

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAYDALE MITCHELL,

Defendant.

ORDER

11-cr-83-bbc-1

14-cv-473-bbc

Defendant Raydale Mitchell has filed a motion for post conviction relief under 28 U.S.C. § 2255, alleging that he was denied the effective assistance of counsel at the criminal proceedings in his case. Accompanying the motion is a 46-page brief in which he discusses at length the law applicable to claims of ineffective assistance, while explaining only in conclusory terms what he contends that was ineffective about the assistance provided him by his appointed counsel. Difficult as it is to make out his claims, I believe that he has stated enough to require a response from the government.

The record shows that defendant was indicted in July 2011 for distributing heroin in violation of 21 U.S.C. § 841(a)(1). Associated federal defender Erika Bierma was appointed to represent him. Defendant entered a plea of guilty on March 1, 2012. According to the presentence report, defendant had two prior convictions for crimes of violence, which made him a career offender under U.S.S.G. § 4B1.1(a), (b)(3). His offense level was 29, after

three levels had been deducted for acceptance of responsibility, and his guideline sentencing range was 151 to 168 months. His classification as a career offender made no practical difference in his guideline range because the amount of heroin attributable to him, plus a two level increase in his offense level for his role as an organizer, put him at the same offense level of 29. Defendant was sentenced to a term of 168 months, which was within the guideline range. He appealed his sentence but the court of appeals upheld it as reasonable in an order entered on May 21, 2013. Defendant filed this motion for post conviction relief on June 30, 2014.

From what I can make out from his brief, defendant is alleging that his counsel did not explain to him that if he entered a plea of guilty, he would not have an opportunity to attack the credibility of the informants who told law enforcement about his heroin; she told him he would not receive a sentence of more than ten years; she did not explain the plea agreement proffered by the government; she never warned him that he might qualify for career offender status or pointed out that the prior convictions were for conduct less serious than the records indicated; she never undertook any discovery; and she failed to obtain evidence from defendant's brother that might have lowered the drug amount attributable to defendant. In addition, he alleges, counsel did not challenge his prior convictions as being too old to count in determining career offender status and she did not challenge his role as an organizer.

Defendant cites Alleyne v. United States, 131 S. Ct. 2131 (2013), for the proposition that any fact that increases the mandatory minimum sentence for a crime is an element of the

crime, not a factor, and must be submitted to the jury, but this holding is not applicable to his case, for several reasons. He was sentenced on his plea of guilty; no fact considered in his sentence increased the mandatory minimum sentence to which he was subject; and the case was not decided until the year after he was sentenced and the Supreme Court has not given it retroactive effect. The government need no respond to any claim defendant has raised under Alleyne.

ORDER

IT IS ORDERED that the government may have until July 30, 2014 in which to respond to defendant Raydale Mitchell's motion for post conviction relief under 28 U.S.C. § 2255. Defendant may have until August 20, 2014 in which to reply to the government's response.

Entered this 9th day of July, 2014.

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