

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JEFFERY ROBINSON,

Defendant.

ORDER

10-cv-154-bbc
08-cr-153-bbc

In response to this court's order of May 13, 2010, defendant Jeffery Robinson has filed an affidavit setting out the factual basis for his claim that his attorney failed to advise him about the benefits of making a full and complete statement to law enforcement. The affidavit is four pages long, but it falls short of what would be required to establish that counsel did not give him any advice about the way in which he could qualify for the safety valve provision, § 5C1.2, of the sentencing guidelines. All defendant says is that his attorney was "very vague as to expounding about the benefit of the 'safety valve,'" but did mention that "perhaps the court would deny him based on the fact that the government would allege that he was an organizer."

Defendant repeats his contention that counsel should have objected to the probation office's failure to recommend application of the safety valve, but I explained in the May 13 order why this claim fails; because defendant did not make a statement, as required under § 5C1.2(5), his attorney had no basis for arguing that he should receive a safety valve reduction in his sentence.

In any event, as defendant acknowledges, his counsel warned him that if he were found to have been an organizer, he would not be eligible for a safety valve reduction, which proved to be true. Even if counsel did not give defendant as full an explanation of the benefits of the safety valve as defendant thinks he should have and even if defendant did not understand the value of providing the government a truthful statement concerning his offenses, he was found to be an organizer of the conspiracy. With that determination, defendant lost any opportunity to claim the benefits of the safety valve, which are not available to anyone who is found to play an aggravating role in a criminal conspiracy. USSG § 5C.1.2.

ORDER

IT IS ORDERED that defendant Jeffery Robinson's motion to alter or amend the

renewed judgment entered herein on April 22, 2010 is DENIED.

Entered this 30th day of June, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge