

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

ERIK SCOTT BROWN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 17-cv-430-JPG

Criminal No 15-cr-40045-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on petitioner Erik Scott Brown's motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 (Doc. 1). On November 16, 2015, the petitioner pled guilty to one count of distribution of heroin resulting in death in violation of 21 U.S.C. § 841(a)(1) (Count 1) and (b)(1)(C) and one count of possession with intent to distribute heroin in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C) (Count 2). The death charged in Count 1 was of Steven Keith Scott, who had multiple drugs in his system when he died. The Government's expert had issued an opinion that heroin toxicity was the but-for cause of Scott's death, and during the plea colloquy, Brown admitted the Government would be able to prove beyond a reasonable doubt that the heroin he provided to Scott was the but-for cause of Scott's death. On March 15, 2016, the Court sentenced the petitioner to serve 276 months in prison on Count 1 and 240 months in prison on Count 2. Written judgment was entered April 28, 2016. The petitioner did not appeal his sentence.

In his timely § 2255 motion, the petitioner raises the following claims:

1. Counsel provided ineffective assistance of counsel in violation of the Sixth Amendment when he failed to independently investigate whether heroin toxicity was the but-for cause of Scott's death, the victim in Count 1, but represented to Brown that he had made such an investigation by consulting a forensic pathologist;

2. Brown's guilty plea and stipulation of facts were not knowing and voluntary, in violation of his Fifth Amendment due process rights, because they were entered into in reliance on counsel's false statement that he had consulted with a forensic pathologist about the cause of Scott's death; and
3. Counsel provided ineffective assistance of counsel in violation of the Sixth Amendment when he failed to thoroughly investigate and/or procure the services of a forensic toxicologist prior to advising Brown to enter a guilty plea and stipulate to facts.

Pursuant to Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts, the Court has determined that it is not plain from the motion and the record of the prior proceedings that the petitioner is entitled to no relief. The Court therefore **ORDERS** the Government to file a response to the petitioner's § 2255 motion within **THIRTY DAYS** of the date this order is entered. The Government shall, as part of its response, attach all relevant portions of the record in the underlying criminal case. The Petitioner shall have **FOURTEEN DAYS** to reply to the Government's response.

IT IS SO ORDERED.

DATED: July 26, 2017

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE