

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JERRY WENDT,

Defendant.

OPINION AND ORDER

05-C-0359-C

04-CR-0044-C-02

Defendant Jerry Wendt has filed a motion for post conviction relief, contending that his trial counsel was ineffective because he failed to object to the enhancements to defendant's sentence under the authority of Blakely v. Washington, 124 S. Ct. 2531 (2004), and because he coerced defendant to enter a guilty plea. In an order entered on June 22, 2005, I gave defendant until July 21, 2005, in which to submit an affidavit setting forth specific allegations about the alleged coercion.

Defendant filed a response to the order but he says only that his attorney told him he did not have a chance to win if he went to trial. He adds that he did not know that the forged checks he was charged with possessing were bad but that his attorney made him say

that he knew. These two statements fall far short of the specific information defendant was given an opportunity to submit. They include no dates, no times, no indication whether any witnesses were present, no details about exactly what was said. The first statement sounds more like an accurate prediction of defendant's chances at trial than an effort to coerce defendant into doing something he would not have done otherwise.

At his plea hearing, defendant told the court that he had not been forced into entering his plea of guilty and that he agreed that the government could prove that he had possessed forged checks with the purpose of deceiving another person in connection with the purchase of a 1998 Dodge pickup truck. In his own words, he told the court that he had handed "the gentleman a check" he had gotten from his co-defendant Mark Heath. He agreed that Heath had produced the check on his Paymaster machine to make it look as if it came from Norwest Bank and that defendant took possession of the truck after turning over the fake check to "the gentleman." Trans. of plea hearing, dkt. #40, at 16. In the face of these statements made in open court, defendant's conclusory averment that his attorney forced him into entering a guilty plea has no traction. Prewitt v. United States, 83 F.3d 812, 819 (7th Cir. 1996) (mere unsupported assertions not enough for grant of hearing; petitioner must file detailed and specific affidavit showing he has actual proof of allegations). See also Galbraith v. United States, 313 F.3d 1001 (7th Cir. 2002) (same).

As to defendant's claim that his attorney was ineffective in failing to challenge his

enhancements under Blakely, defendant must have forgotten that he was not sentenced under the mandatory sentencing scheme that Blakely and United States v. Booker, 125 S. Ct. 738 (2005), condemned. He was sentenced after the Court of Appeals for the Seventh Circuit had issued its decision in United States v. Booker, 375 F.2d 508 (2004). In compliance with the holding in that case, I imposed a discretionary sentence on him, not one required by the Sentencing Guidelines. Therefore, his lawyer would have had no reason to object to the sentencing enhancements. In fact, he would have had good reason not to have objected in light of the stipulation he and defendant signed on October 13 and October 12, respectively. In that stipulation, defendant affirmed that the intended loss was \$280,150, that he was involved in a scheme to defraud more than one victim and that he was agreeing to these matters of his own free without any pressure or promises but knowingly, voluntarily and intelligently, after consulting with his attorney.

In summary, defendant has failed to show any reason why his sentence should be modified or vacated.

ORDER

IT IS ORDERED that defendant Jerry L. Wendt's motion for post conviction relief, filed pursuant to 28 U.S.C. § 2255 is DENIED for defendant's failure to show that his

sentence was illegal in any respect.

Entered this 25th day of July, 2005.

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