White v. USA Doc. 5

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF INDIANA SOUTH BEND DIVISION

| ARMAND WHITE, |) |
|---------------------------|--|
| Petitioner |) |
| VS. |) CAUSE NO. 3:12-CV-87 RM) (Arising out of 3:10-CR-49(3) RM) |
| UNITED STATES OF AMERICA, |) (Allising out of 5.10 CR 15(5) RM) |
| Respondent |) |

OPINION and ORDER

In June 2010, Armand White pleaded guilty to charges of aggravated bank robbery, 18 U.S.C. §§ 2113(d), and brandishing a firearm during a crime of violence, 18 U.S.C. § 924(c). More than a year after sentence was imposed, Mr. White filed a motion to vacate his sentence under 28 U.S.C. § 2255, contending that he didn't possess the firearm used in the robbery and that his attorney was ineffective because he didn't challenge the sufficiency of the evidence and coerced him into pleading guilty to crimes he didn't commit. The court held that Mr. White's motion was barred by the waiver in his plea agreement and that his claims weren't supported by the record or the law, and denied Mr. White's § 2255 motion on July 9, 2012. The court construes Mr. White's notice of appeal [Doc. No. 109] to include a request for a certificate of appealability and for leave to proceed *in forma pauperis* on appeal.

Issuance of a certificate of appealability would require the court to find that

Mr. White has made "a substantial showing of the denial of a constitutional right."

28 U.S.C. § 2253(c)(2). He hasn't done this. Mr. White didn't establish that his

waiver was anything but informed and voluntary, or that his counsel provided

ineffective assistance. His request for a certificate of appealability is therefore

denied.

Federal Rule of Appellate Procedure 24(a)(3) provides that a financially

indigent person may be permitted to proceed on appeal in forma pauperis unless

the court "certifies that the appeal is not taken in good faith." In other words, the

court must determine "that a reasonable person could suppose that the appeal

has some merit." Walker v. O'Brien, 216 F.3d 626, 632 (7th Cir. 2000). Because

no reasonable person could find that Mr. White's appeal has any merit, the court

concludes that his appeal is not taken in good faith, and his request for pauper

status must be denied.

Based on the foregoing, the request for a certificate of appealability and for

leave to proceed in forma pauperis on appeal is DENIED.

SO ORDERED.

ENTERED: August 30, 2012

/s/ Robert L. Miller, Jr.

United States District Court

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cc: A. White

AUSA Schaffer