

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

MARTIN L. THOMPSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM AND ORDER

06-C-001-S

03-CR-084-S-01

Petitioner Martin L. Thompson moves to vacate his sentence pursuant to 28 U.S.C. §2255. This motion has been fully briefed and is ready for decision.

FACTS

On August 6, 2003 a federal grand jury in Madison, Wisconsin returned a two-count indictment against petitioner. Count One charged Thompson with possession of pseudoephedrine to manufacture into methamphetamine and Count Two charged him with possession of equipment, chemicals and materials to manufacture methamphetamine.

On October 2, 2003 petitioner filed a motion to suppress evidence seized at his trailer home in Monroe County pursuant to a state court search warrant. The court rejected petitioner's request for a hearing pursuant to Franks v. Delaware, 438 U.S. 154 (1978). The Court specifically found that the affidavit supporting the search warrant was sufficient to establish probable cause for the search of petitioner's residence.

On November 18, 2005 petitioner pled guilty to count one of the indictment pursuant to a written plea agreement. On January 27, 2004, this Court sentenced petitioner to 100 months in prison, three years of supervised release and a \$100.00 assessment.

Petitioner appealed his judgment and conviction. The appeal was fully briefed and argued on April 19, 2005. On July 12, 2005 the United States Court of Appeals for the Seventh Circuit affirmed petitioner's conviction finding that the warrant affidavit was sufficient to establish probable cause for the search. The Court also found that petitioner was not entitled to a Franks hearing.

MEMORANDUM

Although respondent believes that petitioner is raising a claim that his counsel was ineffective, petition stresses in his reply brief that the only claim he is making is that he was entitled to a Franks hearing.

Three types of issues cannot be raised in a 28 U.S.C. § 2255 motion: issues that were raised on direct appeal absent a showing of changed circumstances; non-constitutional issues that could have been raised but were not raised on direct appeal and constitutional issues that were not raised on direct appeal unless defendant demonstrates cause for procedural default as well as actual prejudice from the failure to appeal. Prewitt v. United States, 83 F.3d 813, 816 (7th Cir. 1996). Issues raised and decided on direct

appeal may not be raised again in a 28 U.S.C. § 2255 motion pursuant to the "law of the case". See Daniels v. United States, 26 F.3d 706, 711-12 (7th Cir. 1994).

Petitioner's claim that he was entitled to a Franks hearing was raised and decided again. He cannot raise it again in this motion pursuant to the "law of the case". Petitioner argues that he would submit new evidence and a slightly different argument. He has not, however, shown any changed circumstances since the decision by the Court of Appeals. Accordingly, petitioner's motion under 28 U.S.C. § 2255 will be denied.

Petitioner is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his motion under 28 U.S.C. § 2255 must be denied. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that petitioner's motion to vacate his sentence under 28 U.S.C. § 2255 is DENIED.

Entered this 24th day of February, 2006.

BY THE COURT:

s/_____
JOHN C. SHABAZ
District Judge