

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

SAMUEL WATSON,	:	
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Petitioner,	:	
	:	
v.	:	NO. 04-CR-392
	:	
	:	
UNITED STATES OF AMERICA,	:	
	:	
Respondent.	:	
	:	

MEMORANDUM OPINION & ORDER

RUFE, J.

August 4, 2009

Samuel Watson (“Petitioner”) pleaded guilty to one count of bank robbery in an open plea (“Plea”) on February 11, 2005. A presentence investigation report (“PSIR”) was then prepared, and the Court sentenced Petitioner to 120 months imprisonment at a hearing held August 5, 2005. Petitioner filed a Notice of Appeal to the Third Circuit regarding his sentence,¹ which was later affirmed.² Petitioner then filed a *pro se* petition to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 (“the Petition”), claiming, *inter alia*, that he received ineffective assistance of counsel in violation of the Sixth Amendment regarding his decision to plead guilty.³ Petitioner also filed an Amended Petition, although his claims did not change.⁴ The Government filed a Response⁵ arguing that the Petitioner’s sentence was below that which he could have received and that well established law indicates that his counsel was not ineffective under the Sixth Amendment. The

¹ Doc. No. 28

² Doc. No. 36.

³ Doc. No. 39.

⁴ Doc. No. 41.

⁵ Doc. No. 45.

Court has carefully considered these filings, as well the transcripts of all relevant hearings, and the matter is now ready for disposition.

I. FACTUAL AND PROCEDURAL BACKGROUND

On July 14, 2004, Petitioner entered a United Bank located in Philadelphia, Pennsylvania. He approached a teller and handed her a note which said, “I have AIDS. This is a stick up. Just listen or I will shoot you. Don’t fuck with me.”⁶ The teller gave the Petitioner \$1,940 in cash and he fled the scene.⁷ Police were advised that a bank robbery had taken place, and when Petitioner was located shortly thereafter he yelled, “You got me.”⁸ A hair brush and \$1,940 was found on the Petitioner and he informed the police that “I’m not saying nothing til the feds get here.”⁹ Later that day, Petitioner was transported to the FBI and he confessed to the bank robbery and signed a copy of his demand note.¹⁰ He claimed that the loss of his disability payments precipitated the bank robbery and that he had chosen the location based on escape options.¹¹

On July 8, 2004, a Grand Jury returned an indictment against the Petitioner for one count of bank robbery in violation of 18 U.S.C. § 2113(a).¹² Petitioner appeared with counsel before the Court on February 11, 2005 and pleaded guilty to the charge alleged in the indictment in an

⁶ Presentence Investigation Report (“PSIR”) ¶ 6.

⁷ Id.

⁸ PSIR ¶ 7.

⁹ Id.

¹⁰ PSIR ¶ 8.

¹¹ Id.

¹² PSIR ¶ 1.

“open plea,” without any written agreement. Prior to the Petitioner entering his plea of guilty, the Court went through a colloquy after which it was determine that he was mentally fit to enter a guilty plea and that he did so knowingly and voluntarily.¹³ The Court also informed Petitioner that he had the right to an attorney and ensured that he understood the charge outlined in the indictment.¹⁴ Additionally, the Court informed Petitioner that, if the case proceeded to trial, it would be the Government’s burden to prove beyond a reasonable doubt that he was guilty of the charges, and that entering a guilty plea would mean he was giving up the right to a trial and to challenge the admissibility of any evidence.¹⁵ The Court went on to inform Petitioner that a guilty plea would mean that a presentence report would be prepared to offer the Court advisory guidelines that he was giving up certain appellate rights.¹⁶ The Court had the Government recite the elements of charge against Petitioner, at which time the Court specifically asked and the Government answered that the crime had a maximum sentence of 20 year imprisonment.¹⁷ Petitioner then pleaded guilty to the charge of bank robbery.

Prior to Petitioner’s sentencing hearing on May 16, 2005, a PSIR was filed. It assigned Petitioner a base offense level of 20, the added two levels since the property of a financial institution was taken during the commission of the crime.¹⁸ Another two levels were added

¹³ Transcript of Plea Hearing, February 11, 2005 (“Plea Hr’g”) at 9:9-14:17.

¹⁴ Plea Hr’g 14:24-15:25.

¹⁵ Plea Hr’g 17:3-18:24.

¹⁶ Plea Hr’g 20:10-21:24.

¹⁷ Plea Hr’g 22:19-24:1.

¹⁸ PSIR ¶ 17; see U.S.S.G. § 2B3.1(b)(1).

because a death threat occurred as part of the crime,¹⁹ leading to an adjusted offense level of 24. Petitioner's fifteen prior convictions meant that he met all the criteria to be considered a career offender,²⁰ increasing his offense level to 32, but he also was given a reduction of two levels for acceptance of responsibility and another level reduction for timely entry of a plea for a total offense level of 29.²¹ The PSIR noted that Petitioner has been HIV Positive for several years and may be eligible for a downward departure of any sentence. After hearing argument from both sides, including Petitioner's statements that he suffered from depression,²² the Court continued the sentencing to obtain a psychological evaluation of the Petitioner. That evaluation took place and a summary was provided to counsel and the Court. A follow-up sentencing hearing took place on August 9, 2005.

At the hearing, the Court noted that it had received and was taking into account the medical report it had requested. The Court also heard the character testimony of Petitioner's girlfriend, Monica Kinsey, as well as a letter submitted by Petitioner's sister. When the Court asked Petitioner whether there was anything that he disagreed with in the PSIR, he informed the Court that he thought the guidelines were too harsh, a view also expressed in a memorandum submitted by his counsel.²³ However, at neither the first or the second sentencing hearing were objections to the PSIR raised, nor were any filed at any other time. The Court addressed the

¹⁹ PSIR ¶ 18; see U.S.S.G. § 2B3.1(b)(1).

²⁰ See U.S.S.G. § 4B1.1.

²¹ See U.S.G.G. § 3E1.1(b).

²² First Sentencing Hr'g, May 16, 2005 ("First Sentencing Hr'g") at 20:2-24

²³ Second Sentencing Hr'g, August 9, 2005 ("Second Sentencing Hr'g") 3:16-21; see also Doc. No. 22 [Def.'s Sentencing Mem.].

sentencing guidelines put forth in the PSIR, which stated a recommendation of 151 to 188 months imprisonment, followed by two to three years of supervised release, and a fine range of \$15,000 to \$150,000.²⁴

The Court noted that the sentencing guidelines are advisory.²⁵ Pointing out that Petitioner was then 52-years-old with a serious medical condition, and that the bottom range of the guidelines was a sentence of 12 and a half years, the Court stated, “I know with medical care he has a better chance of getting the constant care and supervision of the penal system than he does out on the street ... But is 12 and a half years the right sentence for you? For all your crimes? I don’t think so ... A ten year sentence is as much as I am willing to give you in your state of health.”²⁶ The Court sentenced Petitioner to 120 months imprisonment and supervised release of three years.²⁷ Restitution was not requested and no fine was imposed. The sentence was below the recommended guidelines range, and within the statutory maximum.

Soon thereafter, on August 15, 2005, Petitioner filed an appeal of his sentence to the Third Circuit.²⁸ This Court issued its Memorandum Opinion regarding Petitioner’s sentence on August 29, 2005, noting that although Petitioner’s serious medical conditions were considered by the Court and a reasonable sentence was imposed pursuant to the Sentencing Statute, 18 U.S.C. § 3553, no downward departure from the advisory sentencing guidelines was mandated, nor

²⁴ PSIR ¶ 93-104.

²⁵ See United States v. Booker, 543 U.S. 220 (2005).

²⁶ Second Sentencing Hr’g at 18:13-22.

²⁷ Second Sentencing Hr’g at 19:22-20:7.

²⁸ Notice of Appeal [Doc. No. 28].

requested.²⁹ The Third Circuit affirmed the Court’s decision, issuing a final judgment on the matter on April 27, 2007. Petitioner did not file a petition of certiorari.

Petitioner initially filed the instant *pro se* § 2255 habeas petition on October 27, 2007. He did not, however, use the standard form to do so and the Court ordered an amended filing which was docketed on March 18, 2008.³⁰ Petitioner presents a claim of ineffectiveness of counsel in violation of the Sixth Amendment. Although Petitioner did not submit any filings or arguments in addition to his general Petition, he clearly states his contention that “counsel repeatedly informed petitioner that he would receive a sentence of no more than 3 to 5 years due to Petitioner’s medical condition and the fact that petitioner’s mother suffers from breast cancer. Counsel failed to present said mitigating factors of mother’s illness.”³¹ The Motion and the Response filed by the Government are addressed below.

II. DISCUSSION

A. Jurisdiction

As a threshold matter, this Court has jurisdiction over the instant Petition. The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) imposes a one-year statute of limitations on habeas corpus petitions brought under § 2255 which begins to run from the latest of “the date on which the judgment of conviction becomes final” and a number of other

²⁹ See Mem. Op. [Doc. No. 32].

³⁰ Petition for Habeas Corpus (“Petition”) [Doc. No. 41].

³¹ Petition at p. 6.

occurrences not relevant to this case.³² For purposes of a federal habeas petitioner, a conviction becomes final after the time allotted for direct appeal expires.³³ In a criminal case, a defendant may appeal from the district court's judgment within ten days of entry of judgment.³⁴ If a timely appeal has been taken to the appropriate circuit court, a defendant may file a petition for a writ of certiorari with the United States Supreme Court within ninety days of circuit court's denial of his appeal.³⁵

In this case, the Court sentenced Petitioner at a hearing on August 9, 2005. Petitioner filed a notice of appeal of his sentence on August 15, 2005. On April 27, 2007, the Third Circuit affirmed the Court's decision. As a result, Petitioner's conviction became final ninety days after the Third Circuit dismissed his appeal. Because Petitioner timely filed the instant petition on October 22, 2007, this Court has jurisdiction to review his claims.

B. Applicable Law

i. Alleged Misrepresentations of Counsel Regarding Length of Sentence

In order for an ineffective assistance of counsel claim to succeed, the party alleging ineffective assistance of counsel must demonstrate two specific elements: (1) that his attorney's performance was deficient, and (2) that he was prejudiced by the deficiency. Petitioner must prove that counsel's performance fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the

³² 28 U.S.C. § 2255(f) (2006).

³³ Kapral v. United States, 166 F.3d 565, 577 (3d Cir. 1999).

³⁴ F. R. APP. P. 4(b)(1)(A)(I).

³⁵ UP. CT. R. 13(1).

proceeding would have been different.³⁶ In deciding cases where a defendant claims ineffective assistance of counsel based on allegations that counsel provided inaccurate sentence predictions on which the defendant based his guilty plea, as Petitioner does here, the Third Circuit has consistently suggested that as long as an adequate plea hearing is held, an erroneous sentencing prediction by the defense attorney does not meet the requirement of ineffective assistance of counsel.³⁷

Assuming, *arguendo*, that Petitioner's counsel did represent to him that he would receive a certain sentence if he pleaded guilty, any Sixth Amendment claim of ineffective counsel is overcome by the extensive colloquy of the Court during Petitioner's plea hearing in which it ensured that Petitioner was aware of the maximum sentence of twenty years that could result from the charge against him.³⁸ Additionally, Petitioner cannot demonstrate that the actions of counsel prejudiced him as he was sentenced to significantly less than the maximum possible sentence and, in fact, was given a sentence below the advisory guidelines. At the August 16, 2005 sentencing hearing, the Court specifically stated its reasons for imposing a lower sentence, citing Petitioner's age and medical conditions.³⁹ At the plea hearing, the Court took care to

³⁶ Strickland v. Washington, 466 U.S. 668, 687 (1984).

³⁷ See U.S. v. Shedrick, 493 F.3d 292, 299 (3d Cir. 2007). (“However, all that the law requires is that the defendant be informed of his/her exposure in pleading guilty. The law does not require that a defendant be given a reasonably accurate best guess as to what his/her actual sentence will be; nor could it, given the vagaries and variables of each defendant's circumstances and offending behavior. This case falls well within well-established precedent: defense counsel's conjectures to his client about sentencing are irrelevant where the written plea agreement and in-court guilty plea colloquy clearly establish the defendant's maximum potential exposure and the sentencing court's discretion.”).

³⁸ Plea Hr'g at 23:11-24:24:5.

³⁹ Second Sentencing Hr'g at 18:13-22.

inform Petitioner that a PSIR had not yet been prepared.⁴⁰ The Court informed Petitioner that it could not yet determine a sentence because it did not have all the appropriate information and therefore could not promise or speculate as to what his sentence would be.⁴¹

The record clearly indicates that Petitioner was made fully aware of the maximum possible sentence that he faced as well as the process by which his sentence would eventually be determined, thereby dispelling any potential misrepresentations of counsel and any Sixth Amendment claims regarding ineffectiveness of counsel. Moreover, the Court's decision to impose a sentence significantly lower than the maximum penalty and lower than the guidelines range indicates that Petitioner was not prejudiced by any potential failings of counsel.

ii. **Alleged failure to present arguments regarding Petitioner's mother's medical condition.**

Petitioner alleges that his counsel did not present sufficient information regarding his mother's illness in arguing for a lesser sentence. This contention is simply incorrect, as evidenced by the record. The Court was made aware of Petitioner's mother's medical condition via the PSIR, which contained information from a background interview conducted with Petitioner's mother. The PSIR states that his mother informed the probation officer that she was a breast cancer survivor and then notes that "she appeared to be healthy and doing well in spite of her condition."⁴² Additionally, Petitioner's attorney reminded the Court of his mother's illness at his August, 9 2005 sentencing hearing. Counsel informed the Court that Petitioner's mother was

⁴⁰ Plea Hr'g 26:7-27:6.

⁴¹ Plea Hr'g 26:8-22.

⁴² PSIR ¶ 68.

unable to be in the courtroom that day because she was in the hospital, to which the Court replied, “She has her own health issues, as I recall.”⁴³

Regardless, the Court is under no obligation to take into account the medical condition of Petitioner’s family members. The Third Circuit has stated that employment record and family ties and responsibilities are not ordinarily relevant in determining a sentence. Instead, a judge should only consider departing from the offered guidelines in “extraordinary” circumstances.⁴⁴ “Many defendants shoulder responsibilities to their families, their employers, and their communities. Disruptions of the defendant's life, and the concomitant difficulties for those who depend on the defendant, are inherent in the punishment of incarceration.”⁴⁵ While the illness of Petitioner’s mother was most certainly a difficult matter for her family, nothing about the circumstances were “extraordinary.” More importantly, Petitioner was not providing financial support to his mother, nor does anything appear of record to support his implied claim that he was in any way her primary caregiver. Because the Court was not required to account for the medical condition of Petitioner’s mother when making a sentencing decision, it finds no grounds for a Sixth Amendment claim of ineffective counsel.

III. Conclusion

For the reasons set forth above, the Court will deny Petitioner’s motion for habeas corpus relief. Additionally, the Court finds that Petitioner does not raise any substantial issue of law, and

⁴³ Second Sentencing Hr’g at 5:11-18.

⁴⁴ United States v. Higgins, 967 F.2d 841(3d Cir. 1992).

⁴⁵ United States v. Gaskill, 991 F.2d 82, 85 (3d Cir. 1993).

that there is no probable cause for the issuance of a certificate of appealability.⁴⁶ An appropriate Order follows.

⁴⁶ A court should issue a certificate of appealability where a petitioner makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). A petitioner meets this burden by showing that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” Slack v. McDaniel, 529 U.S. 473, 484 (2000). Petitioner has not met his burden here.

**IN THE UNITED STATES DISTRICT COURT
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SAMUEL WATSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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NO. 04-CR-392

ORDER

AND NOW, this 4th day of August 2009, upon consideration of the Petition filed in the above captioned action pursuant to 28 U.S.C. § 2255 [Doc. No. 41], and the Government's Response [Doc. No. 43], a review of the entire record and in accordance with the foregoing Memorandum Opinion it is hereby **ORDERED** as follows:

1. Petitioner Samuel Watson's Petition is **DENIED**;
2. There is no probable cause to issue a certificate of appealability.

The Clerk of Court is **DIRECTED** to **CLOSE** this case.

It is so **ORDERED**.

BY THE COURT:

s/Cynthia M. Rufe

CYNTHIA M. RUFÉ, J.