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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

KHALID AWAN,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

13-CV-1735 (ARR)

NOT FOR ELECTRONIC OR PRINT PUBLICATION

OPINION & ORDER

ROSS, United States District Judge:

Petitioner, Khalid Awan ("petitioner" or "Awan"), acting pro se, moves pursuant to 28 U.S.C. § 2255 to vacate his conviction after a jury trial for providing material support and resources to terrorists in violation of 18 U.S.C. § 2339A, conspiring to provide material support and resources to terrorists in violation of 18 U.S.C. § 2339A, and money laundering in violation of 18 U.S.C. § 1956(a)(2)(A). Awan's petition may be construed as raising two principal arguments. First, he appears to argue that the Neutrality Act of 1794 somehow renders unlawful his conviction for providing and conspiring to provide material support to terrorists. Second, he argues that his counsel, who represented him at trial and on appeal, were ineffective. For the reasons stated below, the petition is denied.

BACKGROUND

I. Pre-Trial Proceedings

On October 25, 2001, FBI agents arrested Pakistani-Canadian Khalid Awan at his house in Garden City, New York, on a charge of credit card fraud. Unites Stated v. Awan, No. 06-CR-

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0154 (CPS), Mem. Op. & Order, DE # 155, at 2. He pleaded guilty to one count of credit card fraud in violation of 18 U.S.C. § 1029 and, in October 2004, was sentenced to sixty months incarceration. Id. On March 8, 2006, just prior to his scheduled release, Awan was again indicted, this time in the Eastern District of New York on charges of providing material support to terrorism and money laundering. Awan, No. 06-CR-0154 (CPS), Indictment, DE #1. In his initial appearance before Magistrate Judge Bloom, petitioner was represented by appointed defense counsel, Robert Beecher, and pleaded not guilty to both counts. Awan, No. 06-CR-0454 (CPS), DE #2.

On the recommendation of a fellow inmate at the Metropolitan Detention Center (MDC), petitioner contacted Khurrum B. Wahid, Esq. Pet., DE #1, at 69. Petitioner retained Wahid and his partner, Sean M. Maher, Esq., to represent him. Petitioner was interested in hiring Wahid's firm because Wahid, like petitioner, was of Pakistani background and spoke Urdu. Id. According to both Wahid and Maher, petitioner's other main reason for hiring their firm was his concern that his appointed counsel, Beecher, was bringing him to proffer sessions with the government and encouraging him to plead guilty. Decl. of Sean M. Maher, Esq. ("Maher Decl."), DE #17-1, ¶ 5; Decl. of Khurrum B. Wahid, Esq. ("Wahid Decl."), DE #28, ¶ 3. Petitioner did not wish to cooperate with the government or plead guilty, and his express purpose in retaining Maher and Wahid was to proceed to trial. Maher Decl. ¶ 6; Wahid Decl. ¶ 3. Petitioner's account of his reasons for hiring them differs, however, in that he states that he told him that he wanted to "go through with the government offer." Pet. 69.

After petitioner retained Maher and Wahid as counsel, a superseding indictment was filed on August 1, 2006, and a second superseding indictment was filed on October 23, 2006. The second superseding indictment charged petitioner with three counts: (1) in and between

approximately 1998 and 2005, conspiring to provide material support and resources to be used in a conspiracy prohibited by 18 U.S.C. § 956(a), to wit, a conspiracy to commit murder, kidnapping, or maiming outside the United States, in violation of 18 U.S.C. § 2339A; (2) in and between approximately 1998 and 2001, providing material support and resources to be used in such a conspiracy, also in violation of 18 U.S.C. §2339A; and (3) in and between approximately 1998 and 2001, engaging in the international transfer of money with the intent to promote specific unlawful activity, to wit, murder and the destruction of property by means of explosive or fire as prohibited by India Penal Code §§ 300 and 435, in violation of 18 U.S.C. § 1956(a)(2)(A). Awan, No. 06-CR-0454 (CPS), Superseding Indictment, DE #86. The charges related to petitioner's alleged involvement with the Khalistan Commando Force ("KCF"), a Sikh separatist organization known for carrying out bombings and murders in India with the intent to force India to permit the creation of a separate Sikh state in the Punjab.[1]

II. Preparations for Trial and Plea Negotiations

According to petitioner, Maher and Wahid continued advising him not to cooperate with the government but to go to trial, despite his own wish to cooperate. Pet. 71; Reply 20. Petitioner insists that his attorneys misled him as to the strength of his case and told him, "we are 100% going to win." Reply 20. According to Awan, at some point prior to his trial, Maher and Wahid informed him that the government had offered him a 12-year plea deal. Pet. 74. Petitioner contends that he told his attorneys, "if [I] need[] to accept the plea, then why are you people pressuring [me] to proceed to the trial." Id. He indicates that he told them that, if there

[1] As described by the Second Circuit in petitioner's appeal, "[t]he KCF has engaged in bombings of Indian security forces, buses, trains, and civilian economic targets resulting in the deaths of thousands in India since the beginning of the organization's existence. The KCF is funded by means of illegal activities, such as bank robbery and kidnapping, as well as through contributions of supporters in North America and Europe." United States v. Awan, 607 F.3d 306, 310 (2d Cir. 2010).

was evidence that made his defense case weak, they should go ahead and negotiate the plea deal. Id. Petitioner indicates that his attorneys informed him that they had already told the government "NO" and that they would proceed to trial in his case. Id.; Decl. of Khalid Awan ("Awan Decl.") ¶ 14.

In their affidavits, Maher and Wahid indicate a different version of events. According to Maher, he spoke with petitioner "numerous times about the advantages and disadvantages of going to trial" and, in light of the government's evidence against petitioner, how difficult it would be for petitioner to mount a successful defense at trial. Maher Decl. ¶¶ 7-9, 11. Wahid confirms that they always advised Awan of the strengths and weaknesses of his case based upon the evidence and never told him that the government's case was weak. Wahid Decl. ¶ 12. Nonetheless, petitioner "clearly and emphatically" insisted on going to trial. Maher Decl. ¶ 6. In light of their client's wishes in the face of the risks of proceeding to trial, Maher states that he "advised Mr. Awan that he should keep the door open with the government in the event some type of mutually acceptable resolution could be reached" and that Maher "kept an open posture with the government to try to resolve the case without a trial." Id. ¶ 14; see also Wahid Decl. ¶ 10 ("We . . . encouraged [Awan] to keep an open mind as to alternative resolutions other than trial."). Maher acknowledges that "[s]hortly before trial, negotiations with the government reached the stage where the government appeared to be open to the idea of permitting Mr. Awan to plead guilty to charges that would carry . . . around twelve year's [sic] imprisonment." Maher Decl. ¶ 15. However, according to Maher, petitioner "flatly rejected" the government's proposition. Id.; see also Wahid Decl. ¶ 12 ("Mr. Awan rejected the 12 year offer prior to trial."). In his affidavit, Wahid confirms that he at no time advised petitioner to reject a plea deal or suggested petitioner would "absolutely win at trial." Wahid Decl. ¶ 5.

III. Petitioner's Trial and Appeal

At trial, the government relied heavily on petitioner's own statements as well as the testimony of cooperating witnesses. Among the witnesses at trial, law enforcement investigator John Ross testified that, during two days of interviews in 2006, petitioner confided, inter alia, that he had met with Paramjit Singh Panjwar ("Panjwar"), that Panjwar was the leader of the KCF, that the KCF was involved in killing people in India, that petitioner had had meetings and calls with KCF sympathizers, and that he had transferred $60,000 to $70,000, which he knew would be used for killing people, to Panjwar. While in the MDC, petitioner made wiretapped calls to Panjwar, including calls in which he introduced a fellow MDC inmate, Harjit Singh ("Harjit"), to Panjwar and discussed Harjit going to Pakistan for military training. According to Harjit's testimony, he had a number of recorded and unrecorded conversations with petitioner between 2003 and 2004 in which petitioner discussed his knowledge of Panjwar and the KCF, including its involvement in hundreds of bombings and attacks on Indian security forces, and petitioner attempted to recruit Harjit to travel to Pakistan for training with the KCF. According to Harjit, petitioner also told him that he had transferred money to Panjwar on several prior occasions. Gurbax Singh and Baljinder Singh, two admitted KCF supporters, also testified that they had provided money intended for KCF to Awan for transfer to Panjwar. The government also introduced into evidence documents recovered from petitioner listing contact information for known KCF members and bank records for wire transfers of money to Pakistan that corroborated petitioner's prior statements to law enforcement.

Following a three-week trial, a jury convicted petitioner on all three counts on December 20, 2006. Petitioner brought a motion for judgment of acquittal or, alternatively, a new trial pursuant to Federal Rules of Criminal Procedure 29 and 33, which the late Judge Charles P.

Sifton denied. Awan, No. 06-CR-0454 (CPS), DE #155. Judge Sifton subsequently sentenced petitioner to 168 months imprisonment. Petitioner, still represented by Maher and Wahid, appealed his conviction and sentence on the grounds that: (1) there was insufficient evidence to support his conviction; (2) the district court erred in denying petitioner's motion to suppress his admissions to investigators; (3) the district court erred in denying petitioner's motion to suppress evidence seized from his residence and suitcases; and (4) 18 U.S.C. § 2339A is unconstitutionally vague as applied and on its face.[2] The government cross-appealed and argued that the district court had erred in failing to apply the terrorism enhancement in U.S.S.G. § 3A1.4 in calculating petitioner's sentence. In separate opinions issued on the same day, the Second Circuit rejected petitioner's arguments, United States v. Awan, 384 F. App'x 9 (2d Cir. 2010) (summary order), and agreed with the government that the petitioner's case should be remanded for resentencing taking into account U.S.S.G. § 3A1.4, United States v. Awan, 607 F.3d 306 (2d Cir. 2010). On remand, petitioner received substantially the same sentence.

According to petitioner, during the six months he spent in the MDC awaiting resentencing, he informed his defense counsel of three potential crimes that he had learned information about while in the MDC, but counsel refused petitioner's requests to pass the information along to government agencies. Pet. 79. The information that petitioner wanted to pass along to government authorities related to (1) a photograph in a Pakistani-language newspaper showing the leader of a radical Islamist group attending an event in New York; (2) a plan by his cellmate to kill an FBI informant in Pakistan; (3) a scheme in which fellow inmates claimed to be able to bribe prosecutors and judges to get lower sentences for inmates who paid

[2] Petitioner also asserted that 18 U.S.C. § 2339A was overbroad, but the Second Circuit declined to address this issue because it was not sufficiently argued in petitioner's brief to that court. United States v. Awan, 384 F. App'x 9, 12 n.4 (2d Cir. 2010) (summary order).

them; and (4) the existence of a Sikh FBI agent who was in fact a KCF supporter sabotaging FBI investigations. Id. at 79-82.

In response, Awan's defense counsel states that "for various reasons [he] was reluctant to advise Mr. Awan to make further direct statements to the government that could potentially be used against him." Maher Decl. ¶ 18. Maher was concerned that there was a possibility that his client would be untruthful and potentially open himself up to prosecution for obstruction of justice. Id. His concerns were heightened by the fact that Awan had previously made admissions to law enforcement agents, only to then claim that the memorialization of those admissions in FBI reports were lies. Id.

IV. The Instant Petition

On April 1, 2013, petitioner timely filed the instant petition pursuant to 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence.[3] In his lengthy petition, Awan sets forth a great deal of information regarding his personal history and his views on what occurred in his case, but his petition ultimately asserts only two claims for § 2255 relief.[4] Most significantly, petitioner claims that his counsel, Maher and Wahid, were ineffective. He argues primarily that Maher and Wahid (1) misadvised him as to the likelihood of success at trial and forced him to go to trial rather than to plead guilty and cooperate with the government as he wished; (2) erred in their trial strategy; and (3) prevented him from conveying information to the government about other potential crimes. Second, petitioner argues that the Neutrality Act of 1794 somehow immunized the conduct for which he was charged or made his prosecution unlawful.

[3] Although Awan's petition was received for filing on April 1, it is dated as having been mailed on March 25, 2013. Because the petition's timeliness is not challenged, the applicable filing date is not consequential.

[4] In his petition, plaintiff states that he is challenging his conviction and sentence on the basis of only two issues---the Neutrality Act and ineffective assistance of counsel---and that he is providing additional information and arguments solely for the court to "take into consideration" in deciding his two claims. Pet. 38-39.

DISCUSSION

I. Ineffective Assistance of Counsel

The court begins with the weightier of petitioner's two asserted grounds for relief. Petitioner claims that his defense attorneys' representation fell below the range of professionally competent assistance insofar as he alleges that Maher and Wahid: (1) misadvised him as to the likelihood of success at trial and encouraged him not to cooperate with the government; (2) did not pursue a particular trial strategy; and (3) refused to convey information about potential crimes to governmental authorities on his behalf.[5] A petitioner seeking a writ of habeas corpus on ineffective assistance of counsel grounds faces a heavy burden in establishing entitlement to relief. Strickland v. Washington, 466 U.S. 668 (1984), established a two-prong test by which ineffective assistance of counsel claims are adjudicated. Under Strickland, a petitioner must demonstrate, first, that counsel's performance fell below "an objective standard of reasonableness" under "prevailing professional norms," id. at 688, and second, that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," id. at 694. A court need not decide both prongs of the Strickland test if a there is an insufficient showing on one. See id. at 697. Moreover, "[t]he performance inquiry is contextual; it asks whether defense counsel's actions were objectively reasonable considering all the circumstances." Purdy v. United States, 208 F.3d 41, 44 (2d Cir. 2000). Applying the Strickland standard to each of petitioner's claims, the court concludes that none of these claims are meritorious.

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[5] To the extent that petitioner attempts to assert an additional ground for ineffective assistance of counsel on the basis that Maher misadvised him as to the date for filing for a § 2255 petition, Pet. 83; Reply 19, that claim fails from the outset because Awan has timely filed his petition and cannot assert prejudice.

A. ***Petitioner's claim that Maher and Wahid forced him to go to trial rather than accept a plea offer from the government***

Petitioner claims that Maher and Wahid provided him with constitutionally substandard representation because they misadvised him as to the strength of the government's case and inappropriately pressured him to go to trial by guaranteeing him a "100%" likelihood of success at trial. Pet. 71; Reply 20. He argues that they not only forced him to go to trial, rather than cooperate with the government as he wished, but also informed him of a plea offer from the government only after they had rejected it without consulting him. Pet. 74. In making these assertions, petitioner relies principally on his own account of his interactions with Maher and Wahid.

Relevant to this type of claim, the Supreme Court has held that the Sixth Amendment right to counsel "extends to the plea-bargaining process." Lafler v. Cooper, 132 S. Ct. 1376, 1384 (2012). As part of this process, counsel must inform a client of the terms of a plea offer and give advice to a client considering whether to accept a plea offer. Purdy, 208 F.3d at 45. Counsel should also "usually inform the defendant of the strengths and weaknesses of the case against him, as well as the alternative sentences to which he will most likely be exposed." Id. Ultimately, however, it is the client's decision whether to accept a plea offer, and counsel may not coerce a client to accept or reject such an offer. Id.

As described above, the affidavits of both Maher and Wahid contradict petitioner's assertions regarding their representation and advice. Both attorneys insist that, throughout their representation of petitioner, they advised him of the strength of the government's case and the difficulties petitioner would face in going to trial, including that petitioner "faced a high

likelihood of conviction after trial." Maher Decl. ¶¶ 7-11; see also Wahid Decl. ¶¶ 10, 12. However, Awan was "adamant" that he did not want to cooperate with the government and that "he would rather go to trial than plead guilty." Maher Decl. ¶ 6. In his affidavit, Maher describes in some detail the specific evidence and strengths and weaknesses of the case that he and Wahid discussed with petitioner. Id. ¶¶ 7-11; see also Wahid Decl. ¶ 6. This included discussing the difficulty of defending against "terrorism" charges in post-9/11 New York City, Maher Decl. ¶ 8, the damaging nature of recorded telephone calls between petitioner and KCF leader Panjwar and conversations between petitioner and Harjit, id. ¶ 9, and the existence of FBI 302 Reports detailing admissions made by petitioner during interviews, id. ¶ 10. Maher also discussed with petitioner the likely severity of sentencing after trial, including the possible application of the terrorism sentencing enhancement that could potentially result in a 45-year sentence. Id. ¶ 12. Despite having been informed of the circumstances and potential consequences of going to trial, Maher asserts that petitioner nonetheless wanted to go to trial and, accordingly, that Maher and Wahid respected their client's decision on the matter. Id. ¶ 13. According to Wahid, petitioner made it clear that he would only consider a potential resolution with the government prior to trial if it would result in his essentially being credited for the time he had already served. Wahid Decl. ¶ 4. They nonetheless encouraged him to keep an open mind to negotiations with the government and conveyed to him a potential government offer that would result in a twelve-year sentence, which he "flatly rejected" and "stated that he would rather go to trial and lose." Maher Decl. ¶¶ 14-15; see also Wahid Decl. ¶ 10, 12. According to Wahid, he at no time encouraged Awan to reject a plea offer, and he at all times acted in petitioner's "best interest and with his full knowledge and consent." Wahid Decl. ¶¶ 5, 9.

The court credits Maher and Wahid's carefully detailed and consistent accounts of their

representation of petitioner and determines that an evidentiary hearing is not necessary in order to credit their version of events against petitioner's account. See Chang v. United States, 250 F.3d 79, 85-86 (2d Cir. 2001) (finding that a hearing was not required where the court found defense counsel's detailed affidavit more credible than petitioner's contradictory "self-serving and improbable assertions"); Aessa v. Annets, No. 06-CV-5830 (ARR), 2009 WL 1636251, at *8 (E.D.N.Y. June 10, 2009) ("Absent credible evidence to the contrary, this court credits [defense counsel's] affirmation" regarding advice whether to plead guilty); cf. Thai v. United States, No. 99 CV 7514(CBA), 2007 WL 13416, at *6 (E.D.N.Y. Jan. 2, 2007) ("[D]efendant's assertion that his counsel refused to permit him to testify, if unsubstantiated and based upon self-serving testimony, may be defeated by the submission of a detailed affidavit from trial counsel credibly describing the circumstances concerning appellant's failure to testify.") (internal quotation marks omitted). The court finds that Maher and Wahid reasonably conveyed to petitioner the strength of the government's case and advised him of the risks he would face by going to trial, including the potential sentence he could face. They conveyed information about a possible plea offer to him and encouraged him to keep an open mind about government offers but appropriately left the ultimate decision regarding such offers to their client. Particularly in light of the "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance," Strickland, 466 U.S. at 669, 689, the court finds Maher and Wahid's advice concerning whether to accept a plea offer or go to trial fell well within an objective standard of reasonableness.

Moreover, even had petitioner shown that Maher and Wahid provided him with ineffective advice, he has not made the required showing of prejudice. To establish prejudice under the second prong of Strickland "[i]n the context of pleas[,] a defendant must show the

outcome of the plea process would have been different with competent advice." Lafler, 132 S. Ct. at 1384. When the prejudice alleged is "[h]aving to stand trial,"

> a defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (i.e., that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed.

Id. at 1385.

Here, petitioner points to no objective evidence other than his own self-serving assertions to indicate that, but for Maher and Wahid's allegedly ineffective counsel, he would have accepted a plea for a sentence lower than that which he received. See Pham v. United States, 317 F.3d 178, 182 (2d Cir. 2003) ("[O]ur precedent requires some objective evidence other than defendant's assertions to establish prejudice."); United States v. Gordon, 156 F.3d 376, 381 (2d Cir. 1998). Petitioner points to no actual plea offer that he would have accepted. With regard to the twelve-year plea offer that petitioner alleges his attorneys rejected on his behalf, petitioner does not indicate that he would have accepted such an offer. Instead, he asserts that he told his lawyers that, if there was some evidence making his case weak, then they should "go ahead and negotiate the plea for less time." Pet. 74. Thus, even under petitioner's own version of events, he has not shown a reasonable probability that he would have accepted an actual plea offer. His own statements reaffirm the fact that, as Maher and Wahid insist, petitioner himself would not accept a plea unless it was for a lesser sentence than the one that the government was offering. Petitioner, however, is inexplicably convinced that, had he cooperated with the government, he would have received a 36-month sentence. Reply 11. This assertion is based on no objective basis other than the fact that cooperating witnesses who testified against him on behalf of the

government received similar sentences. He provides no grounds from which the court could conclude that the government would even have considered such a sentence for petitioner, much less that it was actually on offer and would have been accepted by petitioner but for his counsel's conduct.

The court finds that defense attorneys' conduct regarding plea negotiations and the decision to go to trial was objectively reasonable and, in any event, petitioner has shown no prejudice resulting from their advice. Accordingly, his ineffective assistance of counsel claim on that basis is without merit.

B. *Petitioner's claim regarding choice of trial strategy*

Petitioner next claims that Maher and Wahid provided him with ineffective assistance because they failed to pursue his desired strategy at trial. Specifically, he complains, inter alia, of their failure to secure an expert witness or to hire a private investigator. Pet. 63; Pet. Decl. ¶ 12. He argues that they should have retained an expert to testify about the relationship between India and Pakistan in order to counteract the government's testimony from the Indian Assistant Inspector General of Police. Reply 9. Although it is difficult to discern the precise nature of petitioner's argument, he also seems to assert that his attorneys should have hired a private investigator because such an investigator would have uncovered documents that show petitioner was eligible to file "various suppression motions." Id. at 10. Petitioner also makes various other claims relating to his attorneys' decision not to play at trial a recording of Awan telling a fellow inmate that Osama bin Laden had ruined the global image of Muslims, Pet. 85, not to request that a translation of a recording be corrected to add at the end of a sentence Awan's statement "I

don't know," id. at 86, and not to cross-examine a government witness about his arrest in New Delhi, India, for assaulting an immigration officer, id. at 87.

A court reviewing a Strickland claim is "especially deferential to defense attorneys' decisions concerning which witnesses to put before the jury" because such decisions are "typically a question of trial strategy that [reviewing] courts are ill-suited to second-guess." Greiner v. Wells, 417 F.3d 305, 323 (2d Cir. 2005) (internal quotation marks and citation omitted); see also United States v. Best, 219 F.3d 192, 201 (2d Cir. 2000) ("[C]ounsel's decision as to whether to call specific witnesses—even ones that might offer exculpatory evidence—is ordinarily not viewed as a lapse in professional representation.") (internal quotation marks omitted). Moreover, counsel may "make a reasonable decision that makes particular investigations unnecessary," Strickland, 466 U.S. at 691, and "[a]n attorney need not pursue an investigation that would be fruitless, much less one that might be harmful to the defense," Harrington v. Richter, 131 S. Ct. 770, 789-90 (2011).

In light of this deferential standard, the court finds that counsel's decision not to present an expert witness or to use a private investigator were within the realm of reasonableness. With respect to counsel's decision not to have an expert witness testify about the relationship between India and Pakistan, Maher and Wahid reasonably could have concluded that this would be an unnecessary expense providing little benefit to Awan's defense and that it might, in fact, have hurt Awan's case. According to Wahid, he discussed with Pakistani diplomatic officials the possibility of having a witness from Inter-Services Intelligence ("ISI") (the Pakistani intelligence service similar to the FBI or CIA) testify because petitioner was accused of working with ISI officials either directly or through Panjwar. Wahid Decl. ¶ 11. Ultimately, however, Maher and Wahid could have concluded that such expert testimony would run the risk of further

highlighting the animosity between India and Pakistan and possible motives for Awan, a Pakistani, to provide support to KCF for its attacks on India. With regard to the decision not to hire a private investigator, petitioner has not shown that the documents that he baldly alleges the private investigator would have found would have in any way impacted the outcome of his trial. He has failed to show "how the fruits of this investigation would have aided [his] case," and therefore has failed to overcome the strong presumption that his counsel acted reasonably. Matura v. United States, 875 F. Supp. 235, 238 (S.D.N.Y. 1995).

With regard to petitioner's other claims about the inadequacies of the defense strategy pursued at his trial, those may be summarily dismissed, as they reflect counsel's objectively reasonable conclusions regarding the efficacy of presenting extraneous information at trial that runs perhaps more risk of harming the defense than helping it. Moreover, in some cases, Awan's desired strategy, including cross-examination of Harjit about his arrest for assault in Delhi, would have been patently impermissible at trial. Therefore, petitioner's claims regarding deficiencies in trial strategy must be altogether dismissed.

C. *Petitioner's claim regarding counsel's failure to convey information to the government*

Petitioner's final basis for claiming that his defense attorneys were ineffective relates to counsel's failure to relay certain information to government authorities at petitioner's request. According to petitioner, while he was awaiting resentencing in the MDC, he asked his attorneys to relay certain information that he had regarding three potential "crimes" to the government, and Maher and Wahid refused to pass this information along to authorities. As described above, the information supposedly related to (1) the presence of the leader of a radical Islamist group in

New York; (2) an inmate's plan to murder an FBI informant in Pakistan; (3) an inmate bribery scheme; and (4) a Sikh FBI agent acting as a KCF supporter. Pet. 79-82. Petitioner appears to contend that, had this information been relayed to the government, he would have received a lesser sentence.

First, the court finds that counsel's decision not to relay this information to the government was objectively reasonable under Strickland. In his affidavit, Maher explains that he was concerned that petitioner's insistence on forwarding the information to the government could create a risk of the information being used against Awan or providing a basis for further prosecution. He states:

> [A]fter the earlier proffer sessions before my representation where Mr. Awan admitted committing the charged crimes but claimed that the FBI agents lied in the 302 reports that memorialized Mr. Awan's statements, for various reasons I was reluctant to advise Mr. Awan to make further direct statements to the government that potentially could be used against him. My position was amplified by my concern that Mr. Awan may not be truthful in meetings with the government, thus opening him up to possible exposure under 18 U.S.C. § 1001 or for obstruction of justice.

Maher Decl. ¶ 18. Maher's statements demonstrate his reasonable conclusion that any potential benefit to his client of relaying the information---some of which was implausible or outlandish or of likely little value to government officials---was far outweighed by the risk that his client would expose himself to further government scrutiny. The court finds this reasoning particularly reasonable in light of the circumstances of petitioner's case and the history of his behavior.

Second, the court finds that petitioner has provided absolutely no showing under the second prong of Strickland that, but for counsel's failure to relay the information at issue, he would have received a different sentence. There is simply nothing in the record to indicate the probability of such a result. See United States v. Motipersad, 5 F. App'x 82, 83-84 (2d Cir.

2001) (summary order) (rejecting Sixth Amendment claim where, even though counsel had failed to move for a downward departure at sentencing on the grounds that defendant had provided "substantial assistance to the government" and "exhibited an extraordinary acceptance of responsibility," defendant had not shown a "reasonable probability" that the result of sentencing would have differed in defendant's favor). Here, petitioner has not shown a "reasonable probability" that a lesser sentence would have resulted from the conveyance of the information he provided to his lawyers.

Petitioner has not shown that he received inadequate assistance of counsel on this or any other basis. According, the court finds that petitioner's ineffective assistance of counsel claim is meritless, and his habeas petition is denied on this basis.

II. The Neutrality Act of 1794

Petitioner also sets forth the rather perplexing claim that his prosecution was somehow unlawful under the Neutrality Act of 1794, now codified at 18 U.S.C. § 960. The statute provides that:

> Whoever, within the United States, knowingly begins or sets on foot or provides or prepares a means for or furnishes the money for, or takes part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace, shall be fined under this title or imprisoned not more than three years, or both.

18 U.S.C. § 960.

Petitioner's argument, as best as can be gleaned from his petition, appears to run thus: As established at trial, the KCF is affiliated with Pakistan's ISI and is used by ISI as part of a proxy war between India and Pakistan. ISI is an arm of the Pakistani government. The United States

considers Pakistan to be an ally and provides significant aid to the Pakistani army, and the sole purpose of the Pakistani army is to protect against and engage in conflict with India. By allegedly providing support to KCF, petitioner was providing support to the ISI, and thereby to Pakistan. Therefore, petitioner's conduct is somehow immunized and his prosecution unlawful under the Neutrality Act. To the extent that the court correctly understands the framing of this argument in Awan's petition, his argument must fail. The Neutrality Act criminalized certain conduct under federal law and provides for the imposition of penalties for such conduct. It in no way immunizes conduct or protects an individual from prosecution.

In his reply, petitioner seems to make a different argument, which is that he was prosecuted under the wrong statute. He argues that the Neutrality Act, i.e. 18 U.S.C. § 960, instead of 18 U.S.C. § 956[6], was the appropriate statute under which he should have been prosecuted because of the geo-political implications of the accusations against him.[7] Reply 14-18. As much as petitioner would like his case to have some geo-political significance, those considerations are irrelevant to whether prosecution under § 956 was lawful in his case. By arguing that he was prosecuted under the wrong statute, petitioner is essentially challenging whether, on the basis of the evidence against him, he should have been convicted under § 956, and thus this is essentially the same sufficiency of the evidence claim that he raised on appeal. Whether petitioner could also have been charged under § 960 is irrelevant to whether his

[6] Petitioner was convicted on charges of providing material support and resources to terrorists and conspiracy to provide material support and resources to terrorists, both in violation of 18 U.S.C. § 2339A. An offense under §2339A is committed by:

> Whoever provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of section . . .956 . . . of this title . . . .

18 U.S.C. § 2339A(a). The charges for which petitioner was convicted under § 2339A involved a conspiracy to murder persons outside the United States in violation of 18 U.S.C. § 956, which is only one of a number of statutes the violation of which is incorporated into the § 2339A offense.

[7] Petitioner would seemingly prefer a § 960 charge, as it carries a maximum of three years' imprisonment.

conviction under § 956 was supported by the evidence. On appeal, the Second Circuit considered whether there was sufficient evidence to convict petitioner under § 956 and explicitly found in the affirmative. Awan, 384 F. App'x at 12-14. As a result, this court may not now reconsider the issue. Barnett v. United States, 870 F. Supp. 1197, 1201 (S.D.N.Y. 1994) (quoting Cabrera v. United States, 972 F.2d 23, 25 (2d Cir. 1992)) ("It is well settled that 'section 2255 may not be employed to relitigate questions which were raised and considered on direct appeal.'").

To the extent that Awan also argues that § 2339A and § 956 are vague and overbroad, Reply 14, the court will not consider those claims. The Second Circuit also explicitly rejected the vagueness challenge on appeal. Awan, 384 F. App'x at 15-17. The Second Circuit declined to consider Awan's claim that the statutes were overbroad because he had failed to adequately argue the point in his brief and thus waived his claim. Id. at 15 n.4. Because he did not adequately raise the claim on direct appeal, he may not assert it in this proceeding. DeJesus v. United States, 161 F.3d 99, 102 (2d Cir. 1998) ("[I]f a petitioner fails to assert a claim on direct review, he is barred from raising the claim in a subsequent § 2255 proceeding unless he can establish both cause for the procedural default and actual prejudice resulting therefrom or that he is 'actually innocent' if the crime of which he was convicted."); accord Santiago Gonzalez v. United States, 198 F. Supp. 2d 550, 554 (S.D.N.Y. 2002). The court finds petitioner's ineffective assistance of counsel claim meritless, and petitioner has shown no other cause or explanation for his procedural default, nor has he presented any other evidence indicating his actual innocence. His challenges to his conviction for charges under § 2339A involving violations of § 956 are, therefore, without merit.

CONCLUSION

For the foregoing reasons, petitioner's motion to vacate his conviction and sentence under 28 U.S.C. § 2255 is denied. Furthermore, because petitioner has not made a "substantial showing of the denial of a constitutional right" pursuant to 29 U.S.C. § 2253(c)(3), no Certificate of Appealability will issue. Petitioner may seek such a certificate from the Second Circuit Court of Appeals. The Clerk of Court is directed to enter judgment accordingly.

SO ORDERED.

Allyne R. Ross
United States District Judge

Dated: March 31, 2014
Brooklyn, New York

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