

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
<b>v.</b>	)	<b>Criminal No. 94-68-P-C</b>
	)	<b>(Civil No. 98-122-P-C)</b>
<b>MICHELLE T. MARENGHI,</b>	)	
	)	
<b>Defendant</b>	)	

**RECOMMENDED DECISION ON DEFENDANT’S MOTION  
FOR COLLATERAL RELIEF UNDER 28 U.S.C. § 2255**

Michelle T. Marenghi moves this court to correct her sentence pursuant to 28 U.S.C. § 2255. A sentence of 70 months imprisonment was imposed upon a conviction following trial before a jury of conspiracy to possess with intent to distribute in excess of five grams of cocaine base and possession with intent to distribute in excess of five grams of cocaine base, in violation of 21 U.S.C. §§ 841 and 846. Judgment (Docket No. 57) at 1. Marenghi contends that she received ineffective assistance of counsel during sentencing and that the sentence imposed fails to take into account her minimal role in the offense, coercion by her boyfriend causing her to commit the crime, and an alleged recent medical diagnosis of high cholesterol and atypical precancerous cells.

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) (citations omitted). In this instance, I find that the allegations, accepted as true, would not entitle Marenghi to relief.

Accordingly, I recommend that the motion be denied without an evidentiary hearing.

### **I. Background**

As the First Circuit noted on Marenghi's direct appeal from her conviction, an investigation by agents of the Maine Drug Enforcement Agency into the distribution of crack cocaine in Portland, Maine, culminated on December 9, 1994 when the agents and officers from the Portland Police Department "pulled into a driveway in Portland behind a vehicle driven by [Marenghi] and occupied by five others." *United States v. Marenghi*, 109 F.3d 28, 30 (1st Cir. 1997). After being transported to the police station and advised of her *Miranda* rights, Marenghi removed a plastic bag from her pants. *Id.* at 30-31. The bag contained crack cocaine. Trial Transcript, Volume II ("Trial Tr.") (Docket No. 59) at 95. Marenghi subsequently dictated a statement concerning her involvement in distributing crack cocaine in Portland. *Marenghi*, 109 F.3d at 31. She was convicted following a three-day trial. *Id.* at 29.

Marenghi does not contest the base offense level of 32 assigned by the court at sentencing. Memorandum of Sentencing Judgment ("Sentencing Mem.") (Docket No. 56) at 1. The court reduced the offense level by two pursuant to United States Sentencing Commission Guideline ("U.S.S.G.") § 3B1.2(b):

The Court FINDS that this defendant was in an abusive relationship with a co-conspirator for a period of five (5) years and that the co-conspirator appears to have been the one planning and instigating the illegal activity, and CONCLUDES that the Defendant was a minor participant in this offense. The Adjusted Base Offense Level is reduced to Level "30." . . . The Court REJECTS Defendant's claim of duress for sentencing purposes, for reasons stated on the record at imposition of sentence.

*Id.* at 1-2. Those reasons were stated as follows:

The record will reflect that the Court rejects the defendant's claim of duress for sentencing purposes so far as a downward departure below the mandatory minimum statutory sentence for a term of imprisonment.

\* \* \*

The bottom line here is that there has always been to this Court and I suspect to everybody else involved here, a very fundamental emotional type of mystery about the reasons for the conduct of this defendant. And I have been concerned from the very beginning, way before we went to trial in this case, that there was some element of emotional compulsion and infatuation that this woman has with Freddie Long, that has so far distorted her judgment, that there was serious questions as to whether a responsible system of justice could hold her responsible for what had happened in the circumstances.

The course of trial, the course of the development of and my consideration of this presentence report, what I have heard from her here today, her counsel has said in her behalf, to counter balance against what the assistant United States Attorney has to say, satisfies me fully that she did not do these things under the type of duress that is contemplated by section 5K2.12.

The record both in her testimony at trial, in her statement given to officer Pelletier the very night of her arrest, and all of the evidence accumulated in the case makes it clear that she had ample opportunity to break away from him, that she was being encouraged by her family to do so, that they made available to her the resources for her to accomplish that, that she in fact lived away from them almost all the time; she didn't live with him as such. She went to school, lived at home. When she was with him she was under his — I'm satisfied that was not because of any threat of physical harm or injury or death, it was because she had this terrible compulsion and infatuation and she did it in order to hold his attention, in order to accomplish what she had in mind for her goals in respect to a relationship with him. That is not duress.

I don't know, and I'm not competent to judge what it may be, or what the significance of it may be, but I know it is not the type of force to compel conduct that the law recognizes as a sufficient defense, and the jury recognized that. And I know further that it is not the type of duress that is contemplated by the guidelines to be a basis for a departure downward.

So for those reasons I have determined to deny that departure.

Trial Tr. at 321-23.

Marengi appealed her conviction solely on the ground that the court erred in denying her motion to suppress her written statement. *Marengi*, 109 F.3d at 30. The First Circuit affirmed her

conviction. *Id.* at 34.

## II. Discussion

As the basis for her claim of ineffective assistance of counsel during sentencing, Marengi asserts that her attorney “failed to argue for further downward departures, mislead [sic] the Defendant as to her plea of guilty, failed to take into account that Defendant was admitting involvement in the offense under circumstances of duress and coercion.” Petition under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (“Petition”) (Docket No. 63) at 5.

*Strickland v. Washington*, 466 U.S. 668 (1984), provides the applicable standard for assessing whether a defendant has received ineffective assistance of counsel such that her Sixth Amendment right to counsel has been violated. The defendant must show that her counsel’s performance was deficient, i.e., that the attorney “made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Id.* at 687. The defendant must also make a showing of prejudice, i.e., “that counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” *Id.* The court need not consider the two elements in any particular order; failure to establish either element means that the defendant is not entitled to relief. *Id.* at 697.

First, it is clear that Marengi did not plead guilty in this case. Therefore, she could not have been misled by her trial counsel concerning such a plea. Next, the petition, unaccompanied by any memorandum of law, fails to specify what downward departures should have been sought by trial counsel beyond those for a minor role in the offense, acceptance of responsibility, and the “safety

valve” provision of U.S.S.G. § 5C1.2, all of which she received. Sentencing Mem. at 1-2. Allegations of ineffective assistance of counsel that are insufficiently specific to raise an issue of fact that would merit relief are subject to dismissal. *United States v. Michaud*, 925 F.2d 37, 41 (1st Cir. 1991). That is the case here.

Marenghi’s final argument in support of her claim of ineffective assistance of counsel is that her trial counsel “failed to take into account” that her confession was due to duress and coercion. This issue appears to have been resolved on direct appeal, where the First Circuit upheld the admission of that confession. *Marenghi*, 109 F.3d at 30-34. If Marenghi means to argue that the confession was coerced by someone other than the police, any argument on that basis by her trial counsel would have been futile. *Michigan v. DeFillippo*, 443 U.S. 31, 38 n.3 (1979) (exclusionary rule intended to deter unlawful police conduct). If the argument is addressed only to police conduct, trial counsel certainly raised the issue. An extensive suppression hearing was conducted to address the issue. The record shows that, far from failing to take into account the possibility that Marenghi’s confession was the result of duress or coercion, her trial counsel pushed that claim as far as he could. Transcripts of Hearing on Motion for Suppression, Docket Nos. 32 & 41 and Transcript of Proceedings on Continued Motion for Suppression . . .beginning on the 11th day of July 1995. Neither prong of the *Strickland* test is satisfied by this allegation.

Two of Marenghi’s remaining three claims address the court’s application of the sentencing guidelines in her case. Alleged errors in the application of the sentencing guidelines are not cognizable on collateral attack under section 2255. *Knight v. United States*, 37 F.3d 769, 772-73 (1st Cir. 1994). Marenghi does not contend that the alleged errors constitute a miscarriage of justice, the only basis for exception from this rule, *id.* at 773, nor could she do so in the absence of a claim of

actual innocence, *Burks v. Dubois*, 55 F.3d 712, 717 (1st Cir. 1995), which she does not make.

Marenghi's final claim asserts that a recent diagnosis of "high cholesterol and atypia [sic] pre cancerous cells," Petition at 6, provides a ground for reducing her sentence. She also raised this claim in a separate Motion for Reduction of Sentence (Docket No. 62), which this court denied after concluding that it was without authority to grant the requested relief. Endorsement. If Marenghi means to assert that her medical condition has deteriorated during her incarceration, thus entitling her to some form of compassionate release, administrative provisions exist for such an application. 28 C.F.R. § 571.63. If she means to assert that the medical care provided for her current medical condition is inadequate, that is a claim concerning the execution of her sentence rather than its imposition and must be addressed to the federal court having jurisdiction over the place where she is incarcerated, which in this case is Connecticut. *United States v. DiRusso*, 535 F.2d 673, 674 (1st Cir. 1976).

In neither case does this court have the authority to correct Marenghi's sentence under section 2255 for such a reason. That statute provides for relief only if "the sentence was imposed in violation of the Constitution or laws of the United States, or . . . the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack." None of these grounds is implicated by Marenghi's assertion concerning her health. The only listed ground that might appear on its face to be applicable to Marenghi's claim, the "catch-all fourth category" has been held to include "only assignments of error that reveal 'fundamental defect[s]' which, if uncorrected, will 'result[] in a complete miscarriage of justice,' or irregularities that are 'inconsistent with the rudimentary demands of fair procedure.'" *David v. United States*, 134 F.3d 470, 474 (1st Cir. 1998), quoting *Hill v. United*

*States*, 368 U.S. 424, 428 (1962). Marenghi’s claim concerning a “recent diagnosis” does not rise to this level.<sup>1</sup>

### III. Conclusion

For the foregoing reasons, I recommend that the motion to vacate, set aside or correct the 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) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after 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.*

*Dated this 24th day of June, 1998.*

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*David M. Cohen  
United States Magistrate Judge*

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<sup>1</sup> The court was aware at the time of sentencing that the defendant had “anaplasia, which is pre-cancer cells on her cervix.” Presentence Investigation Report at 7. It is not at all clear how a diagnosis of “atypia pre cancerous cells,” Petition at 6, differs from the condition at the time of sentencing.