UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CHARLES WOOTEN, Petitioner	:	
v.	:	3:97-CR-232 (EBB)
	:	3:01-CV-894 (EBB)
UNITED STATES OF AMERICA; Respondent	:	

RULING ON MOTION FILED PURSUANT TO 28 U.S.C. SECTION 2255

Charles Wooten ("Wooten" or "Petitioner") has filed a Motion to Vacate, Set Aside or Correct Sentence, pursuant to Title 28 U.S.C. Section 2255, alleging ineffective assistance of three counsel, and Constitutional violations in his Rule 11 proceeding.

After a thorough review of the parties' moving papers and exhibits thereto, it was determined that a hearing was unneccessary in order to decide the present Motion. Said Motion is now ready for decision.

STATEMENT OF FACTS

The Court sets forth only those facts deemed necessary to an understanding of the issues raised in, and decision rendered on, this Motion. The facts are distilled from the parties' moving papers, the exhibits thereto, the pre-sentence report, the transcript of Wooten's guilty plea canvas, and the transcript of his sentencing.

On or about November 20, 1997, Wooten, along with seven other individuals, was indicted by a federal grand jury on narcotics and other related charges. This indictment followed years of investigation, wiretaps, and the use of confidential informants.

Thereafter, on or about May 21, 1998, the grand jury returned a superseding indictment charging Wooten and five others with conspiracy to possess and distribute cocaine and cocaine base, in violation of 21 U.S.C. Section 846.

On June 17, 1998, Wooten entered into a plea agreement with the Government, agreeing to plead to Count One of the superseding indictment. During the plea canvas, after being placed under oath and being warned of the consequences of not being truthful, Wooten was asked the following:

1) Whether he understood what the charge in Count One of the superseding indictment was;

2) Whether he had discussed it with his counsel;

3) Whether he understood that Count One charged him with the intent to distribute cocaine and cocaine base;

4) Whether he had had a full and adequate opportunity to discuss with his counsel the idea of changing his plea to guilty;

5) Whether he understood that the Court did not want him to change his plea unless he was, in fact, guilty of the offense;

6) Whether he was aware of the fact that, by pleading guilty, he was waiving certain rights, including the rights to persist in

his plea of not guilty and to require the Government to prove his guilt at trial beyond a reasonable doubt, the right to be represented at trial by a lawyer at no cost to him, the right to remain silent at trial, the right to testify on his own behalf at trial, as well as the right to call witnesses on his behalf, and the right to cross-examine witnesses called by the prosecution;

7) Whether he was pleading guilty of his own free will;

8) Whether anyone threatened him or coerced him in any way to plead guilty;

9) Whether he had read the plea agreement letter;

10) Whether he had reviewed it with his counsel;

11) Whether he understood that, if he pled guilty to Count One, the government would dismiss the rest of the indictment as to him;

12) Whether he had agreed with the Government that the amount of cocaine involved is at least fifteen kilograms, but less than fifty kilograms;

13) Whether he realized how significant that was in determining his adjusted offense level;

14) Whether he realized that, although he had agreed with the Government as to this amount, the Court could come to a different conclusion;

15) Whether he realized that, if the Court did so, he could appeal but he could still not withdraw his guilty plea;

16) Whether he realized that the Court could come to a different adjusted offense level than 34, the level to which he had agreed

with the Government, and, if the Court did, he could appeal his sentence but that he could not withdraw his guilty plea;

17) Whether he knew the Court did not have to give him a three-level downward departure for acceptance of responsibility and that if it declined to do so, he could appeal, but he still could not withdraw his guilty plea;

18) Whether he realized that the probation office was going to do a presentence investigation and that he could comment on the final report;

19) Whether he was aware that the offense to which he was pleading guilty carried a maximum sentence of life imprisonment, a $4 million fine, and a mandatory minimum of ten years in prison;

20) Whether he realized that he would be given a term of supervised release of five years to life upon his release from prison;

21) Whether he had discussed the sentencing guidelines with his counsel;

22) Whether he realized that his criminal history would become part of the presentence report and would be counted toward his final guideline range;

23) Whether he had agreed with his co-conspirators to possess and distribute cocaine and cocaine base;

24) Whether the blood pressure medication he had taken on the day of the guilty plea affected his ability to understand.

His counsel further testified that he knew of no reason why his client should not enter into a plea. During the canvas, Wooten was very careful to ask for help when he did not understand something. The Court, in great detail, explained the concept of supervised

release when Wooten said he did not understand what supervised release was. Further, the Court explained that, when he and his counsel calculated his guideline range, if the court determined that the range was incorrect, Wooten could file an appeal, but he still could not withdraw his guilty plea. Wooten testified that he now understood. Transcript of Guilty Plea at 13.

As Wooten had answered all Rule 11 inquiries appropriately, his plea of guilty to Count One of the Superseding Indictment was accepted.

Less than a month later, in a letter dated July 13, 1998, Wooten requested to withdraw his plea. In the letter he stated that he felt his case had been mishandled and that he had been poorly, if not negligently, represented by his court-appointed attorney, Attorney Petrella ("Petrella" or "Plea Counsel"). As a result, he was appointed a new attorney, Attorney Donovan ("Donovan" or "Sentencing Counsel"). Donovan filed a Motion to Withdraw Guilty Plea, which Motion was denied by the Court, which found that "[t]he record reflects a defendant who was totally engaged in the plea allocution and who did not hesitate to question that which he did not understand."

At the sentencing hearing, Wooten had a very difficult time admitting to the role to which he had already pled guilty. Only when he acknowledged, after a private recess with his counsel, that he

distributed cocaine or cocaine base three to four times a week, did the Court "reluctantly" give him a three-point downward departure for acceptance of responsibility.

Wooten also took issue with his criminal history, arguing that he should be placed in level II, not level III, as determined by the probation officer in his presentence report. The Court, after listening to argument on both sides, opted to leave his criminal history level at III. In his present moving papers, he continues to claim that his criminal history was calculated incorrectly. .

Due to Wooten's claims at sentencing, made in contradistinction to his guilty pleas, and the findings of the probation officer, Wooten was sentenced to the middle of his guidelines range, or 152 months.

Sentencing Counsel was replaced by Appellate Counsel, who, after extensive review of all discovery, the plea canvas, and the sentencing transcript, filed an Anders brief with the Court of Appeals for the Second Circuit. Wooten filed his own supplemental appeal as to the amount of narcotics only, which was dismissed by the Second Circuit Court of Appeals.

Petitioner now moves this Court to vacate, correct, or set aside his sentence, pursuant to Section 2255. In support of his motion, he asserts that all three counsel were ineffective within the meaning of the Sixth Amendment; that the Office of Probation

incorrectly calculated his criminal history score; that the Court inaccurately advised him of the term of supervised release he faced; and that the Court was not correctly advised as to the nature of the blood pressure medicine he was taking at the time of his plea.

LEGAL ANALYSIS

In Strickland v. Washington, 466 U.S. 668 (1984), the Supreme Court set forth the yardstick for measuring claims of ineffective assistance of counsel.

> The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsel's skill and knowledge is necessary to accord defendants the 'ample opportunity to meet the case of the prosecution' to which they are entitled. (citations omitted in original) . . . .The Sixth Amendment recognizes the right to assistance of counsel because it envisions counsel's playing a role that is critical to the ability of the adversarial system to produce just results.

Id. at 685.

For that reason, the Supreme Court has recognized that "the right to counsel is the right to effective assistance of counsel." McMann v. Richardson, 397 U.S. 759, 771 n. 14 (1970). Counsel can deprive a defendant of the right to effective assistance, simply by failing to render "reasonably competent advice." Cuyler v. Sullivan, 446 U.S. 335, 344 (1980).

The Strickland Court, after reviewing its earlier cases which

never answered in full the inquiry of adequate assistance of counsel, set down a two-prong test by which such assistance is to be measured. First, the defendant must show that counsel's performance was deficient. "This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense." Strickland, 466 U.S. at 687.

The proper standard for attorney performance is that of reasonably effective assistance under prevailing professional norms. *Id*. at 687-88. One of the overarching duties recognized in Strickland is to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution. *Id*. at 688. In the circumstances of a guilty plea, the Petitioner can only demonstrate prejudice by showing that "there is a reasonable possibility that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 366, 370 (1985).

Judicial scrutiny of counsel's performance must be highly deferential. The performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances and the reasonableness of counsel's conduct must be judged as of the time of counsel's conduct. Strickland, 466 at 688-90.

An error by counsel, even if professionally unreasonable, does not warrant setting aside a conviction, or a sentence, if the error had no effect. In other words, under the second prong of Strickland, "any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution." *Id*. at 691-92. However, if the Petitioner fails to satisfy one prong of the Strickland analysis, the court need not consider the other. *Id*. at 697.

The Court finds no Strickland violation by any of Wooten's three consecutive attorneys. His Plea Counsel shared all discovery with him in a timely manner and reviewed the plea agreement with him in great detail. Wooten acknowledged this, both in the plea agreement itself and during the Rule 11 proceedings. Wooten's plea canvas was in strict compliance with Rule 11, as noted above, and when specifically asked, both he and his counsel indicated that there was no reason that either one knew of as to why Wooten should not change his plea to guilty. It was Wooten's Plea Counsel who brought Wooten's blood pressure medication to the court's attention, after Wooten initially testified that he had taken no medication that day. When asked, Wooten emphatically denied that the blood pressure medication had any effect on his ability to understand. The Court finds no violations of Rule 11 in this case and no ineffectiveness on the part of Plea Counsel.

The Court finds no Strickland violation by Sentencing Counsel, either. Sentencing Counsel put forth an excellent memorandum of law, in an attempt to persuade this Court to permit Wooten to withdraw his guilty plea. That it was not granted says nothing about the caliber of the arguments set forth therein. The same is true of Wooten's sentencing. But for the extreme persuasiveness of Sentencing Counsel, Wooten would have lost his three-point reduction for acceptance of responsibility, based on Wooten's conduct at the sentencing. As the Court noted, it was "reluctantly" granting it. Sentencing Counsel also put forth cohesive arguments with regard to Petitioner's criminal history. Again, simply because the Court did not accept the arguments, does nothing to demean them under the law.

Appellate Counsel conscientiously reviewed the entire record in this case and determined that there were no non-frivolous arguments which could be made at an appellate level. This Court, intimately involved with all of the proceedings in Wooten's prosecution, agrees completely with Appellate Counsel's analysis.

The Court also finds no error in the computation of Wooten's criminal history level of III. First, he argues that his March, 1998, conviction for larceny in the sixth degree, for which he was sentenced to five days' imprisonment, should not have resulted in the assessment of one criminal history point. His reading of the applicable Guideline provision is erroneous. Section 4A1.1(c) states

that one point should be assessed for each prior sentence not counted under (a) or (b), that is, resulting in a sentence of less than sixty days' incarceration. Certain exceptions, not applicable here, but relied upon by Petitioner, are set forth at Section 4A1.2(c). However, although larceny in the sixth degree is a misdemeanor, it is not one of the crimes on the list of exceptions set forth at subsection c(1) or c(2). Accordingly, the assessment of one criminal history point was appropriate.

The other criminal history computation flaw cited by Petitioner is the basis for his argument that his March, 1988, convictions for criminal impersonation, and larceny and narcotics possession were related cases and should have resulted in an assessment of one point, rather than two. However, from the pre-sentence report, it appears that these convictions arose out of two separate arrests, had two separate docket numbers, and two separate sentences. Accordingly, the assessment of two points was accurate.

The Court notes, however, that, even if Petitioner were correct on one of his arguments, his criminal history score would fall from five to four, which is still Level III.

Petitioner's final claim is that the Court erroneously advised him that he faced a term of supervised release of five years to life, and that this error was a violation of Rule 11 of constitutional magnitude. The Court disagrees. Petitioner has misread the

provisions of 21 U.S.C. § 841(b)(1)(A) which provides for a minimum five-year term of supervised release but imposes no maximum term.

CONCLUSION

For all of the reasons set forth herein, Petitioner's Motion [Doc. No. 514] is DENIED. A certificate of appealability shall not issue, Petitioner having failed to make a substantial showing of a denial of a constitutional right.

SO ORDERED

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ELLEN BREE BURNS
SENIOR UNITED STATES DISTRICT JUDGE

Dated at New Haven, Connecticut this ___ day of February, 2003.