

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA)
)
)
v.) Criminal No. 97-82-B
)
JAMIE COX)

**Recommended Decision on Defendant’s Petition for
Writ of Habeas Corpus Under 28 U.S.C. §2255**

On February 19, 1998, Petitioner pled guilty to seven counts of mailing threatening communications in violation of 18 U.S.C. §§876 and 2, and eleven counts of making extortionate threats by mail in violation of 18 U.S.C. §§876 and 2. On May 15, 1998, United States District Judge Morton Brody sentenced Petitioner to forty-six months in jail. Petitioner now files this motion claiming that his plea was secured in violation of his constitutional rights.

A court should dismiss a 2255 motion without an evidentiary hearing if “(1) the motion is inadequate on its face, or (2) the movant’s allegations, even if true, do not entitle him to relief, or (3) the movant’s allegations need not be accepted as true because they state conclusions instead of facts, contradict the record, or are inherently incredible.” David v. United States, 134 F.3d 470, 477 (1st Cir. 1998). For reasons stated below, the Court is satisfied that the Petitioner’s allegations contradict the

established record and that even if true, do not state grounds for relief. The Court therefore recommends that the motion be dismissed without an evidentiary hearing.

Factual Background

While incarcerated in the Maine Correctional Institution (MCI) Petitioner sent several threatening letters, some of which contained demands for money, to various individuals. Petitioner later pled guilty to seven counts of mailing threatening communications and eleven counts of making extortionate threats by mail. The Court held a subsequent sentencing hearing on May 15, 1998. At the hearing, it was determined that because Petitioner was a career offender his total offense level of eleven was increased to thirty-two. The Court then decreased the level by three to twenty-nine for acceptance of responsibility. Because of various previous offenses, the Petitioner was in a Criminal History Category IV, making his guideline range 151 to 188 months.

At the hearing, the Government requested that the Court impose a sentence of 151 months. Defense counsel asked the Court to depart from the guidelines because Petitioner sent the letters from prison thereby making it impossible for him to carry out the threats made in the letters. Counsel also argued that Petitioner wrote the letters not intending to harm anyone. Instead, counsel argued, Petitioner wrote the letters because he believed he would be moved from MCI to a federal facility and that

if federal charges were brought against him the state would drop the state sentence or would allow him to serve the state sentence concurrently with his federal sentence in a federal facility. Counsel also argued that the threats had little impact on the victims. For various reasons, including those offered by Petitioner's counsel, the Court determined that this case warranted a departure from the guideline range and sentenced Petitioner to forty-six months to be served after he completes serving his state sentence.

On May 18, 1999 Petitioner filed this section 2255 motion claiming that he was rendered ineffective assistance of counsel in violation of the Sixth Amendment. Under Ground One Petitioner first alleges that he was rendered ineffective assistance because while awaiting trial in MCI prison officials: denied him contact visits with counsel, monitored his telephone conversations, opened his legal mail, prevented him from exchanging documents with counsel and prevented him from having note-taking materials. Next, Petitioner claims that counsel failed to seek a psychiatric evaluation based on his youth and inability to cope with being placed in MCI when he wrote the letters. Lastly, Petitioner maintains that he did not fully understand the penalty he faced by pleading guilty and that his attorney failed to properly inquire into his intent behind writing the letters.

Under Ground Two petitioner again alleges he was given ineffective assistance of counsel. Petitioner argues that he was suicidal and distressed when he wrote the letters. He again stated that his attorney failed to adequately investigate why he wrote the letters and should have asked to have Petitioner psychiatrically evaluated. In his brief Petitioner reiterated most of the issues raised earlier in his petition but added whether “[t]he totality of conditions within the Maine Correctional Institution did deny petitioner effective assistance of counsel.” Petitioner’s Brief at p.1. Petitioner also raises whether the confinement conditions in the prison had a chilling effect on the attorney-client relationship that deprived him of a fair hearing.

Sixth Amendment

Ineffective assistance of counsel claims are reviewed under the familiar two-prong analysis set forth in Strickland v. Washington, 466 U.S. 668 (1984). Specifically, Petitioner must show the Court that counsel’s performance was deficient. Id. at 687. Petitioner must also 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.

When a petitioner challenges a plea, the Court applies the same two-part test enunciated in Strickland. Hill v. Lockhart, 474 U.S. 52, 57 (1985). Specifically, the defendant must show that counsel's representation 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 proceeding would have been different. Id.

A. Failure to Seek a Psychiatric Evaluation

Petitioner claims that counsel should have requested that a psychiatric evaluation be performed on him. He claims that had such a evaluation occurred it would have shown that he was suffering from sensory deprivation that induced psychosis causing him to become despondent and to seek contact any way he could. Petitioner's present assertion conflicts with the record established during his change of plea and sentencing hearings in which Petitioner answered the questions in a lucid manner, stated he was satisfied with his representation, and made the following statement at sentencing hearing:

I do take full responsibility of the crimes that I've done. I have admitted them, every one of them, to the investigators that came to me. I do want to make clear that I – the letters that I have written, I did not mean to harm the people that I written to. I did not try to get any money from them. I did ask money from them, but there was no intentions of me to get any money from them. The reasons for me to write those letters was for me – I was hoping that, if I get sentenced to federal time before the state, maybe I can get into federal time and may be some – maybe they'd drop the state time if I go to federal or maybe they will run it the same time as my federal. But the way it turned out, it did not work out that way, and I do apologize to the court for the crimes I have committed. And, like I say, I do take full responsibility of the crimes I committed and that's it.

Petitioner's statement directly contradicts and refutes the notion that he was under some mental disease or defect when he drafted the letters. He explains that he knew exactly what he was doing when he wrote those letters and also explains why he wrote the letters. Petitioner's statements at the hearing carry with them the strong presumption of veracity which his present assertion fails to rebut. Blackledge v. Allison, 431 U.S. 63, 74 (1977) ("Solemn declarations in open court carry a strong presumption of verity."). Based on Petitioner's own words, it was objectively reasonable for counsel to accept Petitioner's explanation of why he wrote the letters and not request a psychiatric evaluation.¹

¹Another glaring deficiency in Petitioner's assertion is that he fails to explain how a psychiatric evaluation would have led him to plead not guilty to the charges made against him.

B. Counsel's Alleged Failure to Explain Sentence Exposure

Petitioner next claims that counsel failed to explain his sentence exposure to the federal charges. This conclusory assertion is refuted by the record established at his change of plea hearing. Panzardi-Alvarez v. United States, 879 F.2d 975, 982 (1st Cir. 1989) (“Generally, we will accept the accuracy and the truth of the Rule 11 motion unless the defendant makes a specific showing that the testimony was not in fact accurate.”). Petitioner told the Court that counsel explained to him the sentence he could receive by pleading guilty to the charges. Further, not only did counsel explain the sentencing ramifications to Petitioner, the Court also made clear the penalties Petitioner faced once he pled guilty to the eighteen counts against him. Therefore, even if counsel failed to explain the sentence he faced, Petitioner was not prejudiced because the consequences to pleading guilty were fully explained to him by the Court.

C. Counsel's Alleged Failure to Inquire into Cox's Intent

Petitioner next argues that counsel failed to inquire why he wrote the letters. The assertion parallels Petitioner's previous assertion that counsel should have requested that a psychiatric evaluation be done. Petitioner maintains that he was “very emotional” because he had been sentenced to a long prison term and that the letters were in fact a cry for help because he had no one to talk to. Nowhere does

Petitioner refute the reason he gave at the sentencing hearing that he wrote the letters under the belief that he would be transferred from MCI to a federal facility. Further, it is clear from the sentencing hearing that counsel did inquire into Petitioner's intent behind writing the letters and that Petitioner told counsel that the purpose behind writing the letters was the same he offered to the court, namely, to coerce authorities to move him from MCI. This fact demonstrates that counsel did inquire into Petitioner's intent and the Court is satisfied that counsel's performance was not deficient.

D. Failure to Investigate

Petitioner next contends that counsel failed "to properly investigate what grounds of a defense was available to me." A fatal flaw in Petitioner's conclusory assertion is that, even if proven true, he fails to allege what additional information counsel would have discovered that would have change the outcome of the proceedings. Having failed to allege how, but for counsel's alleged error, he would have pled not guilty to the charges, this assertion need not be further explored at an evidentiary hearing.

*E. Conditions of confinement*³

Petitioner alleges under his ineffective assistance of counsel claim that while incarcerated at MCI he was denied the opportunity to meet with counsel, prison officials opened his mail, prison officials did not permit him to exchange documents with counsel and that prison officials monitored his phone conversations. Petitioner's argument that counsel was ineffective for raising the confinement conditions imposed on him is without merit. Even if counsel had raised the issue with the court, Petitioner fails to explain how raising that issue would have changed his plea.

Petitioner's argument that the confinement conditions themselves violated his right to effective counsel by creating a "chilling effect" on the attorney-client relationship is also deficient. "A defendant's sixth amendment right to counsel is violated when a defendant is denied access to counsel that is necessary for consultation and trial preparation." United States v. Ramos, CRIM A. No. 88-371 1990 WL 28613 at *1 (E.D. La. March 15, 1990) (citing Gholson v. Estelle, 675 F.2d 734, 743 (5th Cir. 1982)). Besides being conclusory in nature in that Petitioner provides no evidence to support this assertion, the transcripts from the change of plea hearing and sentencing hearing make plain that counsel, in fact, did meet with and

³ Petitioner argues that the conditions of confinement violated counsel's right to practice his profession. Counsel, not Petitioner, has standing to assert counsel's right to practice. Conn v. Gabbert, 119 S.Ct. 1292 (1999).

discuss the pending charges against Petitioner. For example, Petitioner stated at the sentencing hearing that he never intended to harm anyone and that he believed by writing the letters he would be transferred from MCI. These are the very reasons counsel successfully argued to have Petitioner's sentence reduced from the range suggested by the guidelines. Further, during the change of plea hearing Petitioner stated that he was satisfied with counsel's representation, that counsel explained the elements of the charges pending against him, and that counsel explained to him the sentence that could be imposed. For the reasons stated above, the Court is satisfied that no evidentiary hearing is needed.

Voluntariness of Plea

Petitioner claims that the plea he gave was not voluntary. This assertion is completely refuted by the record both at the change of plea hearing and at the sentencing hearing. At the change of plea hearing Cox told the Court that he spoke to counsel about the charges made against him and that he understood the elements of the crimes and the penalties which may be imposed on him. Petitioner also stated that he wanted to plead guilty to the charges. In addition, as stated above, at the sentencing hearing Petitioner made plain that he took full responsibility for the crimes he committed.

Petitioner also claims that he did not understand the sentence he faced once he pled guilty. As explained above, the record directly refutes this assertion and reflects that Petitioner stated that counsel did explain to him the penalty he could face if he pled guilty.⁴

Conclusion

For the reasons stated above, the Court recommends that Petitioner's motion be dismissed without an evidentiary hearing.

⁴ Petitioner's last assertion that he did not know he could serve jail time for writing the letters is not pertinent to whether he may be entitled to an evidentiary hearing in this collateral action.

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.

Eugene W. Beaulieu
United States Magistrate Judge

Dated on: November 24, 1999