Mark H.

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

Richmond Division

UNITED STATES OF AMERICA,	)	
	)	
v.	)	C.R. 87-01-R
	)	
JOSEPH F. CRAWFORD,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

This matter is before the Court on motion of the United States to dismiss the motion filed by the defendant to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Both parties have filed pleadings and affidavits.

FACTS

On March 30, 1987, defendant Joseph F. Crawford plead guilty to kidnapping, an offense punishable by up to life in prison. Mr. Crawford has never contested his guilt with regard to this crime. On May 7, 1987, Mr. Crawford was sentenced by this Court to twenty (20) years of imprisonment. On June 10, 1988, this Court granted defendant's motion under Rule 35 of the Rules of Criminal Procedure, and reduced Mr. Crawford's sentence to 16 and 1/2 years.

Defendant's § 2255 motion now alleges that the plea was involuntarily made. Defendant further alleges that he was told by his counsel that he would only serve 12 years if he plead guilty to the offense.

A full transcript of the rearraignment at which Mr. Crawford plead guilty has been reviewed. The transcript reveals that Mr. Crawford testified that he read the plea agreement, understood it, and signed it. In particular, Mr. Crawford was asked in open Court, "Do you understand if the court accepts your plea of guilty today that you could be imprisoned for as long as up to life imprisonment ... ?" The defendant replied under oath, "Yes, Your Honor, I do." Transcript of Rearraignment Proceedings, page 5, line 25 to page 6, line 5. Defendant similarly testified that he understood that he could receive the same sentence under a guilty plea as he could after a jury trial. Id., page 7, lines 12-16. Mr. Crawford stated that no one made any promises of a lighter sentence in exchange for a plea. Id., page 7, line 17 to page 8, line 1. Finally, Mr. Crawford testified that the written plea agreement was the entire understanding of the parties. Id. at page 4, lines 7-13.

There is no evidence in the transcript that Mr. Crawford was stifled or inhibited in any way. Both Mr. Metcalf, the U.S. Attorney's statement, see Id., page 3, lines 1-4, and the plea agreement itself reveal that there were no other understandings or agreements about the plea.

CONCLUSIONS OF LAW

Our system depends on our ability to rely on statements made to the Court under oath. Because of the solemn nature of a guilty plea, a prisoner's right to later contest the plea is usually

foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977); Via v. Superintendent, Powhatan Correctional Center, 643 F.2d 167, 171 (4th Cir. 1981). In looking to the sufficiency of a guilty plea, the conduct of the attorney for the defendant may be examined. Under the standard set forth in McMann v. Richardson, 397 U.S. 759, 25 L.Ed.2d 763 (1970), the defendant must show that his counsel acted outside the acceptable range of competence.

The Fourth Circuit Court of Appeals addressed a similar fact situation in Crawford v. United States, 519 F.2d 347 (4th Cir. 1975), cert. denied, 432 U.S. 1057 (1976), overruled on other grounds, United States v. Whitney, 759 F.2d 327 (4th Cir.), cert. denied, 474 U.S. 873 (1985). See also Ouellette v. United States, 862 F.2d 371 (1st Cir. 1988). In Crawford the defendant plead guilty to bank robbery and kidnapping. He later moved to vacate his sentence on the ground that the plea was involuntary and that his attorney had lied to him. Crawford, 519 F.2d at 349. The District Court reviewed the arraignment proceedings, and dismissed the motion without a hearing. The Fourth Circuit affirmed, noting that bare contradiction of statements made at the arraignment was insufficient. Id. at 350.

This Court finds the contentions of defendant Joseph Crawford analogous to those presented in Crawford. Defendant's unsupported statement that his attorney Mr. Geary told him to remain silent is analogous to the claim by Stanley Crawford that he was threatened into pleading guilty. Id. at 349. Indeed, defendant's contention is clearly refuted by Mr. Geary's affidavit and the statements of

the defendant at the arraignment. This bald assertion does not necessitate an evidentiary hearing.

Defendant's claim of ineffective assistance of counsel is similarly without merit. Looking to the totality of evidence regarding Mr. Geary's representation, it is clear that his representation was fair and reasonable. His guess that the sentence would be between 3 and 15 years may have been incorrect, but it was not outrageous or unreasonable. Moreover, there is no reason to believe that his advice to plead guilty was unreasonable or improper.

Under the standard set forth in Strickland v. Washington, 466 U.S. 668, 687 (1984), the defendant must show unreasonable professional judgment or a "reasonable possibility" that the outcome of the case would have been different. There is no indication that Mr. Crawford is innocent of kidnapping. Given this, the plea bargain, under which the government dropped Count I, involving interstate transportation of a stolen vehicle, appears to have been a reasonable agreement. There is no reason to believe that the this plea agreement would have been rejected if a different attorney had handled the case. For these reasons, defendant's claim of ineffective assistance of counsel is clearly without merit.

Defendant's claim that he was never informed of his right to appeal his sentence is contradicted by the sworn statement of his attorney. Moreover, any failure to appeal is harmless in light of defendant's success on his Rule 35 motion.

CONCLUSION

Defendant Joseph Crawford plead guilty to a crime he admits committing. Contrary to his sworn testimony before this Court, he now claims that there was a separate bargain between the government and his attorney. Yet all the evidence, and the plea agreement itself, indicates that this is not the truth. There is no allegation that the signature on the plea agreement is not his. The only explanation for the testimony given at the rearraignment is in direct conflict with all the evidence submitted. For these reasons, it is conclusively clear from the filings and affidavits that there is no merit in defendant's motion to set aside, vacate or correct his sentence. The government's motion to dismiss should therefore be GRANTED, and defendant's motion pursuant to 28 U.S.C. § 2255 should be DISMISSED WITH PREJUDICE.

DATE

UNITED STATES DISTRICT JUDGE