

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

SHANE BRADLEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM AND ORDER
05-C-344-S
03-CR-171-S-01

On August 10, 2007 after holding an evidentiary hearing the Court denied plaintiff's 28 U.S.C. §2255 motion. On August 23, 2007 petitioner filed a motion to alter or amend judgment. This motion has been fully briefed and is ready for decision.

MEMORANDUM

Petitioner argues that this Court's decision is based on a manifest error of fact and a manifest error of law. Petitioner argues that the Court erred in not finding credible petitioner's testimony that he would have gone to trial absent his counsel's deficient performance.

It is undisputed that prior to plea agreement negotiations Attorney Weeden advised petitioner that if he was convicted on all three counts of the indictment he could face 3 consecutive thirty year sentences for a total of 90 years in prison. It is undisputed

that this information was incorrect. Pursuant to U.S.S.G. §5G1.2 n.1, the three sentences would have run concurrently for a total of 30 years in prison. Attorney Weeden did not make a good faith effort to discover the facts relevant to petitioner's sentencing and to analyze those facts in terms of the applicable legal principles. This is deficient performance under United States v. Cieslowski, 410 F. 3d 353, 359 (7th Cir. 2005).

The Court found that petitioner's testimony at the evidentiary hearing that he would have proceeded to trial absent his counsel's deficient performance was simply not credible. Petitioner's testimony that he was concerned had he not plead guilty he could have been re-indicted for conspiracy with Howard for which he would face a life sentence contradicts his testimony that he would have proceeded to trial absent his attorney's mistaken information concerning potential sentences. The record supports this Court's credibility finding. Petitioner's motion to alter or amend judgment because of a manifest error of fact will be denied.

Petitioner also argues that the Court erred in analyzing the prejudice component of Strickland v. Washington, 466 U.S. 668, 694 (1984). Petitioner contends that the Court required petitioner to prove with certainty that he would have insisted on going to trial absent his counsel's deficient performance.

To prevail on the prejudice prong under Strickland, petitioner would have to demonstrate that but for the deficient advice of

counsel there was a reasonable probability that he would have proceeded to trial instead of pleading guilty. See Hill v. Lockhart, 474 U.S. 52, 59 (1985). Based on the testimony at the evidentiary hearing and the evidence in the record the Court found that there was not a reasonable probability that absent his counsel's deficient performance he would have proceeded to trial. Petitioner's motion to alter or amend judgment based on a manifest error of law will be denied.

ORDER

IT IS ORDERED that petitioner's motion to alter or amend judgment is DENIED.

Entered this 4th day of October, 2007.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge