

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES T. SCHLIFER,

Defendant.

ORDER

05-C-0685-C

04-CR-0059-C-01

In an order entered on January 13, 2006, I denied defendant James T. Schlifer's motion for post conviction relief after finding that he had not supplied the necessary detail to support his claims that the government had breached a plea agreement with him and that his attorney had been ineffective in leading him to believe that he would not be sentenced as a career offender but would instead be sentenced to no more than 24-30 months. In a Rule 59(e) motion for reconsideration filed on January 30, 2006 (which I will assume is timely under the mailbox rule; it contains a certification that it was put into the mail on January 23, 2006)), a self-proclaimed "Jailhouse Lawyer" explains that defendant has learning disabilities, no high school education and little ability to read anything. The writer

goes on to explain that defendant was dependent on a jailhouse lawyer to write his original § 2255 motion and to prepare the clarifying detail that defendant was directed to submit.

Now the writer says that defendant was housed, presumably pending trial in this case, with a “Tex Ngo,” who was represented by the partner of defendant’s allegedly ineffective counsel. Ngo told defendant he should be sure to ask whether he would be tried as a career offender before he signed a plea agreement. According to the writer, defendant did so on the day he was supposed to sign and was assured by his counsel that he would not be considered a career criminal. When defendant asked whether he could write into the plea agreement a provision for 24-30 months, counsel allegedly said. “No, all federal plea bargains are written the same and the rest is handled verbally.” When his counsel read through the entire presentence report with defendant, defendant asked again about his career criminal status and was assured allegedly by his counsel that he would not be considered one. In court, counsel prompted defendant to answer “no,” when asked whether any other promises had been made to him. However, defendant concedes that he pleaded guilty in a strategic maneuver to be released from jail in the least amount of time. Finally, in an effort to show that he was prejudiced by pleading guilty instead of going to trial, he says he would have been acquitted at trial because two of the witnesses had given statements contradictory of each other and Misty Johnson had written to the court stating that she had never seen defendant manufacture methamphetamine.

Although defendant signed the motion for reconsideration and did so under penalty of perjury, I have grave doubts about its legitimacy. First, it is evident that it is the jailhouse lawyer explaining *his* understanding of what might have happened. If, as the jailhouse lawyer says, defendant cannot read at all, what assurance is there that defendant even knows what the motion contains or the representations that have been made on his behalf? Second, it is clear that the jailhouse lawyer does not know what happened in this case. Not being familiar with this court's sentencing practices, the jailhouse lawyer made the unlikely assertion in the original § 2255 motion that the United States Attorney had offered a particular sentence to defendant as part of a proposed plea agreement.

Even if defendant had convinced me that his experienced court-appointed lawyer would have told him he had no chance of being sentenced as a career offender, despite his extensive criminal record and the amount of methamphetamine he had manufactured, despite the lack of any reference to a particular sentence in the written plea agreement and despite his representation to the court at the time he entered his guilty plea that no one had promised him any particular sentence, defendant has shown no prejudice. As I said in the January 13 order, the evidence against him was voluminous. It is not credible that a jury would have acquitted him of the conspiracy to manufacture methamphetamine charge against him, even if Misty Johnson had repudiated her earlier statements to enforcement officials about the amount of methamphetamine she and defendant manufactured and even

if the jury would have believed her repudiation.

ORDER

IT IS ORDERED that defendant James T. Schlifer's motion for reconsideration filed pursuant to Fed. R. Civ. P. 59(e) is DENIED.

Entered this 13th day of February, 2006.

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