U
Paul Hunt

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

Subjects
- § 2255
- Evidentiary Hearings
  - Need to hold one
- Prosecutorial Misconduct
- Perjured testimony
- Ineffectiveness of counsel

EDWARD ISLEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION

This matter is before the Court on the Petitioner's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence. After reviewing the Petitioner's motion, the Government's response, and the underlying record, the Court has determined that an evidentiary hearing is not necessary. For the reasons discussed below, the Petitioner's Motion is denied.

FACTUAL BACKGROUND

On August 9, 1984, after a three-day trial, a federal jury found the Petitioner, Edward Isley, and codefendants, Andre Bowlding and Jerome Fields, guilty of murdering and conspiring to murder fellow inmate Tyrone Jenkins inside the walls of the Lorton Reformatory. The jury returned its verdict based, for the most part, on the following evidence:

On February 23, 1984, at approximately 5:00 p.m., a corrections officer discovered Jenkins' body face down in a pool

of blood outside the doorway to Dormitory Number Four ("Dorm Four") in Lorton's Central Facility. Jenkins had been stabbed seven times, sustaining wounds in his back, his head, and in the palm of his hands.

The United States produced three eyewitnesses: Michael Allison, Charles Bailey and Anthony Richardson, all Lorton inmates and residents of Dorm Four at the time Jenkins was killed. Allison testified that he was returning from the dining hall when he saw Jenkins approaching from the opposite direction. Allison and Jenkins reached the door to the TV room of Dorm Four at the same time; Jenkins entered first.

As Jenkins pushed the door open, Allison saw Isley, the Petitioner, step from the annex to the TV room, close the annex door, lean against a wooden bench near the pool table, and fold his arms. Bowlding, who was positioned with his back to the TV room door, then turned and stabbed Jenkins.

As Allison bent to retrieve a cup and spoon he had dropped, he saw Isley looking at him. Allison testified that Petitioner's look made him afraid, telling Allison that he has seen something he was "not supposed to see." (Tr. Trans. (Vol. III) at 310.) Allison then returned to the dining hall.

During this time, Bailey was inside Dorm Four, in the main room adjacent to the TV room. Bailey testified that he was sitting at the foot of his bed when he heard a scuffle occurring in the TV room. He looked through a doorway into the TV room and saw Isley, Fields, and Bowlding surrounding Jenkins. The outside door to the

TV room was open, and Fields was behind it.

According to Bailey, Fields closed the door and held Jenkins, as Bowlding stabbed Jenkins with a shank. Jenkins struggled to free himself, fending off blows with his hands. At some point, Fields told Bowlding that Jenkins had had enough. Isley, however, pulled Fields away, telling him to let Bowlding finish his work. Isley then encouraged Bowlding to hit Jenkins more, and Bowlding responded with more blows.

The third witness, Richardson, was in a shower in the dorm room when he heard shuffling and a "holler." He testified that he stepped out of the shower and saw Fields holding Jenkins, while Bowlding stabbed Jenkins, and Isley stood close by. Afraid to be seen as a witness, Richardson returned to the shower.

FBI agents began investigating the murder as soon as it was discovered. In initial interviews with the FBI, both Bailey and Richardson stated they saw nothing. Bailey claimed he was asleep and Richardson claimed he never left the shower. Both testified at trial that they were afraid to tell the FBI what they saw, fearing retribution from fellow inmates.

PROCEDURAL HISTORY

Following his conviction, Petitioner moved the district court for a new trial, claiming, inter alia, insufficiency of evidence and prosecutorial misconduct. This Court denied the motion for new trial on September 7, 1984, and the Petitioner appealed. The Fourth Circuit held that the prosecutor's failure to produce evidence that the Defendants had a conversation in which they

plotted Jenkins' death, which was specifically alluded to by the Government in their opening statement, was not reversible error. The jury was told that opening statements are not evidence, defense counsel highlighted the prosecutor's failure to produce the evidence, and eyewitness testimony, showing that the Defendants acted in concert on the night of the murder, supported the conspiracy convictions. United States v. Isley, No. 84-5298, Slip Op. at 5-7 (4th Cir. July 11, 1985) (per curiam).

In March, 1987, Petitioner filed a pro se motion with this Court, again seeking a new trial, this time on the grounds of two pieces of newly discovered evidence.[1] This Court refused to grant a new trial, finding that the new evidence was simply cumulative impeachment material, and would not have affected the verdict. United States v. Isley, Cr. No. 84-00115-A (E.D. Va. August 17, 1987) (per Williams, J) (Gov. Exh. B). The Petitioner appealed and filed a motion to supplement the appellate record, asking the Fourth Circuit to consider various documents not presented to the court below, including documents that Isley had obtained under a Freedom of Information Act ("FOIA") request. The Fourth Circuit affirmed this Court's ruling, finding it "substantially consistent with Bailey's trial testimony." United States v. Isley, No. 87-

[1]The new evidence was as follows" A statement made by Special AUSA Janet DeCosta during oral argument on direct appeal, that the Government did not introduce evidence of any conspiratorial conversation amongst the Defendants because Bailey recalled aspects of the alleged conversation differently than he had before. The second piece of evidence was a recorded conversation between Bailey and a private investigator, in which Bailey indicated that his trial testimony was based on rumors and not on personal observation.

6606, No. 87-7335, slip op. at 5 (4th Cir. June 6, 1989).

The Fourth Circuit did give separate treatment to one letter: a letter written from AUSA Karen Tandy to the D.C. Parole Board on behalf of government witness, Michael Allison. See (Pet. App. 24.) The letter states that it was the prosecutor's understanding that Allison would be released in November, 1984. At trial, Allison said he was to be let out in August, 1984. The Fourth Circuit stated that this contradiction "suggest[ed] the possibility" of an undisclosed agreement between Allison and the United States. Nonetheless, the court did not address this possibility, finding that the letter was not timely presented to the court. The Fourth Circuit's decision, however, was specifically made without prejudice to Isley's raising the letter in a separate petition under § 2255.

Petitioner has now filed a § 2255 motion. In this motion, Isley raises not only the Tandy-to-Parole Board letter, but raises new allegations of prosecutorial misconduct regarding the testimony of Charles Bailey, and charges ineffective assistance by Isley's trial counsel. The Petitioner states three grounds on which he claims he is being held in violation of federal law.

NEED FOR EVIDENTIARY HEARING

As a preliminary matter, the Court finds it unnecessary to hold an evidentiary hearing on the issues raised in Isley's motion. I presided over Isley's trial, his sentencing, and his Rule 33 motion for a new trial, and the events in connection with those proceedings are still clear in my mind. In addition, the positions

of the parties are adequately supported with numerous affidavits, exhibits, and memoranda. Given the Court's familiarity with the case, combined with a review of the record and the new submissions by Isley and the Government, the Court finds no need for an additional hearing. See McCarthy v. United States, 764 F.2d 28, 31 (1st Cir. 1985) (holding that no hearing on petitioner's § 2255 motion was required given the judge's familiarity with the case). Moreover, a court may make findings without the aid for a hearing where the motion and files and records of the case show that the prisoner is entitled to no relief. 28 U.S.C. § 2255.

I. PROSECUTORIAL MISCONDUCT--USE OF FALSE TESTIMONY

A prosecutor who obtains a conviction by knowingly presenting false testimony, or allowing false testimony to go uncorrected when it appears, violates a defendant's due process rights. Campbell v. Reed, 594 F.2d 4, 6 (4th Cir. 1979) (citing Napue v. Illinois, 360 U.S. 264, 269 (1959)). However, a prosecutor does not violate due process merely by presenting testimony inconsistent with a witness' own or other witness' statements. United States v. Griley, 814 F.2d 967, 971 (4th Cir. 1987). A defendant seeking to have a conviction vacated must establish an actual perjury. Id. Perjury is not established, for the purposes of a collateral attack on a conviction, unless the court is "reasonably well satisfied that testimony given by a material witness is false." United States v. Wallace, 528 F.2d 863, 866 (4th Cir. 1976 (citing Larrison v. United States, 24 F.2d 82, 87 (7th Cir. 1928)).

1. Michael Allison

Michael Allison was a key government witness at the trial. He testified that Isley folded his arms when the victim entered the room, and the prosecution argued to the jury that this action was a signal to his codefendants. This was the only evidence presented at trial of a pre-existing conspiracy.

The Brady materials provided by the government did not disclose any evidence of an agreement between Allison and the Government, and, in fact, at trial the prosecutor elicited a denial of any government promises in exchange for Mr. Allison's crucial testimony. Mr. Allison also testified that he was going to be released from prison in a few weeks.[2]

The Petitioner claims that events subsequent to the trial have demonstrated that the above testimony by Allison was false and that the AUSA knew that these statements were false when she elicited them. Pursuant to a FOIA request, Isley received a letter written by AUSA Tandy to the Board of Parole on September 26, 1984 (Pet. App. 24). That letter stated in relevant part:

> It is my understanding that Mr. Allison is to be

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[2]The AUSA at trial specifically asked Allison the following:

Q: When are you supposed to be finished with your sentence that you received on those offenses?
A: This month, August the 28th.
Q: So in about three weeks you are supposed to be released from custody . . . ?
A: Yes.

* * * * *

Q: Mr. Allison, has the Government ever promised you anything?
A: No.

(Pet. App. 39, 45.)

> released, with applicable good time, on or about November 1, 1984. I hereby request that you give Mr. Allison favorable consideration in an early release from prison as a result of the quality and extent of his cooperation in this serious case.

(Pet. App. 24-25.) (emphasis added) Isley states that this letter is evidence that the prosecutor promised Allison a reduced sentence in exchange for his testimony.

Allison's testimony was certainly central to the Government's case, and Tandy referred to it at length in her closing argument. The Petitioner claims that, in light of the Parole Board's letter, the Government knowingly relied on perjured testimony to mislead the jury. Moreover, the Petitioner maintains, that even if the letter had not been written at the time of trial, it must have been planned, and, therefore, the Government should have provided this exculpatory evidence to Isley. Without evidence of the cooperation agreement, Isley was prejudiced in his ability to impeach the witness.

The Government directly disputes the Petitioner's contentions regarding Allison. The Government argues that the Tandy letter to the Parole Board does not reflect an undisclosed agreement, but, rather, a misunderstanding. Ms. Tandy has stated by affidavit that, at the time of trial, she believed, as Allison testified, that he would be released on August 28, 1984. (Gov. Exh. C.) Sometime after the trial, Ms. Tandy learned that Allison had not been released on that date. She then agreed to write a letter to the parole board on Allison's behalf, in appreciation for Allison's cooperation at trial. Id. The letter presented by the Petitioner

is entirely consistent with the Government's story, and the Court has no reason to doubt this explanation.

The Petitioner's suggestion that Ms. Tandy anticipated writing the letter prior to trial, making Allison's denial of government promises "stark perjury," conflicts with common sense. If Ms. Tandy had promised to write a parole board letter to Allison before trial, she would have no reason to hide it during trial, because the letter is not a request for sentence reduction but simply a description of the value of Allison's testimony and a recommendation for an early release date if he is eligible. In fact, a promise to write Charles Bailey a similar parole letter was disclosed by the United States in its case in chief. Moreover, despite Tandy's letter, Allison served his entire sentence. (Gov. Exh. D.) It appears that Allison received no undisclosed benefit because he was promised none.

The Petitioner's evidence does not begin to establish, to any degree of reasonable certainty, that Michael Allison committed actual perjury or that the United States was aware of this transgression. Subsequent events have proved Allison's comments about his release date to be wrong; this does not prove, however, that they were not thought to be true at the time they were made. Allegations of prosecutorial misconduct without better supporting evidence than that presented here will not satisfy the Petitioner's burden under § 2255.

2. Charles Bailey

Charles Bailey testified at trial that he had seen the murder,

which occurred in the adjacent TV room, from his bed in Dorm Four. The beds in the dormitory were lined up in two rows separated by an aisle, against two opposite walls, to the left and right of the door. Charles Bailey's bed was the second bed to the right once you entered the dorm. (Pet. App. 48.) Bailey testified that his bed stood out about eighteen inches from the wall at the time of the murder. This fact was essential because Bailey may not have been able to see the murder if his bed was flush against the wall because floor to ceiling walls extended the full length of his bed.

Bailey now states, seven years after the trial, that his testimony was perjured, and that he saw nothing of the murder. He claims that he was in fact asleep at the time of the incident as he told the officers who first questioned him, but later changed his story in the face of tremendous government pressure on him, including placing him in lockdown, threatening to return him to the general population with the label of snitch, and telling Bailey that Isley had implicated him in the incident. (Pet. App. 122-25.) Due to this pressure, Bailey states that he reluctantly acquiesced and testified falsely that he had seen the murder. Id.

Bailey's testimony was critical to the Government's case. At trial, he stated that Isley had intervened when codefendant Fields tried to stop the attack on Jenkins, and had encouraged Bowlding to continue to strike the victim. This testimony formed the sole basis of the aiding and abetting count for which the Petitioner received a life sentence. The Petitioner claims, based on the evidence discussed above, that Bailey's testimony was perjured and

that the Government knew it to be so.

The Government's picture of Charles Bailey is much different than the one painted by Isley, and, in the view of the Court, a more credible one. The Government agrees that Bailey was indeed a reluctant witness. However, he admitted his reluctance at trial, testifying that he lied not only to the FBI, in his initial interview, but also to defense counsel, in a pre-trial meeting, because he was afraid to have his cooperation made known. (Tr. Trans. (Vol. V) at 25.) Bailey ultimately told the FBI that he saw the murder, detailing the same facts that he testified to at trial.

Based on Bailey's recent recantation, Petitioner now argues that Bailey's original story -- that he slept through the murder -- is the truth, and that his trial testimony is false. However, motions to vacate based on recanted trial testimony are viewed with suspicion. United States v. Johnson, 487 F.2d 1278, 1279 (4th Cir. 1973). Careful consideration must be given to the circumstances in which the recantation is made. Id.

Isley noticeably fails to mention that Bailey first recanted his trial testimony in 1986, in statements made during an interview with a private investigator, who was apparently working for the Petitioner. See (Gov. Exh. F (statement of FBI Agent Howard Luker).) In the interview, Bailey stated, contrary to his recent affidavit, that he was awake during the murder, and in fact saw Bowlding struggling with Jenkins, but that he did not see or hear Isley. (Gov. Exh. A (emphasis added).)

According to FBI Agent Luker, who talked to Bailey after his

interview with the private investigator, Bailey told him that he did not want to speak with the private investigator, but nevertheless allowed the interview, telling the investigator what he wanted to hear to get the investigator to leave. Bailey also reaffirmed the testimony he gave at trial during Luker's visit. (Gov. Exh. F.)

Consistency is not Bailey's best virtue. When pressured by agents of the Petitioner, he readily tells these individuals a story that would be helpful to their position. Unfortunately, even the story told to agents of the Petitioner has changed substantially over time. The fact that Bailey has once again changed his trial testimony after a solicitation by the Petitioner suggests that the recantations, rather than Bailey's trial testimony, are to be doubted.

The United States also filed three affidavits from persons who were involved in interviewing Bailey and preparing his testimony for trial. (Gov. Exh. G, H, and I (affidavits of Luker, Tandy, and DeCosta).) All three verify that Petitioner was not threatened to testify and was not offered promises beyond those disclosed at trial. Isley attempts to prove otherwise with the following: (1) a letter from AUSA Tandy to Bailey discussing his refusal to testify before the Grand Jury, and (2) statements of other prisoners who assert that Bailey told them either he was being pressured to testify or that he did not see the murder.

The Petitioner states that the pressure exerted by the Government is documented by a letter from AUSA Tandy to Bailey,

revealed for the first time through Isley's FOIA request of January 11, 1988. This letter reads in pertinent part:

> As you are aware, you were subpoenaed to appear before the Grand Jury this date to testify about the murder of Tyrone Jenkins. Since you have refused to cooperate in the Grand Jury investigation, I have no choice but to consider filing a motion to have the Court hold you in contempt. If the Court holds you in contempt, you will remain at Lorton until you agree to cooperate.

(Pet. App. 23.) (emphasis added) This letter was withheld from the defense. Isley argues that the withholding of this exculpatory evidence unfairly prejudiced the Petitioner in regards to his cross examination of Bailey.

AUSA Tandy states that she did prepare a letter telling Bailey to cooperate in the Grand Jury investigation or he would be found in contempt and would remain at Lorton. (Pet. App. 145.) The letter, however, was a sham. It should be noted that the letter was dated April 2, the same day that Bailey actually testified before the Grand Jury. Thus, it seems obvious that the Government had no need to threaten Bailey on this date. The Government claims that the letter was written at Bailey's request in order to make it appear that he had not cooperated, i.e. to give him something to show his fellow inmates to protect himself. See (Gov. Exh. C.) Such letters are frequently generated for Lorton inmates who are concerned that grand jury appearances might jeopardize their safety or standing among fellow inmates.

The Petitioner also submits the affidavits of other prisoners as support for his argument. Daryl Morgan states in his affidavit that he was in "the hole" at the same time as Charles Bailey and

recalls that Bailey had special privileges, including a color television in the cell, telephone privileges, and work as an orderly. Charles Bailey told Morgan repeatedly that he did not see anything the night Jenkins was murdered and that he did not know why he was in the hole. Morgan recalls that Bailey had no trouble "getting certain things" in the hole. (Pet. App. 126.)

Both John White and Gene Dorsey now state that Bailey was laying flat on his bed at the time of the murder and could not have seen it happen. (Pet. App. 117, 115.) White maintains that he was the person who actually woke Bailey up that night. Dorsey claims that Bailey had the flu and had been sick all week and had been asleep every time that Dorsey went into the dormitory. Dorsey and another prisoner, Michael Hill, state that Bailey's bed was flush against the wall at the time of the murder.

Isley offers these affidavits by prisoners in order to show that Bailey was not an eyewitness to the murder. However, the affidavits better demonstrate, consistent with Bailey's trial testimony, that Bailey made efforts to hide his cooperation from fellow inmates. For instance, Morgan avers that while Bailey was in the "hole" (protective custody), he had no trouble receiving certain privileges. This belies the fact that Bailey was put in the hole to force his cooperation, and supports Bailey's trial testimony that he was placed in protective custody, at his own request, for his own protection. (Tr. Trans. (Vol. V) at 31.) Similarly, out of a concern for his safety, Bailey told many other prisoners that he had not seen the murder.

Bailey testified that, from the foot of his bed, he could see into the television room through a wide doorway. The defense contested this testimony, presenting evidence to show that Bailey's view was obstructed by a dormitory wall, and challenging Bailey's ability to see around this wall. The jury apparently found that Bailey could see the murder scene from his bed. The evidence offered by Isley -- the unsubstantiated opinions of some former inmates -- is insufficient to require a reopening of the jury's factual finding.

Bailey never recanted the substance of his trial testimony to the Government's attorneys. (Gov. Exh. C.) The day before he was to testify Bailey did change the location of the alleged conspiratorial conversation amongst the codefendants. See (Gov. Exh. H.) Rather than risk the damage of impeachment, the United States decided not to offer proof of the conversation, despite having mentioned it in their opening. Id. The ramifications of failing to offer this evidence have been fully litigated, without a finding of error.

The Court finds that Bailey's testimony was presented in good faith. His trial testimony was virtually identical to his grand jury testimony, and his recollection of the events of the murder was corroborated by the physical evidence and the testimony of the other government witnesses. Based on the circumstances of this case, the Court views Bailey's recent recantation with suspicion and finds no reason to believe that Bailey's trial testimony did not describe the actual events of Jenkins' murder.

II. INEFFECTIVE ASSISTANCE OF COUNSEL

As an alternate ground, Isley argues that his sentence should be vacated because he was effectively denied assistance of counsel due to the poor performance by his trial attorneys. A criminal defendant's Sixth Amendment right to counsel is violated, when the defendant is represented at trial, only if counsel's trial performance is so deficient that it undermines the adversarial process and deprives the defendant of a fair trial. Strickland v. Washington, 466 U.S. 668, 689 (1984). There is a strong presumption that the strategies and tactics of counsel fall within the range of reasonable professional assistance. Id. A deficiency is deemed prejudicial only if there is a reasonable probability that, but for the deficiency, the trial result would have been different. Id. at 692.

The Petitioner cites a number of reasons why his trial counsel was ineffective. Among other things, Petitioner claims that his counsel failed to fully investigate, interview, and call possible helpful witnesses, failed to make an opening statement or put on evidence, failed to develop inconsistencies in the Government's evidence, failed to make timely objections to improper questioning, failed to stay awake at trial, failed to properly advise Isley of his right to testify, and failed to render effective post-trial assistance. None of these complaints are meritorious.

There is no need to discuss each alleged inadequacy in any detail because, as the trial judge, I had a good impression of the

effectiveness of Isley's attorneys. The evidence and events at trial are still clear in my mind; from this, and from a review of the record and newly filed affidavits and exhibits, the Court finds that Isley's attorneys performed perfectly well in light of their trial strategy and in no way denied the Petitioner his right to a fair trial. The Petitioner has produced no convincing evidence that his counsel's representation fell below an objective standard of reasonableness.

In regards to their efforts before trial, Petitioner's counsel state that they thoroughly investigated the case against him: interviewing over a dozen Lorton inmates and surveying the scene of the crime. (Gov. Exh. L, M.) Petitioner claims that some of these inmates should have been presented to impeach the testimony of Charles Bailey.

Isley's counsel decided, however, that none of these witnesses would be helpful because none had any direct knowledge of where Bailey was when the murder occurred or about what Bailey actually saw. Certain inmates could have testified that Bailey told them before trial that he did not see the murder. However, Bailey himself admitted at trial that he lied about what he saw, to prevent fellow inmates from learning that he was a cooperating witness. Thus, Isley's attorneys did nothing unreasonable or inadequate in investigating and preparing their case.

Isley was represented by three attorneys at trial: Jeffrey Billet, Dale Saliba and Charles Stow. The Petitioner also received the benefits of the arguments, objections and examination made by

his codefendants' counsel. All three defendants employed a similar strategy: impeaching government witnesses and arguing insufficiency of the evidence. The strategy failed for the Petitioner. However, this defeat does not now justify second-guessing trial strategy and accompanying tactics in an effort to retry the case.

III. JENCKS ACT OBLIGATIONS

The Jencks Act requires the United States to disclose statements of government witnesses only after the witnesses testify at trial. 18 U.S.C. § 3500(b). Pretrial release of witness statements is often made, however, to give defendants a reasonable opportunity to examine the statements and prepare for their use at trial. See United States v. Holmes, 772 F.2d 37, 40 (4th Cir. 1983). A defendant denied reasonable opportunity to review witness statements, either before or during trial, is deprived of his statutory rights and may be entitled to a new trial. Id. at 41.

The United States disclosed witness statements, including FBI form 302's and grand jury testimony, to Isley's trial counsel on July 30, 1984, five days before trial. (Gov. Exh. O.) This release was subject to a court imposed protective order. Out of a concern for the safety of inmate witnesses, this Court ordered that defense counsel not reveal the names of witnesses to the inmate codefendants in connection with the substance of the witness' statements. Complying with this order, Petitioner's counsel met with Isley before trial and summarized the Jencks

material to him, without releasing witness names. (Gov. Exh. L.)

Petitioner claims that he should have been allowed to see Bailey's grand jury testimony before trial and learn witness names so that he could have told his attorneys which of Bailey's allegations were false or inconsistent. Because Bailey's testimony was critical to the prosecution, Isley argues that he was severely prejudiced in his ability to impeach the witness.

To the contrary, Bailey was confronted on cross-examination, by Isley's counsel and other defense counsel, with the very type of evidence Petitioner now suggests that he was unable to raise. See (Tr. Trans. (Vol. V.) at 62-65, 71-78, 120-22 (Bailey confronted with Grand Jury testimony)) and id. at 79-82, 117 (Bailey confronted with statements in FBI 302's). Thus, even if the Court's protective order constituted a violation of statutory or constitutional disclosure requirements, the error was harmless to Petitioner.

CONCLUSION

In order to succeed on a § 2255 motion, the Petitioner's conviction must have been based on errors of such a nature as to make the Petitioner's trial a "complete miscarriage of justice" or a proceeding "inconsistent with the rudimentary demands of fair procedure." Hill v. United States, 368 U.S. 424, 428 (1962); Kerr v. Finkbeiner, et al, 757 F.2d 604, 606 (4th Cir. 1985). The errors made in this case, if any, do not rise to such a level.

In the case at bar, the Court cannot reasonably conclude that the prosecutor knowingly offered false testimony to the jury in

regards to either Michael Allison or Charles Bailey or that some other form of prosecutorial misconduct served to deny Petitioner the right to a fair trial. In addition, Isley's counsel's trial performance was not so deficient that it undermined the adversarial process and deprived the defendant of a fair trial. Thus, the Petitioner's § 2255 motion is denied.

Let the Clerk send a copy of this Memorandum Opinion and the accompanying Order to all counsel of record.

DATE	UNITED STATES DISTRICT JUDGE