

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

UNITED STATES : CRIMINAL ACTION  
 : NO. 00-710  
 v. :  
 : CIVIL ACTION  
 TYRONE MARTIN : NO. 04-3637  
 :

M E M O R A N D U M

EDUARDO C. ROBRENO, J.

April 19, 2007

Tyrone Martin has filed a pro se petition for habeas relief pursuant to 28 U.S.C. § 2255 asking this Court to vacate, set aside, or correct his sentence. The Court held an evidentiary hearing to allow Martin to provide evidence in support of his petition. For the reasons set forth below, the Court will deny the petition.

**I. BACKGROUND**

Late one winter night in Philadelphia, Martin was circling around a block plagued by drug-activity in a rented van with out-of-state tags. Police stopped Martin, searched the van, and discovered it was full of drugs, a gun, and ammunition. At a pre-trial suppression hearing, Martin challenged the search of his vehicle as being without probable cause. After this Court denied his suppression motion, Martin proceeded to trial, and a jury convicted him of possession of cocaine base with intent to

distribute, in violation of 21 U.S.C. § 841(a)(1), and with carrying a firearm in relation to a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1). Martin unsuccessfully challenged the search at trial, post trial, and on his direct appeal to the Third Circuit. United States v. Martin, 69 Fed. App'x 46 (3d Cir. 2003).

On August 2, 2004, Martin filed a pro se petition for habeas relief pursuant to 28 U.S.C. § 2255 asking this Court to vacate, set aside, or correct his sentence (doc. no. 91). The Court granted in part and denied in part Martin's petition, and ordered a hearing on the two grounds on which he may have had meritorious claims. United States v. Martin, 454 F. Supp. 2d 278, 288-89 (E.D. Pa. 2006). Those grounds involve claims of ineffective assistance of counsel through (1) counsel's prior representation of a Government witness and (2) counsel's failing to inform Martin of a plea offer made by the Government.

## **II. CONFLICT OF INTEREST**

Martin alleges in his § 2255 petition that his trial counsel, Tariq Karim El-Shabazz, Esq., failed to inform Martin that he had previously represented Johnny Culpepper, one of the Government witnesses who testified at trial. Specifically, Martin alleges in his petition that during cross-examination, Mr. El-Shabazz disclosed for the first time "that he represented Mr.

Culpepper in the past." (Pet. 5B). Martin claims that Mr. El-Shabazz's representation of Mr. Culpepper in the past "was fraught with the danger of dividing counsel's loyalties as to justify a present finding of a Sixth Amendment violation as a result of conflicting interests." (Pet. 5B).

The Court decided that Martin should be entitled to an evidentiary hearing based on these allegations, but confined the hearing to the following scope:

At the hearing, petitioner will have the opportunity to show whether Mr. El-Shabazz represented Mr. Culpepper in the past, and if he did, whether Mr. El-Shabazz had a continuing financial interest in his relationship with Mr. Culpepper and how, if at all, the past representation provided Mr. El-Shabazz with confidential information that affected his representation of the petitioner.

454 F. Supp. 2d at 283.

The Court held an evidentiary hearing on December 20, 2006 (doc. nos. 110, 114). At the hearing, Martin testified that, during the course of his trial, Mr. El-Shabazz told Martin that he "knew" Mr. Culpepper, not that he actually represented him. Tran. of Hrg. of 12/20/06 at 22. Martin "took it," however, that Mr. El-Shabazz "represented [Culpepper] in the past by saying that, I know him." Martin conceded that this inference was probably a "misinterpretation of [Mr. El-Shabazz's] language that he used to me." Id. at 23. Martin had no other evidence that Mr. El-Shabazz ever represented Mr. Culpepper. Id. at 31.

Furthermore, Mr. Martin's current counsel, Michael E. Brunnabend, Esq., summarized for the Court his efforts to determine whether Mr. El-Shabazz had ever represented Mr. Culpepper. Id. at 32-34. All these efforts indicated that he had not. Id.

Finally, Mr. El-Shabazz also testified at the hearing that he never had represented Mr. Culpepper. Id. at 36. Nor, according to Mr. El-Shabazz, had he ever indicated to Martin that he ever represented Mr. Culpepper in the past. Id.

### **III. FAILURE TO INFORM OF PLEA OFFER**

Martin also claimed in his § 2255 petition that his trial counsel (both David Kozlow, Esq. and Mr. El-Shabazz) failed to inform him of a plea offer made by the Government. Specifically, Martin claims in his petition that Assistant U.S. Attorney Joseph G. Poluka sent defense counsel a discovery packet that included a cover letter containing a Government settlement offer. According to Martin's petition, the letter stated that if Martin pleaded guilty, the Government would recommend "at the time of sentencing [that Defendant] receive a two point reduction in his base offense level for acceptance of responsibility pursuant to Sentencing Guideline 3E1.1." (Pet. 5B). Martin alleges in his petition that, had he known about it, he would have accepted this plea offer. He also claims that trial counsel

failed to inform him about the law in relation to the plea and about the maximum penalty. (Pet. 5B).

Based on these allegations, the Court found that:

[P]etitioner is entitled to an evidentiary hearing on his claim for ineffectiveness of counsel based on his allegations that Mr. El-Shabazz failed to inform him of the government's making a plea offer that may have resulted in a two-point reduction in his base level sentence for acceptance of responsibility.

Martin, 454 F. Supp. 2d at 283.

At the hearing on December 20, 2006, Martin testified that, though he wanted to "know all [his] options," his attorney never brought to his attention the option of pleading guilty, and Martin "was under the impression [that] all we can do now, is trial." Trans. of Hrg. of 12/20/06 at 15. He asserted that after he retained Mr. El-Shabazz, Mr. El-Shabazz never visited him; the only time they met was at the suppression hearing and at trial itself. Id. at 26-27. Martin testified that he first "found out" that he had an option of pleading guilty after he had already been convicted following trial, when his subsequently appointed defense counsel, Joseph Mancano, came to visit Martin and asked "why did [you] go to trial?" Id. at 20. Martin also testified that Assistant U.S. Attorney Poluka also asked him after his trial, at the proffer hearing, "why didn't you just plead out?" Id. It was only then, according to Martin, that he realized he had the option of pleading guilty.

Martin did not initially testify regarding the cover letter described in his § 2255 petition.<sup>1</sup> When later questioned regarding this letter, however, Martin stated that he had never actually seen or heard of such a letter in this case. Id. at 81. Rather, Martin testified, when formulating his § 2255 petition, he used the format of a letter addressed to another inmate, which contained a plea offer, and tailored that letter to this case. Id. In other words, Martin merely surmised that there must have been a letter containing a plea offer in this case. He has no personal knowledge of the existence of such a letter.

The Federal Defender originally appointed to represent Martin, Mr. Kozlow, also testified at the hearing. Mr. Kozlow is the attorney who initially received discovery materials from the Government, and he had no recollection of the Government offering a plea in this case. Id. at 57-61.<sup>2</sup> He also did not recall Martin being interested in pleading guilty. Id. at 63.

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<sup>1</sup> Martin's typed petition states: "On \_\_\_\_\_ Assistant U.S. Attorney \_\_\_\_\_ sent defendant attorney (sic) a discovery packet including a cover letter containing the government settlement offer." In the second blank, Martin has handwritten the name "Poluka." (Pet. 5B). The petition also states that "[t]he letter stated that the settlement offer would expire at \_\_\_\_\_." In this last blank Martin handwrote "N/A."

<sup>2</sup> Defense counsel and the Government have asserted that they could not find any plea offer within their files. However, counsel on both sides have had some difficulty locating their complete original files in this case. Nevertheless, the testimony of all the witnesses with personal knowledge of the case, including Martin's own testimony, points to the conclusion that there was never any cover letter containing a plea offer.

Mr. El-Shabazz also testified at the hearing. He stated that he met and spoke with Martin over the telephone on numerous occasions throughout his legal representation and discussed all of Martin's options with him. Id. at 49-50. During those meetings, he testified, Martin was never interested in pleading guilty, because Martin had a "vendetta" against one of the police officers involved in the case, id. at 51, 53, and Martin thought he could somehow settle that vendetta by proceeding to trial in this case:

He wouldn't even talk about pleading, he was too busy telling me how much he disliked the police, too busy telling me how much they didn't have anything, too busy telling me about his tattoo that said, F' the police and too busy trying to direct the course of the litigation in the case.

Id. at 36. Mr. El-Shabazz was emphatic that "[t]here was no indication, whatsoever, on this side of the equator from this young man, that he was interested in doing anything, other than going to trial." Id. 46.

Mr. El-Shabazz also affirmed that the Government never made a plea offer. Id. at 36. He testified that, in his experience in federal criminal matters, it is not the general practice of the Government to offer a plea to a defendant, and generally, the defendant must approach the Government and express a desire to plead guilty. Id. at 45-46. After Martin lost the suppression hearing in this case, Mr. El-Shabazz advised Martin

that he should "re-think" his decision not to plead guilty, and explained that it would be a "disaster" to take the stand in his own defense and show off his "F\_ \_ \_ the Police" tattoo. Id. at 53. However, it was Martin's desire to continue to trial and display his tattoo, which he had the opportunity to do, and did. Id. After hearing all the evidence, including Martin's own testimony in his defense, the jury convicted Martin.

#### IV. CONCLUSION

Having held an evidentiary hearing in which Martin was provided an opportunity to provide additional "specific evidence" to support the claims of his § 2255 petition, the Court is now in a position to rule on those claims. See United States v. Day 969 F.2d 39 (3d Cir. 1992). The Court finds that the files and records of the case conclusively show that Martin is entitled to no relief on his claim of ineffective assistance of counsel. Martin has failed to show that his trial counsel previously represented a Government witness. Martin has also failed to show that his defense counsel failed to inform him of any plea offer made by the Government.<sup>3</sup>

An appropriate order follows.

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<sup>3</sup> Martin has also submitted a number of pro se memoranda in which he complains that his habeas counsel has been ineffective (See doc. nos. 113, 116, 117, 119, 120). To the extent Martin requests any relief on such grounds, the Court denies this request without prejudice.

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**ORDER**

**AND NOW**, this **19th** day of **April, 2007**, for the reasons stated in the accompanying Memorandum, it is hereby **ORDERED** that defendant's petition for relief pursuant to 28 U.S.C. § 2255 (doc. nos. 91, 93) is **DENIED**.

**AND IT IS SO ORDERED.**

S/Eduardo S. Robreno

EDUARDO C. ROBRENO, J.