

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
	)	
<b>v.</b>	)	<b>Crim. No. 96-17-B</b>
	)	
<b>AMY LEGASSE,</b>	)	
	)	
<b>Defendant</b>	)	

***RECOMMENDED DECISION TO DENY DEFENDANT'S MOTION  
FOR COLLATERAL RELIEF PURSUANT TO 28 U.S.C. § 2255***

Amy Legasse moves this Court to vacate, set aside or correct her sentence pursuant to 28 U.S.C. § 2255 (1994 & Supp. 1997). Legasse pleaded guilty to three counts of transportation of stolen goods in interstate commerce and aiding and abetting that crime, 18 U.S.C. §§ 2, 2314 (1969 & Supp. 1997); one count of conspiracy to interfere with commerce by robbery, 18 U.S.C. § 1951 (1984 & Pamph. 1997); and one count of conspiracy to interfere with commerce by robbery and aiding and abetting that crime, 18 U.S.C. §§ 1951, 1952 (1984 & Pamph. 1997). She was sentenced to a term of seventy-eight months' imprisonment. Legasse claims that she received ineffective assistance of counsel; that her guilty pleas failed to satisfy the requirements set forth in Federal Rule of Criminal Procedure 11; that the Court erred in calculating the sentence; and that prosecutorial misconduct occurred regarding a promised departure and certain sentencing reduction motions.

A section 2255 motion may be dismissed without an evidentiary hearing if the "allegations, accepted as true, would not entitle the petitioner to relief, or if the allegations cannot be accepted as true because they are contradicted by the record, inherently incredible, or conclusions rather than statements of fact." *Dziurgot v. Luther*, 897 F.2d 1222, 1225 (1st Cir.

1990) (internal quotation and citation omitted). Because I find that Legasse's allegations, accepted as true, do not entitle her to relief, I recommend that her motion be denied without an evidentiary hearing.

## **I. Background**

Legasse pleaded guilty to conduct that occurred in the summer and fall of 1995, when she and five other individuals participated in thefts and robbery of computer chips from an Augusta business. Following her pleas of guilty on May 16, 1996, to the above referenced counts, the Court enhanced her offense level because a gun was brandished during the robbery, a security guard was restrained and injured, and more than \$800,000 in computer chips was taken. After the government moved for a downward departure from the Sentencing Guideline Range of 121-151 months, the Court imposed on Legasse on October 11, 1996, a seventy-eight month sentence. Although Legasse directly appealed her sentence, she later moved for leave to withdraw the appeal. On March 16, 1997, the First Circuit Court of Appeals granted the motion.

## **II. Discussion**

### *A. Ineffective assistance of counsel*

Legasse first contends that she received ineffective assistance of counsel because her attorney failed to raise objections to the presentence investigative report or at sentencing.

"To establish a Sixth Amendment violation, [] [a petitioner] has to show that his lawyer's performance 'fell below an objective standard of reasonableness,' and that prejudice resulted because, absent the mistake or mistakes, there is a reasonable probability that the outcome would have been different." *United States v. Alston*, 112 F.3d 32, 36-37 (1st Cir. 1997) (quoting *Strickland v. Washington*, 466 U.S. 668, 687-688, 691-692 (1984)). Ineffective assistance of

counsel claims are reviewed under the familiar two-prong analysis set forth in *Strickland*. Specifically, a petitioner must show the Court that counsel's performance was deficient. *Strickland*, 466 U.S. at 687. The petitioner also must show that, but for counsel's deficient performance, the outcome of the trial would have been different. *Id.* There is no requirement that the Court analyze these separate prongs in any particular order; a failure to show prejudice will suffice to defeat a particular claim, without reference to the level of counsel's performance. *Id.* "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.*

Legasse does not state how her attorney's assistance was ineffective, or what specific objections should have been raised by her. A review of the record discloses that when asked by the Court, Legasse stated she had reviewed the presentence investigative report and had no objections to it. In light of such evidence, and without more specific factual allegations by Legasse, this conclusory claim must fail. *Dziurgot*, 897 F.2d at 1225.

*B. Rule 11 hearing*

Legasse also contends that her guilty pleas were not knowing, intelligent, and voluntary. She claims that she is entitled to relief because the Court (1) did not read the indictment to her at the Rule 11 hearing; (2) failed to advise her of a right to court appointed counsel; and (3) failed to inquire whether the pleas were the result of negotiations or discussions with the government.

Legasse is not entitled to relief on this claim, however. A review of the Rule 11 hearing

transcript discloses that although the Court did not read the actual indictment to Legasse, it did explain the nature of the charges to her, and asked her if she understood them. Also, the plea agreement signed by Legasse sets forth the nature of the five charges. Finally, the provisions of Rule 11 do not even require that an indictment be read in its entirety. The rule only requires that the Court determine that a defendant understands "the nature of the charge to which the plea is offered, . . . ." Fed. R. Crim. P. 11(c)(1).

Legasse's complaint that she was not advised of her right to court appointed counsel is without merit, as well. It strains credulity for Legasse to assert that she was unaware of her right to court appointed counsel when, by the time of the Rule 11 hearing, the Court already had appointed counsel for Legasse on two separate occasions. The Court implied such a right anyway when it explained to Legasse that she would, by pleading guilty, give up her right to confront witnesses at trial "through your counsel." Rule 11 appears to require advice about the appointment of counsel only "if the defendant is not represented by an attorney, . . . ." Fed. R. Crim. P. 11(c)(2). Legasse was represented by counsel at the time she entered her pleas. The rule thus does not apply in this instance, and the Court did not err by failing to expressly advise Legasse yet again of her right to court appointed counsel.

A further basis for relief asserted by Legasse concerns the Court's failure to inquire "whether her pleas [were] the result of negotiations or discussions." Contrary to her contention, the record discloses that the Court did in fact inquire about the existence of the plea agreement. The agreement was filed with the Court, and Legasse herself told the Court that she had no questions concerning it. Legasse also told the Court that she had signed the agreement. Thus, because this allegation is directly refuted by the record, the claim may be denied without an

evidentiary hearing. *Dziurgot*, 897 F.2d at 1225.

*C. Sentencing*

Legasse raises a variety of issues with respect to the Court's sentencing findings. She challenges unspecified testimony related to quantity, questions the Court's failure to find that she played a "minor role" in the offenses, and claims errors in certain sentencing enhancements and factual findings. None of these non-constitutional, factual findings by the Court are cognizable in this motion, however, because Legasse did not raise them on direct appeal. *Knight v. United States*, 37 F.3d 769, 772-773 (1st Cir. 1994). In view of the fact that Legasse withdrew her direct appeal, the Court lacks jurisdiction over this claim, and it should be dismissed. *Id.*

*D. Prosecutorial misconduct*

Legasse's final claim is based on her contention that the United States Attorney for the District of Maine "made false promises . . . regarding cooperation, Grand Jury investigations and 5K1/Rule 35 motions." She again fails, however, to identify with any specificity what promises were made or broken by the government. Without any factual basis to support this conclusory claim, the Court should deny it without an evidentiary hearing. *Dziurgot*, 897 F.2d at 1225.

Even were the Court to consider the claim, the record discloses that a downward departure pursuant to Sentencing Guideline 5K1 was requested by the government and granted by the Court. Further, the government stated at the hearing that the reason it did not seek a Rule 35 reduction of sentence was because it believed Legasse had not told the complete truth about the whereabouts of certain monies received from the computer chip thefts and robbery. Finally, the plea agreement between the parties that was filed with the Court states that no agreements existed between the parties except those reduced to writing. This claim should be dismissed

without an evidentiary hearing, as well.

### **III. Conclusion**

For the foregoing reasons, I recommend that Legasse's motion to correct her sentence be **DENIED** without an evidentiary hearing.

### NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

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Eugene W. Beaulieu  
United States Magistrate Judge

Dated this 9th day of December, 1997