

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION**

JOSEPH WILLIAMS,)
)
 Petitioner,)
 v.) **Case No. 08-CV-2279**
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)

OPINION

On November 17, 2008, Petitioner, Joseph Williams, filed his Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 (#1). Respondent, United States of America (“the Government”), filed a Response to Petitioner’s Motion on February 5, 2009 (#6). For the reasons that follow, Petitioner’s Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 (#1) is DENIED.

BACKGROUND

On August 17, 2007, Petitioner entered an open plea of guilty to the offense charged in the indictment against him. The indictment charged that the Petitioner, by intimidation, did take from the person or presence of another, money belonging to and in the care, custody, control, and possession of the ICG Credit Union in violation of 18 U.S.C. § 2113(a). A sentencing hearing was held on November 20, 2007, and Petitioner was sentenced to a term of 188 months in the Federal Bureau of Prisons. Petitioner did not file a notice of appeal.

On November 17, 2008, Petitioner filed his pro se Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, Correct Sentence (#1). Petitioner argued he was denied the effective assistance of counsel because his counsel made no attempt to seek a plea agreement from the prosecutor, consequently he entered an “open plea.” Petitioner also claimed that his counsel did

not adequately contest his classification as a career offender in the Pre-Sentence Report, and did not automatically file a notice of appeal as he should have.

The Government filed its Response to the Petitioner's Motion (#6) on February 5, 2009. The Government argued that Petitioner's claims have no merit because there is no constitutional right to a plea bargain. The Government also argued that Petitioner clearly qualified as a career offender so his counsel was not ineffective for failing to challenge that classification, and that Petitioner did not indicate that he directed his counsel to file an appeal.

Petitioner sent a letter to the clerk's office on February 16, 2009 in which he asked for a recording of his guilty plea and a copy of his sentencing transcript. The court construed this letter as a pro se Motion (#7) requesting transcripts, and denied this Motion on March 6, 2009 because Petitioner made no attempt to explain why the transcripts were "needed to decide the issue presented by the suit." 28 U.S.C. § 753(f). Petitioner did not file a Reply to the Government's Response.

ANALYSIS

To establish a claim of ineffective assistance of counsel following a guilty plea a defendant must show 1) that the counsel's performance fell below an objective standard of reasonableness, and 2) that there was a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 57-59 (1985).

Petitioner argues that he did not receive effective assistance of counsel because no plea agreement was obtained from the Government. However, the Supreme Court has established that "there is no constitutional right to a plea bargain; the prosecutor need not do so if he prefers to go to trial." Weatherford v. Bursey, 429 U.S. 545, 561 (1977). In this case, no plea agreement

was offered to the Petitioner. The Government has indicated in its Response that no plea agreement would have been offered even if Petitioner had chosen to proceed to trial. Not obtaining a plea agreement when none was offered or guaranteed does not demonstrate any lack of reasonableness on the part of counsel, nor does this show any error on the part of counsel that would have affected the guilty plea tendered in this case.

Petitioner also argues that he was erroneously classified as a career offender because the Government did not file notice that his prior convictions would be used to enhance his sentence in any way. While filing this information is required when dealing with certain drug offenses under 21 U.S.C. § 851, that statute is not applicable in this case. Here, Petitioner was classified as a career offender under § 4B1.1 of the United States Sentencing Guidelines (U.S.S.G.), which does not require that any notice be given about the effect that prior convictions will have on the calculation of sentencing. See U.S.S.G. § 4B1.1. The purpose of the notice requirement under § 851 is to ensure that a defendant is aware of the increased statutory maximum penalties before pleading guilty. Conversely, treatment as a career offender does not affect the statutory punishment range, thus no notice is required. See United States v. Warner, 175 F. Appx. 52, 53 (7th Cir. 2006). Furthermore, the record indicates that Petitioner was asked in open court if he was aware of his classification as a career offender and he answered in affirmative. The court then asked if he had any objections to this classification and none were raised. Because no notice must be given when prior convictions will be used under § 4B1.1., there was no error made in classifying Petitioner as a career offender based on his past convictions. Thus counsel was not ineffective for failing to challenge this classification.

Finally, Petitioner argues that his counsel was ineffective for failing to file an appeal to challenge his classification as a career offender. Petitioner does not assert that he requested his

counsel to file an appeal, rather he argues that counsel did not file an “obligatory” appeal. However, there is no *per se* rule requiring counsel to file a notice of appeal absent a specific request by his client to do so. Roe v. Flores-Ortega, 528 U.S. 470, 478 (2000). Because nothing in the record indicates that Petitioner requested that his counsel file an appeal, the failure to automatically file an appeal does not demonstrate that counsel’s performance in this case fell below an objective standard of reasonableness.

IT IS THEREFORE ORDERED THAT:

(1) Petitioner’s Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 (#1) is DENIED.

(2) This case is terminated.

ENTERED this __19th__ day of June, 2009

s/ Michael P. McCuskey
MICHAEL P. McCUSKEY
CHIEF U.S. DISTRICT JUDGE