

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

UNITED STATES OF AMERICA : CRIMINAL NO. 93-394
 :
 v. :
 :
 CRAIG B. SOKOLOW : C.A. No. 98-764

MEMORANDUM & ORDER

J.M. KELLY, J.

MARCH , 1999

Presently before the Court are Craig B. Sokolow's ("Sokolow") Objections to the Report and Recommendation of Magistrate Judge Thomas J. Rueter on Sokolow's Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255.

Sokolow has objected to almost every aspect of the Report and Recommendation, but his Objections fall into three categories: 1) his "actual innocence" excuses his raising issues here for the first time which could have been raised on appeal; 2) "newly discovered evidence" casts doubt upon his conviction; and 3) his trial counsel was woefully ineffective such that Sokolow was denied a fair trial.

PROCEDURAL DEFAULT

An issue that could have been raised on direct appeal, but was not, is subject to procedural default. United States v. Frady, 456 U.S. 152, 162-67 (1982). Such claims are waived unless the prisoner can show either actual innocence or cause excusing the procedural default, and actual prejudice resulting from the error. Id. at 168. On several issues, Sokolow contends that he is "actually innocent," therefore his failure to raise

these issues upon appeal should be excused. Beyond his statement of actual innocence, Sokolow does not demonstrate that he is actually innocent. For example, Sokolow contends that an Internal Revenue Service determination refutes that he laundered in excess of \$4,000,000. Sokolow has not shown what factors the IRS relied upon in its determination or how this refutes the great quantum of evidence that he did in fact launder in excess of \$4,000,000.

NEWLY DISCOVERED EVIDENCE

Sokolow contends that newly discovered evidence demonstrates his innocence, the inapplicability of seizure of substitutable assets and his inability to make restitution. Sokolow has failed, with one exception, to make any showing what this evidence will prove. Accordingly, this newly discovered evidence does not support his Motion. Sokolow does contend that there is evidence that many members of his group did not receive billing statements with a Blue Cross logo. Even if this were true, it would not overcome the great quantum of evidence presented at trial that Sokolow sold his insurance scheme as a plan fully covered by Blue Cross.

INEFFECTIVE ASSISTANCE OF COUNSEL

In order to succeed on an ineffective assistance of counsel claim, a petitioner must show that: (1) "counsel's representation fell below an objective standard of reasonableness" and (2)

"there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland v. Washington, 466 U.S. 668, 688, 694 (1984). Upon reviewing the Objections filed by Sokolow, the Court agrees with Magistrate Judge Rueter; that Sokolow has shown neither of the Strickland elements to support his assertion that his attorney was ineffective.

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O R D E R

AND NOW, this day of March, 1999, upon consideration of the Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 of Craig B. Sokolow ("Sokolow"), the Government's Response thereto, the Report and Recommendation of Magistrate Judge Thomas J. Rueter, Sokolow's Objections to the Report and Recommendation, and after after a careful and independent review of the record in this matter, it is ORDERED:

1. The Report and Recommendation is APPROVED and ADOPTED.
2. Sokolow's Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 is DENIED.
3. There are no grounds to issue a Certificate of Appealability.

BY THE COURT:

JAMES MCGIRR KELLY, J.