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United States District Court, E.D. Pennsylvania.
United States of America
v.
Damon MEADOWS
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v.
United States of America
No. CIV. A. 97-2798.

Dec. 19, 1997.

Damon Meadows, White Deer, Pro se.

James H. Feldman, Jr., Alan Ellis, Law Offices of Alan Ellis, P.C. , Ardmore.

Sarah L. Grieb, William C. Nugent, U.S. Attorney's Office, Phila, for U.S. Attorneys.

MEMORANDUM

DALZELL, J.

***1** On July 23, 1993, a jury returned a guilty verdict against Damon Meadows for conspiracy to distribute cocaine base, 21 U.S.C. § 846. After a lengthy sentencing hearing on February 25, 1994, at which we made extensive factual findings as to drug quantities and enhancements, we located Meadows's offense level at 48, five levels above the top offense level under the Guidelines. We therefore were compelled to sentence Meadows to life, and also imposed a fine of $25,000, and a supervised release term of five years.

Meadows promptly appealed, and on March 9, 1995 the Court of Appeals affirmed the sentence. *United States v. Meadows,* 52 F.3d 318 (3d Cir.table), *cert. denied* 516 U.S. 890, 116 S.Ct. 237, 133 L.Ed.2d 164 (1995). In doing so, the Court of Appeals considered the following:

1. There were variances between the indictment and the proof presented at trial which substantially prejudiced the rights of the appellant;

2. The appellant was prejudiced by testimony and argument concerning the shooting of Darryl [*sic*] Green; and

3. The court's calculation of drug quantities which it attributed to the appellant was based on unreliable testimony to which no scrutiny was given[.]

Id. at slip op. 1-2.

Meadows filed the instant § 2255 petition on April 22, 1997. In six separate documents filed with this Court-that is, the original memorandum in support of his § 2255 (filed May 30, 1997), an amended memorandum in support of his § 2255 (filed July 11, 1997), a supplemental memorandum (filed August 6, 1997), his reply to the Government's response to Meadows's § 2255 (filed September 8, 1997), a supplement to that reply (filed September 18, 1997), and a December 15, 1997 Letter to the Assistant United States Attorney, which Meadows also faxed to us-Meadows has argued a number of different grounds for relief.

We note at the outset that § 2255 does not afford a remedy for all errors made at trial or sentencing. *United States v. Addonizio,* 442 U.S. 178, 185, 99 S.Ct. 2235, 60 L.Ed.2d 805 (1979). Habeas corpus relief is generally available only in “exceptional circumstances” to protect against a fundamental defect which inherently results in a complete miscarriage of justice or an omission inconsistent with the rudimentary demands of fair procedure. *See Hill v. United States,* 368 U.S. 424, 428, 82 S.Ct. 468, 7 L.Ed.2d 417 (1962).

To obtain collateral relief based on trial errors to which no contemporaneous objection was made, a convicted defendant must show both (1) ‘cause’ excusing his double procedural default, and (2) ‘actual prejudice’ resulting from the errors of which he complains. *United States v. Frady,* 456 U.S. 152, 167, 102 S.Ct. 1584, 1594, 71 L.Ed.2d 816 (1982).

Of Meadows's accumulated arguments for relief, we shall first address those that we decide without a hearing.

a) *Due Process Violation-“Willful Blindness” Instruction*

Meadows alleges that we erred in charging the jury on "willful blindness," as follows:

[T]he element of 'knowledge' may be satisfied by inferences drawn from proof that a defendant deliberately 'closed his eyes' to what would otherwise have been obvious to him. A finding beyond a reasonable doubt of conscious purpose to avoid enlightenment would permit an inference of knowledge. Stated another way: A defendant's knowledge of a fact may be inferred from a 'willful blindness' to the existence of the fact. A showing of negligence or mistake is not sufficient to support a showing of willfulness or knowledge.

***2** Trial Tr. at 588.

We doubt that under the first prong of *Frady* 's "cause and prejudice" standard, Meadows's double procedural default on this point is excused by the bare assertion of ineffective assistance of counsel for failing to object to the jury instruction and failing to raise the issue on appeal. Even if we were to find cause and move to the second prong of *Frady*, however, we do not think it even a close question that Meadows has shown error, much less prejudice, in our "willful blindness" instruction.

In challenging jury instructions under *Frady*, Meadows "must shoulder the burden of showing, not merely that the errors at his trial created a *possibility* of prejudice, but that they worked to his *actual* and substantial disadvantage, infecting his entire trial with error of constitutional dimensions." *Id.* at 1596 (emphasis in original). Viewed in the light most favorable to the Government, *United States v. Anderskow*, 88 F.3d 245, 252 (3d Cir.1996)(citing *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979)), and after careful review of the trial record, we conclude that there was ample evidence to support our giving the instruction. We also find that the charge properly emphasized the necessity of inquiring into the defendant's subjective awareness of the fact in question, rather than instructing an objective inquiry in that regard. *See United States v. Caminos*, 770 F.2d 361, 365 (3d Cir.1985). Furthermore, "a single instruction to a jury may not be judged in artificial isolation, but must be viewed in the context of the overall charge." *Cupp v. Naughten*, 414 U.S. 141, 147, 146, 94 S.Ct. 396, 400, 38 L.Ed.2d 368 (1973). Given that the willful blindness instruction appeared in our introductory discussion of the instructions, and that we separately and exhaustively charged the jury as to each element of the conspiracy count, we cannot say that the willful blindness instruction, even if erroneous in isolation, worked actual prejudice in context with the entire charge. Finally, even assuming that we erred in giving the instruction, Meadows has raised only the *possibility* of prejudice in his case-a gossamer one here, in view of the overwhelming evidence of his guilt-which is in any event insufficient to warrant granting relief under *Frady*.

b) *Sixth Amendment Violation-Ineffective Assistance of Counsel at Trial*

Meadows argues that he was deprived of his Sixth Amendment right to effective assistance of counsel at trial, and offers as grounds for this claim the fact that his trial counsel, Robert Scandone, Esquire, failed, among other things, to file any discovery motion or join the discovery motions of co-defendants, investigate or interview possible witnesses such as Jocko King, Keith Ellis, or Turhonda Tippens, present at trial a "multiple conspiracy defense," object to allegedly improper remarks made by the prosecutor in his closing argument, or discuss with his client possible defense strategies or evidence of which Meadows may have been aware.

***3** When considering a claim of ineffective assistance of counsel we are bound by the two-pronged test that the Supreme Court formulated in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984):(i) whether the attorney's performance fell "below an objective standard of reasonableness", thus rendering the assistance so deficient that the attorney did not function as "counsel" as the Sixth Amendment guarantees, *see id.*, at 687-88, and (ii) whether the attorney's ineffectiveness prejudiced the defense such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *See id.* at 694; *see also Deputy v. Taylor*, 19 F.3d 1485, 1493 (3d Cir.), *cert. denied*,114 S.Ct. 1730 (1994).

We first note that some of these claims, such as the possibility of a multiple conspiracy defense, were argued on Meadows's direct appeal, and thus are barred here from collateral review. Second, without addressing Meadows's non-barred claims *seriatim*,

we do not believe, under the first *Strickland* element, that he has disturbed the strong presumption that his counsel's conduct fell within the wide range of professionally reasonable assistance and sound trial strategy. *Id.* at 689 (holding that "[j]udicial scrutiny of counsel's performance must be highly deferential, and ... every effort must be made to eliminate the distorting effects of hindsight."). Mr. Scandone presented a vigorous defense on Meadows's behalf, in many respects following Meadows's directions as to trial strategy. Lastly, and perhaps most importantly, under the second prong of *Strickland*, and in light of the admissions of Meadows in court on December 17 as to his culpability in the conspiracy, we cannot conclude that Meadows has established that any alleged errors of trial counsel were so pervasive as to "undermine confidence in the outcome," *Strickland*, 466 U.S. at 694, such that denying Meadows's § 2255 motion to vacate his conviction would result in a "complete miscarriage of justice." *Hill*, 368 U.S. at 428.

We now turn to the grounds for which we granted a hearing, which we conducted on December 17 and 18, 1997.

c) *Ineffective Assistance as to the Guilty Plea*

Meadows alleges that his trial counsel's failure-before trial, after trial, or prior to our imposition of Meadows's sentence-to advise Meadows that he faced a life sentence if he proceeded to trial amounted to ineffective assistance of counsel.

Applying *Strickland*, we cannot say that trial counsel's performance was deficient in this regard. First, Meadows's sentence was primarily driven under § 2D1.1 of the Sentencing Guidelines by the quantity of drugs attributable to him. Up until shortly before trial, neither Mr. Scandone nor even the Government knew what amount of crack properly could be attributed to Meadows-at all events a complex enterprise, to say the least, under established Guideline jurisprudence. *See, e.g., United States v. Collado*, 975 F.2d 985, 990-95 (3d Cir.1992). In fact, until the trial actually began, Mr. Scandone had every reason to believe that the drug quantity reasonably attributable to Meadows would *not* place him in an offense level exposing him to life in prison.

***4** Moreover, Mr. Scandone provided Meadows with all the information which Scandone had, namely, that Meadows's was a "serious case," and that he faced a mandatory *minimum* 10-year sentence-which Scandone raised to twenty years as he obtained more information as the trial grew closer. Notably, Meadows himself *twice* stated on December 17 that, to him, the possibility of a 10-year prison term was "like a life sentence." Thus, given the information that Meadows himself admits Mr. Scandone provided him, Meadows was adequately equipped to decide whether to plead or proceed to trial.

In any event, trial counsel is not required to "give [the] defendant anything approaching a detailed exegesis of the myriad arguably relevant nuances of the Guidelines," *United States v. Day*, 969 F.2d 39, 43 (3d Cir.1992), and thus we find that Mr. Scandone's performance was adequate to provide the necessary information for Meadows to make a reasonably informed decision whether or not to plead guilty.[FN1] *Id.*

FN1. Meadows also takes Mr. Scandone to task for failing to mention that the *statutory* maximum sentence was life imprisonment. In this case, as in most offenses committed after November 1, 1987, this contention is meritless. Since that date, the only relevance of the statutory maximum in the real world of federal sentencing is if a statutory maximum caps a Guideline-based offense level. In cases like Meadows's where drug conspiracies are alleged, the sentences are driven by drug quantity and statutory mandatory *minimums.* Given the reality of this post-Sentencing Reform Act sentencing regime, except in the rarest cases-and Meadows never impersonated one-the statutory maximum is academic. The failure of defense counsel to mention that maximum to his client therefore cannot, in such a sentencing world, constitute a predicate for an ineffectiveness claim.

Even if we were to reach the second *Strickland* prong on this issue, we would not find that there is a "reasonable probability" [FN2] that, but for trial counsel's failure to advise Meadows directly that he faced life, the result would be different. *Id.* at 685. We examine this issue against the two unselected of the three options Meadows faced before trial: (1) plead and cooperate with the Government, (2) "open plead" and

seek a reduction of his sentence for acceptance of responsibility, or (3) proceed to trial.

FN2. In applying this standard, we recognize that when challenging counsel's assistance as to a possible guilty plea, the defendant "need not prove with absolute certainty that he would have pleaded guilty, that the district court would have approved the plea arrangement, and that he therefore would have received a lesser sentence." *Day*, 969 F.2d 39, 45 n. 8.

As to the first possibility, we fully credit Mr. Scandone's testimony that before trial Meadows steadfastly refused to hear any guilty plea advice that included cooperation with the Government.[FN3] Furthermore, Vincent Croft, who attended one of Meadows's pre-trial meetings with Mr. Scandone-and testified at the habeas hearing that he knows Meadows "better than anybody"-confirmed Mr. Scandone's credible testimony that discussion of any such plea agreement would fall on deaf ears. Thus, we find that any alleged deficiency by Mr. Scandone in this regard is excusable. *Cf. Jeffrey Paul Gordon v. United States*, No. Civ. A. 97-2757, 979 F.Supp. 337, 1997 WL 613080 at *6-9 (E.D.Pa. Oct.1, 1997).

FN3. We also note that both parties agree that at no time did the Government in fact offer Meadows a guilty plea agreement.

As to Meadows's second option, Meadows repeatedly asserted to his trial counsel that he would not "open plead," instead believing that he would be acquitted because of the paucity and character of the Government's evidence at trial. We do not believe that there is a reasonable probability that Meadows's conclusion would have been altered had he been provided with the information of which he here complains years after the fact. Meadows did not decide to plead guilty after either (i) he heard testimony at his trial that other co-conspirators, absent a guilty plea, faced sentences up to life imprisonment, or (ii) he read his own Presentence Investigation Report, which provided in bold and underlined type that the Guideline range for Meadows's imprisonment was life imprisonment.[FN4] To the contrary, Meadows resolutely *disclaimed* any involvement with the conspiracy at sentencing. *See* Sentencing Tr. at 114.[FN5] Furthermore, Mr. Croft's informed testimony as to Meadows's state of mind is again illuminating. Mr. Croft testified that Meadows would never have accepted a plea which resulted in a thirty-year term, which would have been the minimum term of imprisonment we could impose *assuming* we credited Meadows with full acceptance of responsibility under the Guidelines. Meadows believed, as Croft testified before us on December 18, that a thirty-year term was "like a life sentence," and therefore we cannot say that, under *Strickland*, there is a reasonable probability that Meadows would have in fact accepted the plea.

FN4. It further bears noting, and is relevant to the good faith of his claim, that Meadows waited more than three years after the imposition of his sentence-and thus receiving most dramatic imaginable notice of the fact that he faced life imprisonment-to create this incredible claim. To the contrary, Meadows's posture as to the plea, in the face of Mr. Scandone's doing everything in his power to persuade him to do so, was consistent with Meadows's bravado that "he was going out like a soldier." Trial Tr. at 114 (Testimony of Fred McDuffie).

FN5. Meadows testified as follows:

Q. Did you ever deliver drugs to any of these people?

A. No.

Q. Never. Did you ever possess any firearms?

A. No. Did I possess firearms?

Q. Yes.

A. No.

Id.

***5** Lastly, we note that even *had* Meadows agreed to plead guilty and sought a reduction under the Sentencing Guidelines, we cannot say that there is a reasonable probability that we would have awarded him a three-point reduction-or any reduction-for his "acceptance of responsibility." [FN6] Even when he no

longer had any doubt as to the sentence he was facing, Meadows steadfastly denied any involvement with drugs, *see* Sentencing Tr. at 114, testimony he on December 17, 1997 admitted was a lie. Thus, Meadows in this regard has failed to show either deficient performance by trial counsel or a reasonable probability of prejudice warranting a grant of his § 2255 motion.

FN6. Even a cursory glance at the Application Notes under U.S.S.G. § 3E1.1 affords no basis, even to this day, by which we could find Meadows "clearly" has shown any "acceptance of responsibility." He remains, as we saw in his demeanor and heard in his testimony, a good "soldier" in Anthony Pone's criminal army.

d) *Ineffective Assistance at Sentencing*

As to the question of whether Robert Scandone provided ineffective assistance of counsel at sentencing, we reject Meadows's arguments for three reasons. First, collateral review of our calculation of the amount of crack properly attributable to Meadows-the prime factor driving the sentence-is foreclosed by our Court of Appeals's ruling on Meadows's direct appeal. *Meadows,* 52 F.3d 318, slip op. at 2. Second, our recalculation of Meadows's Guideline range under § 2D1.1 of the Sentencing Guidelines, as retroactively reduced under Amendment 505, moots the essence of defense counsel's proffer on this point. Third, as to defense counsel's argument that Meadows should have been properly attributed under 1.5 kilograms of crack at sentencing, we find that the testimony which we heard from Jocko King on December 17, as well as defense counsel's proffer of other testimony on this point, is insufficient to disturb our finding at sentencing that the evidence upon which we relied at sentencing had the "sufficient indicia of reliability" required by *United States v. Miele,* 989 F.2d 659, 664 (3d Cir.1993) and Sentencing Guideline § 6A1.3(a).

e) *Sentencing Guidelines Issues*

We briefly turn to Meadows's objections to our application of the Sentencing Guidelines. First, as to the base offense level, the Government concedes and we agree that, pursuant to our power under 18 U.S.C. § 3582(c)(2) and Guideline § 1B1.10(a), we should apply Amendment 505's retroactive reduction of Meadows's base offense level under § 2D1.1(a) to 38.

The Government also concedes that it erred in contending that Meadows was subject to a two-level enhancement for obstruction of justice pursuant to Guideline § 3C1.1. *Compare id.* Application Note 3(e) *with id.* Application Note 4(a), (d).

We reject, however, Meadows's argument regarding application of the two-level enhancement for distribution near a protected area pursuant to Guideline § 2D1.2. The evidence at Meadows's sentencing hearing provided ample factual grounds to support our finding on this point. We also find unavailing Meadows's legal argument that he was charged with violation of a statute (21 U.S.C. § 846) for which § 2D1.2 is an improper referent. Our Court of Appeals has on at least two occasions affirmed sentences applying this enhancement, *see Meadows,* 52 F.3d 318; *United States v. Robles,* 814 F.Supp. 1249 (E.D.Pa.), *aff'd* 8 F.3d 813 (3d Cir.1993). Furthermore, we find the Sixth Circuit's analysis as articulated in *United States v. Clay,* 117 F.3d 317, 318-21 (6th Cir.1997) to be persuasive on this point.[FN7] *But see United States v. Locklear,* 24 F.3d 641 (4th Cir.1994).

FN7. *Clay* found that Application Note 3 to U.S.S.G. § 1B1.1, which provides that "[t]he list of 'Statutory Provisions' in the Commentary to each offense guideline does not necessarily include every statute covered by that guideline,"*id.,* and Application Note 6 to U.S.S.G. § 1B1.3, which states that "[u]nless such an express direction [to limit application of the guideline to the listed statutes] is included, conviction under the statute is not required,"*id.,* justifies application of § 2D1.2 in cases where the defendant is convicted under a statute not listed for that Guideline. *Id.* at 320-21.

***6** Because of the Government's concession as to applicability of Amendment 505 and the inapplicability of the obstruction of justice enhancement, we will grant Meadows's § 2255 motion and vacate his sentence.[FN8]

FN8. We would like to make clear that our grounds for granting Meadows's motion, based upon the Government's concessions,

do not warrant finding a violation of his Sixth Amendment right to effective assistance of counsel. Although a very able trial lawyer, Mr. Scandone is not clairvoyant, and thus cannot be faulted for failing to predict that Amendment 505-not even proposed to Congress at the time of Meadows's sentencing-would *ex post facto* reduce Meadows's base offense level. The two-level firearm enhancement under § 2D1.1(b)(1) was not, and could not be, an issue. As to the § 2D1.2 and § 3G1.1 enhancements discussed above, and to which Scandone made no objection at sentencing, we find no possibility of prejudice under *Strickland.* Even if Mr. Scandone had successfully objected to those enhancements at sentencing, Meadows's total offense level of 44-still off the Sentencing Table-would at the time still have mandated life imprisonment.

ORDER

AND NOW, this 19th day of December, 1997, upon consideration of Meadows's motion to amend his sentence pursuant to 28 U.S.C. § 2255, and after a hearing, and for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

1. The motion is GRANTED to the extent set forth in the accompanying Memorandum;

2. In all other respects, the motion is DENIED;

3. As to the denied grounds, Meadows has not made a substantial showing of the denial of a constitutional right, and thus we decline to issue a certificate of appealability; and

4. The Clerk shall CLOSE Civil Action No. 97-2798.

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Not Reported in F.Supp., 1997 WL 835413 (E.D.Pa.)

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