

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

GREGORY C. TAYLOR,

Defendant.

OPINION AND ORDER

13-cv-354-bbc

11-cr-102-bbc

Within weeks after his release from state prison in July 2011, defendant Gregory C. Taylor robbed the Summit Credit Union in Waunakee, Wisconsin. He was charged in federal court on September 7, 2011 with armed bank robbery and being a felon in possession of a firearm. On January 10, 2012, he entered into a plea agreement with the government under which he agreed that he had been convicted previously of three felonies that qualified as violent felonies under 18 U.S.C. § 924(e)(2)(B) and that he would not appeal his conviction or any sentence of imprisonment of 235 months or less. In return, the government agreed not to file an information under 18 U.S.C. § 3559(c)(4) that would require the court to impose a life sentence. Defendant was sentenced to a term of 235 months on each of the two counts, with the terms to run concurrently.

On May 2, 2013, defendant filed a motion for resentencing, contending that his sentencing was improper because his counsel had provided him ineffective representation,

advising him to sign a plea agreement that made him an armed career offender. Dkt. #149. In an order entered on May 10, 2013, I told defendant that his motion had to be construed as a motion for post conviction relief brought under 28 U.S.C. § 2255, because he was challenging his previous conviction. Dkt. #150. United States v. Evans, 224 F.3d 670, 673 (7th Cir. 2000) (“[A]ny motion filed after the expiration of the time for direct appeal, and invoking grounds mentioned in [§ 2255(1)] is a collateral attack for purposes of [§ 2255(8)].”) I explained to defendant that he would have only one chance to file a § 2255 motion and gave him the opportunity to withdraw his motion for a reduction of sentence and file a new motion, setting forth every § 2255 claim he believed he had. I advised him that it was unlikely he could succeed on a post conviction motion and I warned him of the strict deadlines for the filing of such motions. Id.

On May 21, 2013, defendant filed a timely motion for post conviction relief under 28 U.S.C. § 2255, asserting the same claim he had tried to raise earlier, that his lawyer was ineffective because she had allowed him to sign a plea agreement in which he agreed that he was an armed career criminal. Dkt. #151. (Defendant says “armed career offender,” but the plea agreement makes it clear that it was *armed career criminal* status under 18 U.S.C. § 924(e) that was at issue.) He contends that he should not have been sentenced as an armed career criminal because more than 15 years had passed since he committed the violent offenses relied upon to find him an armed career criminal. (Had defendant been subject to sentencing under the Sentencing Guidelines, the 15-year limit would have been relevant to determining whether he qualified as a career offender, U.S.S.G. § 4A1.2(e), but it is irrelevant to his situation

because he was being sentenced under § 924(e), which counts prior sentences differently. U.S.S.G. § 4B1.4, Application Note 1.) He does not mention the promise made by the government not to file an information against him under 18 U.S.C. § 3559(c)(4). Had it filed such an information, the court would have been required to sentence defendant to a mandatory life sentence.

Before defendant was convicted in this court, he had previously been convicted of nine crimes, all of which met the criteria for a violent felony under 18 U.S.C. § 924(e). Contrary to defendant's understanding, § 924(e) does not have any time limit on the previous crimes that can be taken into consideration in determining whether defendant meets the criteria for sentencing under § 924(e); all previous crimes are counted if they are violent felonies (or "serious drug offenses"). U.S.S.G. § 4B1.4, Application Note 1. This makes it irrelevant whether defendant committed the prior offenses more than 15 years before the bank robbery. The one temporal requirement is that the felonies have been committed "on occasions different from one another," § 924(e)(1), and that requirement is met in this case.

It was not ineffective assistance for defendant's counsel to advise him to accept a proposed plea agreement bargain that carried a minimum mandatory penalty of 15 years in prison under § 924(e) and included a waiver of appeal rights. Defendant had no chance of convincing the court that his prior violent felonies should not be taken into consideration in determining whether he met the criteria of § 924(e). On the other hand, he was obtaining a benefit from the government, which had agreed that if defendant accepted the proposed plea agreement and agreed not to appeal any sentence of 235 months or less, it would not file an

information in his case under 18 U.S.C. § 3559(c)(4), which carries a mandatory life sentence.

I conclude that defendant has failed to show that he has any grounds to support his claim that he was denied the effective assistance of counsel when he entered into a plea agreement with the United States. He has not alleged any other claim, so his post conviction motion will be denied.

Under Rule 11 of the Rules Governing Section 2255 Proceedings, the court must issue or deny a certificate of appealability when entering a final order adverse to a defendant. To obtain a certificate of appealability, the applicant must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); Tennard v. Dretke, 542 U.S. 274, 282 (2004). This means that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 336 (2003) (internal quotations and citations omitted). In this case, defendant has not made the necessary showing, so no certificate will issue.

Although the rule allows a court to ask the parties to submit arguments on whether a certificate should issue, it is not necessary to do so in this case because the question is not a close one.

ORDER

IT IS ORDERED that defendant Gregory C. Taylor's motion for post conviction relief under 28 U.S.C. § 2255, dkt. #1 in case no. 13-cv-354-bbc, is DENIED. No certificate of

appealability shall issue. Defendant may seek a certificate from the court of appeals under Fed. R. App. P. 22.

Entered this 30th day of May, 2013.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge