

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

NEAL ROMAN ARMSTRONG,)	
)	
Petitioner,)	
)	
vs.)	CIVIL ACTION NO. 2:07cv689-WHA
)	
UNITED STATES OF AMERICA,)	(WO)
)	
Respondent.)	

ORDER

This case is before the court on the Recommendation of the Magistrate Judge (Doc. #14), entered on March 25, 2009, and Petitioner’s Objections (Doc. #19), filed on May 28, 2009.

Upon an independent evaluation and *de novo* review of this 28 U.S.C. § 2255 petition, including the Report and Recommendation, and the objections, the court finds the objections to be without merit, and they are hereby overruled.

In his objections, Armstrong does little more than restate his arguments from his 2255 petition.

He again asserts his claim that the evidence was insufficient to support his money laundering conviction. As noted in the Magistrate Judge’s Recommendation, Armstrong’s counsel (at trial and) on appeal challenged the sufficiency of the evidence, although emphasizing arguments different from those made by Armstrong in his 2255 petition. The Eleventh Circuit found that the evidence was sufficient to sustain Armstrong’s conviction for money laundering. In so doing, the appellate court necessarily determined that all elements of the offense were proved at trial and thus necessarily rejected Armstrong’s current argument as to why the

evidence was insufficient, i.e., his contention that the evidence showed only that he was paid for drugs and not that he received the “laundered” proceeds from drug sales.

Armstrong again claims that his counsel was ineffective at trial and on appeal for emphasizing an incorrect argument (regarding concealment) as to the laundered funds. However, as noted in the Recommendation, Armstrong fails to show how counsel’s legally incorrect argument resulted in prejudice to him. The appellate court found the evidence sufficient for conviction. Therefore, counsel’s error, even if it rises to the level of deficient performance, does not constitute ineffective assistance of counsel.

Armstrong again claims he was factually innocent of the money laundering charge. His claim is essentially a sufficiency of the evidence claim. Moreover, the Eleventh Circuit specifically found that the evidence showed that Armstrong cashed or attempted to cash money orders mailed to him by his coconspirators knowing that the money orders represented the proceeds [i.e., the laundered proceeds] of the illegal sale of cocaine. Armstrong presents no facts, other than his own conclusory statements and argument, to support his claim of actual innocence. Mere conclusory allegations are insufficient to support a claim of actual innocence. As noted, the record reveals that the evidence was substantial and convincing that Armstrong was guilty of the offenses charged in the indictment.

Armstrong reargues his claim that his counsel failed to properly challenge his obstruction of justice sentence enhancement by (1) failing to challenge the reliability of Irvin Johnson’s testimony at the sentencing hearing that, prior to trial and while the two were incarcerated in the Montgomery City Jail, Armstrong offered Johnson \$500 and ten kilograms of cocaine to kill codefendant Wallace Pickett, whom Armstrong believed to be a “snitch.”; and (2) failing to

cross-examine Timothy Sewell, who testified at the sentencing hearing that, while he was sharing a jail cell with Armstrong and Johnson, he overheard Armstrong offer Johnson money and drugs in exchange for agreeing to kill Pickett. However, as noted in the Recommendation:

What can be seen from the record is that Armstrong's counsel did in fact vigorously challenge the reliability of Irvin Johnson's testimony at the sentencing hearing, but that the district court found the substance of Johnson's testimony ultimately to be credible. Armstrong does not suggest how his counsel could have more effectively challenged Johnson's credibility at the sentencing hearing, nor does he suggest how cross-examination of Timothy Sewell at the sentencing hearing could have impeached Sewell and thereby undermined the portions of Sewell's testimony that corroborated Johnson's version of events....

.... Further, because Armstrong does not establish the likely value of cross-examining Timothy Sewell, he fails to show that his counsel was ineffective in this regard either. The decision as to whether to cross-examine a witness is "a tactical one well within the discretion of a defense attorney." *Messer v. Kemp*, 760 F.2d 1080, 1090 (11th Cir. 1985). Absent a showing that cross-examination of Sewell was reasonably likely to affect the outcome of the sentencing proceedings, Armstrong is unable to show prejudice necessary to satisfy the second prong of *Strickland*, 466 U.S. at 687. Armstrong is not entitled to any relief based on these claims of ineffective assistance of trial and appellate counsel.

The court agrees.

The court adopts the Recommendation of the Magistrate Judge, and it is hereby ORDERED that the Petitioner's 28 U.S.C. § 2255 motion is DENIED, as the claims therein entitle him to no relief. Final Judgment will be entered accordingly.

DONE this 18th day June, 2009.

/s/ W. Harold Albritton
W. HAROLD ALBRITTON
SENIOR UNITED STATES DISTRICT JUDGE