “constitute a formidable barrier in any subsequent collateral proceedings”).

The Court also reviewed Jackson’s psychiatric history and use of the medication:

THE COURT: Are you taking any other medicines at the present time?
THE DEFENDANT: No.
THE COURT: I know quite a bit about your mental health because we’ve had you evaluated and I’ve read all the reports. Is there anything you want to tell me about your mental health now? I’ve read the reports. For example, are you understanding my questions?

THE DEFENDANT: Yes. Lately, like I've been getting nervous and depressed, but when I take my medicine, sometimes it helps, but sometimes I can't get out of the – get out of that mood.

THE COURT: Are you in a depressed mood now?

(Pause.)

THE DEFENDANT: I don't know, I don't . . . no . . . I don't know, not too much.

THE COURT: You don't seem that way to me –

THE DEFENDANT: Yeah.

THE COURT: – you seem to be okay –

THE DEFENDANT: Yeah.

THE COURT: – you're smiling and – although I understand this is a very big day for you, it's a serious day for you.

THE DEFENDANT: Yes.

Hearing Transcript, January 26, 2005, at 24-25. Throughout the hearing, the Court checked with Jackson to assure that Jackson was understanding and knowingly participating in the proceedings:

THE COURT: When you appeal from a plea of nolo contendere or a guilty plea, you have a limited right of appeal. You can appeal if I commit errors in this proceeding and you can appeal if I impose a sentence that is unlawful, unreasonable, improper; do you understand that?

THE DEFENDANT: Yes

THE COURT: Any questions about that?

THE DEFENDANT: No, Sir.

THE COURT: Have you understood all of my questions so far?

THE DEFENDANT: Yes.

THE COURT: Do you have any questions about anything I have said?

THE DEFENDANT: No.

THE COURT: Do you wish to talk to your attorney? I'm going to keep asking that question. You can if you want.

THE DEFENDANT: No, no, that's okay.

Id. at 41; see United States v. Ying Guan Chen, 42 F. App'x 537, (3d Cir. 2002) (finding that a district court by “asking repeatedly: ‘Do you understand?’” sufficiently clarified that a defendant's entered plea was knowing and intelligent). In one such exchange, Jackson demonstrated his ability to follow the proceedings by correcting the Court when asked about his

decision to enter his plea.

THE COURT: All right. Did you decide to plead guilty of your own free will?
(Pause.)

THE DEFENDANT: I didn't – I didn't know no – no contest meant that you –

THE COURT: That's a good answer. Did you decide to plead no contest of your own
free will

THE DEFENDANT: Yes.

THE COURT: Did anyone force you into pleading no contest?

THE DEFENDANT: No.

THE COURT: That last answer tells me that you're really thinking, Mr. Jackson, and
that's good. You're pleading no contest or *nolo contendere*.

Hearing Transcript, January 26, 2005, at 42. Following this extensive colloquy, the Court then sought assurance from both counsel for Jackson and for the government that they were satisfied that Jackson's plea was knowing, voluntary and intelligent:

THE COURT: Fine. Mr. Thompson, are you satisfied that a *nolo contendere* plea by the
defendant at this time would be a knowing and voluntary and intelligently entered
plea?

MR. THOMPSON: Yes, your Honor.

THE COURT: Are you prepared to answer the same question: Are you of the
opinion that a *nolo contendere* plea at this time under the facts presented would be
entered knowingly, voluntarily and intelligently?

MS. WOLF: Yes, your honor

THE COURT: Fine. Mr. Jackson, you've done very well today, you answered all my
questions, I want to be sure you understand them; did you understand them?

THE DEFENDANT: Yes.

THE COURT: Did you answer my questions truthfully?

THE DEFENDANT: Yes.

Id. at 54. The Court concluded that Jackson was “fully competent and capable of entering an informed plea,” and that his plea of *nolo contendere* was “a knowing and voluntary plea, supported by an independent basis of fact containing each of the essential elements of the offenses charged in Counts 1 and 2 of the indictment.” Id. at 56.

A habeas petitioner faces a heavy burden when challenging the knowing, intelligent and

voluntary nature of his or her guilty or *nolo contendere* plea. Zilich, 36 F.3d at 320. The Court concludes that Jackson has not met this burden and that the allegations contained in the § 2255 Motion are insufficient to overcome the record in this case that establishes that Jackson's plea of *nolo contendere* was entered knowingly and intelligently. See Gendrachi v. Fulcomer, No. 86-4159, 1987 U.S. Dist. LEXIS 8853, at *7-8 (E.D. Pa. **Sept. 29, 1987**) (**finding that petitioner's plea was given voluntarily when (a) throughout the colloquy, the trial court continually questioned petitioner regarding his ability to understand the proceedings and consequences of his plea, (b) the transcript of the hearing indicated that petitioner's attorney was questioned as to petitioner's ability to appreciate the proceedings, and (c) the trial court reviewed both petitioner's psychiatric history and use of the medication**).

B. Ineffective Assistance of Counsel

Jackson argues that because trial counsel allowed the plea negotiation to take place while petitioner was under the influence of psychotropic medications, trial counsel was ineffective. Jackson asserts that trial counsel's ineffectiveness was so egregious that it amounted to a miscarriage of justice in violation of Jackson's due process rights.

Under Hill v. Lockhart, 474 U.S. 52 (1985), to prevail on a claim of ineffective assistance of counsel arising out of the plea process, a petitioner must show that counsel's performance fell beneath the standard articulated in Strickland v. Washington, 466 U.S. 668 (1984). To succeed on a claim of ineffective assistance of counsel under Strickland, a defendant must show (1) his counsel's performance was deficient; and (2) that this deficient performance prejudiced the defense. Strickland, 466 U.S. at 687. The measure for counsel's performance under the first prong of Strickland is "reasonableness under prevailing professional norms." Id. at 688. As to

the second prong of Strickland, a defendant must demonstrate that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 694.

The Motion alleges that Jackson’s attorney was ineffective for negotiating a plea while Jackson was heavily medicated. That claim is rejected on the ground that there is no evidence that Jackson was under the influence of medication that rendered his plea unknowing or unintelligent. To the contrary, the record demonstrates that the medication assisted in Jackson’s ability to knowingly and intelligently participate in the change of plea hearing, and that Jackson’s plea was in fact knowing and intelligent. Accordingly, Jackson has failed to meet the first Strickland prong; Jackson has not shown that trial counsel was deficient in negotiating the plea under these circumstances. See, e.g., Johnson v. Ryan, 106 F. App’x 549, 551 (9th Cir. 2004). As to the second Strickland prong, Jackson has failed to show prejudice; he has shown no defect of counsel giving rise to “a reasonable probability that, but for counsel’s error, he would not have pleaded guilty and would have insisted on going to trial.” Hill, 474 at 59; Johnson, 106 F. App’x at 551.

The record in this case establishes that Jackson’s plea was knowing, voluntary and intelligent and therefore, Jackson’s claim that his attorney was ineffective in negotiating the plea fails. In a similar case on appeal to the Ninth Circuit, the court stated that:

As we have explained, Sandgathe’s ineffective assistance claim . . . is essentially that in light of his incompetence, counsel was professionally irresponsible and coercive in allowing him to plead guilty. The key premise of this claim – that Sandgathe was incompetent at the time of the plea – is unsupported in the record. Sandgathe presents no other evidence that counsel coerced Sandgathe to plead. We therefore affirm the district court’s denial of the ineffectiveness of counsel claim.

Sandgathe v. Maass, 314 F.3d 371, 379 (9th Cir. 2002). Because Jackson was competent to enter a plea of *nolo contendere*, and in fact entered a knowing and intelligent plea, he is foreclosed from arguing that his counsel was ineffective for allowing him to enter such a plea.

C. Necessity of Hearing

On October 13, 2006 Jackson sent a letter to the Court, which the Court will interpret as a request for a hearing on the Petition for Writ of Habeas Corpus. Upon receipt of a § 2255 petition, the district court is required to “grant a prompt hearing thereon,” unless the motion and files and records of the case show conclusively that the movant is not entitled to relief. 28 U.S.C. § 2255; see United States v. Booth, 432 F.3d 542, 545-46 (3d Cir. 2005). The Court has discretion to decide whether to hold a hearing, but the Court must “accept as true the nonfrivolous allegations in the petition.” United States v. Dawson, 857 F.2d 923, 927 (3d Cir. 1988). The Third Circuit has advised that the standard for requiring a hearing is “a reasonably low threshold for habeas petitioners to meet.” Booth, 432, F.3d at 546 (quoting United States v. McCoy, 410 F.3d 124,134 (2005)).

In deciding whether to grant a hearing, a judge’s prior familiarity with a case has been considered instructive. See McCarthy v. United States, 764 F.2d 28, 31(1st Cir. 1985) (“[G]iven the judge’s familiarity with the case as he was the presiding judge in both of the cases for which the petitioner was here sentenced – no hearing was required.”). A hearing is necessary only where the record does not resolve factual allegations, such as in a situation where allegations relate primarily to purported occurrences *outside* the courtroom upon which the record can shed no real light. See Machibroda v. United States, 368 U.S. 487, 494-95 (1962); United States v. Capisi, 583 F.2d 692, 695 (3d Cir. 1978).

Jackson has pointed to no evidence outside of the present record that could have a bearing upon his claims for relief. The Court, based upon the record in the case and the Court's extensive familiarity with Jackson's mental health history, concludes a hearing is not necessary to resolve the claims presented by Jackson's § 2255 Motion.

D. Certificate of Appealability

In the Third Circuit, a certificate of appealability is granted only if the petitioner makes: “(1) a credible showing that the district court's procedural ruling was incorrect; and (2) a substantial showing that the underlying habeas petition alleges a deprivation of constitutional rights.” Morris v. Horn, 187 F.3d 333, 340 (3d Cir. 1999); see also 28 U.S.C. § 2253(c). The Court concludes that Jackson has not made such a showing with respect to any of the claims raised in the § 2255 Motion and therefore a certificate of appealability will not be issued.

III. CONCLUSION

The Court concludes that Jackson knowingly and intelligently entered a plea of *nolo contendere*. Accordingly, the § 2255 Motion is denied. The Court will not issue a certificate of appealability on the ground that Jackson has not made a substantial showing of a denial of a constitutional right.

An appropriate Order follows.

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

THE UNITED STATES OF AMERICA	:	
	:	
Plaintiff,	:	CRIM. NO. 04- 87
vs.	:	
	:	
CHANCE A. JACKSON	:	CIV. NO. 06-3935
	:	
Defendant.	:	

ORDER

AND NOW, this 15th day of November, 2006, upon consideration of Petitioner's *pro se* Motion to Vacate/Set Aside/Correct Sentence By a Person in Federal Custody Under § 2255 (Document No. 58, filed September 6, 2006), Government's Response to Chance Jackson's Habeas Corpus Motion Under 28 U.S.C. § 2255 (Document No. 62, filed September 28, 2006), and Letter from Chance A. Jackson to Judge DuBois (Document No. 64, filed October 13, 2006), for the reasons set forth in the attached Memorandum, **IT IS HEREBY ORDERED** that:

1. Petitioner's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence is

DENIED;

2. Petitioner's Letter Request of October 13, 2006, which the Court will interpret as a Request for a Hearing is **DENIED;**

3. Petitioner's Letter Request received on November 13, 2006 for appointment of counsel is **DENIED;** and,¹

4. A certificate of appealability will not issue on the ground that petitioner has not made a substantial showing of a denial of a constitutional right as required under 28 U.S.C. § 2253(c)(2).

BY THE COURT:

/s/ Honorable Jan E. DuBois
JAN E. DUBOIS, J.

¹Copies of two letters from petitioner received on November 13, 2006 shall be docketed by the deputy clerk. In one of the letters, petitioner states that “. . . we request information on new attorney and informing the courts that we would have liked to communicate with attorney to, and before the motion 28 U.S.C. § 2255 was filed.” That was the first such request received by the Court.