

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

MAURITA STOVALL,

Defendant.

ORDER

00-C-0469-C
97-CR-0074-C

Defendant Maurita Stovall has filed a motion pursuant to 28 U.S.C. § 2255, in which she challenges the sentence imposed on her in this court on April 24, 1998, and affirmed by the court of appeals on August 6, 1999. Defendant contends that her trial counsel was ineffective for a variety of reasons, that the prosecutor engaged in misconduct when he gave leniency to certain witnesses and that her Fourth Amendment rights were violated in two respects. The motion will be denied. Defendant's allegations are inadequate to amount to a cognizable claim of ineffectiveness; her claim of prosecutorial misconduct rests on a case that has been withdrawn by the court of appeals that heard it and which was never followed in this circuit; and her Fourth Amendment claim is essentially frivolous.

A. Constitutional Ineffectiveness of Counsel

Defendant alleges a myriad of errors on the part of her trial counsel that can be considered in five categories. First, he failed to offer the court an instruction allowing the jury to find that defendant was not part of the charged conspiracy to distribute crack cocaine but was involved with the conspiracy in merely a buyer-seller relationship. Second, counsel was ineffective in not arguing that she should have been sentenced for distributing powder rather than crack cocaine. Third, counsel failed to investigate the plain language of 21 U.S.C. § 851. Fourth, he never told her she had a right to testify. Fifth, he was ineffective in advising her whether to plead guilty or not.

It appears that defendant is receiving help from another inmate who has no familiarity with the facts of her case, because two of her claims bear no evident relation to her or to her trial. In claim one, defendant argues that her counsel failed to recognize that a buyer-seller instruction might be appropriate; in fact, counsel did recognize this and proposed to the court that it give such an instruction, which it did. In claim three, defendant accuses her counsel of incompetence because he failed to investigate 21 U.S.C. § 851. Section 851 comes into play only when a defendant has previous convictions of a certain kind. It has no application to plaintiff, who had no prior convictions when she went to trial in this district.

In claim two, defendant argues that her counsel should have objected to her being

sentenced for crack cocaine, rather than powder cocaine, but there is no merit to her argument. Extensive evidence at trial proved the nature of the cocaine with which the conspiracy was dealing; it would have been a waste of the court's time to have tried to argue that the cocaine was really powder.

The remaining two allegations are factual in nature but do not require an evidentiary hearing because defendant has not alleged sufficient facts. For example, in claim four, defendant asserts that she would have taken the stand if defendant had advised her of her right to do so. Not only does she fail to support this bald assertion with any specific allegations of the nature of her testimony, she has failed to allege how the results of the proceeding would have been different had she testified. These are not the only shortcomings. In arguing that her counsel should have given her better advice about entering a plea of guilty, she alleges that the evidence against her was overwhelming and there was no chance she could have been acquitted. Her effort to have things both ways is strong evidence that she has no basis for either of her last two assertions. Certainly, she has no specific facts to support her claim concerning counsel's alleged ineffectiveness in helping her to decide whether to go to trial or to plead guilty. She has said nothing that would allow a determination that there is a reasonable probability that she would have accepted the plea bargain offered to her had it not been for her counsel's ineffectiveness. See United States v. Paters, 159 F.3d 1043, 1047 (7th Cir. 1998)

In summary, I conclude that defendant has failed to show that her sentence is subject to challenge under 28 U.S.C. § 2255.

ORDER

IT IS ORDERED that defendant Maurita Stovall's § 2255 motion to vacate her sentence is DENIED.

Entered this 25th day of September, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge