

UNITED STATES DISTRICT COURT
Eastern District of Virginia
P. O. Box 630
Richmond, Virginia 23205-0630

chambers of
Richard L. Williams
Senior District Judge

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September 21, 1994

Mrs. Doris Casey, Clerk
U.S. District Court
Eastern District of Virginia
P.O. Box 21449
Alexandria, VA 22320-2449

Re: 87-0009-A / Edwin Paul Wilson v. United States of America

Dear Doris:

Please file the enclosed Final Order with the other papers in the above-referenced case, and process in the usual way.

Very truly yours,

Richard L. Williams

RLW/mce

Encl.

P.S. The file is being returned by UPS.

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

EDWIN PAUL WILSON

v.

Civil Action No. 87-0009-A

UNITED STATES OF AMERICA

FINAL ORDER

This matter is before the Court on petitioner's Writ of Error Coram Nobis filed pursuant to the All Writs provision of Title 28 U.S.C. § 1651. The petition is a continuation of a similar action filed in 1987 that was treated as a petition for relief pursuant to Title 28 U.S.C. § 2255. After reviewing the 91 page petition and documentation attached in support thereof, I find the petition to be without merit and, therefore, dismiss it with prejudice without granting an evidentiary hearing or without requiring the United States to file a response. The reasons for this summary dismissal are that the petition is a complete rehash of issues decided by the Fourth Circuit in the direct appeal and issues ruled on by this court in the prior § 2255 action. The Court's ruling on the § 2255 action was not appealed, even though petitioner was represented by counsel at that time. A copy of the Court's Order and Memorandum Opinion dated August 8, 1988 is attached hereto as Exhibits A and B.

If petitioner desires to appeal the Court's Order, he must file a notice of appeal with the Clerk of the District Court within

30 days after the date of entry of this Order.

It is SO ORDERED.

Let the Clerk send a copy of this Final Order to all counsel of record and to the petitioner at his new address.

SENIOR UNITED STATES DISTRICT JUDGE

David
Wiles

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

EDWIN P. WILSON,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 87-009-M
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

FINAL ORDER

This case is before the Court on Edwin Wilson's petition for relief from his conviction, pursuant to 28 U.S.C. § 2255. For the reasons stated in the accompanying Memorandum Opinion, the petition is without merit and is hereby DISMISSED with prejudice.

In addition, the petitioner has moved this Court for appointment of counsel pursuant to 18 U.S.C. § 3006A(a)(2)(B), and (apparently) for leave to proceed in forma pauperis. The motion for Court-appointed counsel is DENIED, but the request for leave to proceed in forma pauperis is hereby GRANTED.

It is so ORDERED. Let the Clerk send a copy of this Final Order, and the Memorandum Opinion, to all counsel of record.

8/8/88
DATE

Richard C. Williams
UNITED STATES DISTRICT JUDGE

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

EDWIN P. WILSON,)
)
 Petitioner,)
)
 v.) Civil Action No. 87-009-M
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)

MEMORANDUM OPINION

This matter is before the Court on Edwin Wilson's petition for relief from his 1982 criminal conviction, brought under 28 U.S.C. § 2255. The Court has held the matter under advisement for some time, in order to allow the Petitioner to file affidavits and discovery requests in support of his petition. For the reasons stated herein, the petition is without merit and shall be dismissed without the grant of an evidentiary hearing.

The law is clear that once "a matter has been decided adversely to the defendant on direct appeal, it cannot be relitigated on collateral attack." 3 Wright, Federal Practice and Procedure: Criminal § 593, at 439 (2d ed. 1982); United States v. Kalish, 780 F.2d 506, 508 (5th Cir. 1986); United States v. Kraemer, 810 F.2d 173, 177 (8th Cir. 1987) ("appellant cannot raise the same issues in a § 2255 petition that have been decided on direct appeal"). Petitioner's allegations that he was denied a fair trial by the government allegedly preventing him from securing General Anderson's testimony at trial, and by its

alleged withholding of exculpatory documents and information, were answered by the Court of Appeals when it affirmed his convictions. See United States v. Wilson, 721 F.2d 967 (4th Cir. 1983).

On appeal from his convictions, Wilson complained that the trial court's denial of his requested continuance prevented him from obtaining General Anderson's appearance and testimony at the trial. The Fourth Circuit held that "even assuming General Anderson would have testified . . . that the M-16 rifle at issue in the case had been inoperable," the reversal of Wilson's convictions related to that firearm was unwarranted. United States v. Wilson, 721 F.2d at 972. The Court noted that "General Anderson's testimony, far from being 'essential,' would have been cumulative and of limited relevance." Id. This appellate review and consideration of the issue precludes Wilson from now raising it in his collateral § 2255 petition.

Similarly, the Court of Appeals rejected Wilson's claim that the government's alleged suppression of exculpatory information denied him an opportunity at trial, and at his preliminary CIPA hearings, to develop his "good faith" defense. Wilson sought to assert the defense that his firearms exports were part of a good-faith "covert scheme to penetrate the Libyan government and secure valuable information for United States intelligence agencies." Wilson, 721 F.2d at 974. The Court of Appeals reviewed the claims at some length and upheld the trial court's decisions on CIPA discovery and disclosure matters and its decision to quash, for lack of specificity, Wilson's subpoena for a "broad

production of documents" from several government agencies. See Wilson, 721 F.2d at 974-76. Once again, these claims have already been addressed on direct appeal, precluding their relitigation under §2255. See United States v. Kraemer, 810 F.2d at 177.

In addition, Wilson has filed affidavits making numerous allegations about misconduct by various persons, both within and without the CIA, who allegedly conspired to "set up" Wilson for the crimes of which he was convicted. He cannot fairly raise this issue at this late date, however, since he had a full opportunity at trial to substantiate his CIA-related claims and to call the various witnesses he now identifies, including inter alia Shirley Brill, Tom Clines, Ted Shackley and General Richard Secord. See Wilson, 721 F.2d at 975.

Moreover, to the extent that his petition raises claims about alleged suppression of exculpatory material that were not addressed by the Fourth Circuit's opinion, these claims likewise fail to state a basis for § 2255 relief. Wilson's petition now identifies one broad category of information--the alleged NSA intercepts of his communications from overseas--which he claims was improperly suppressed in violation of the government's Brady obligation. While he has introduced an affidavit of Mr. James Bamford, who opines that such NSA intercepts probably do exist, he has failed to produce direct evidence of their existence.

Nonetheless, assuming that Wilson's claims about the suppression of intercepted communications are true, he has failed to carry his burden of showing that the sought-after information was material to his case at trial. As the Fourth Circuit explained

in Bond v. Proconier, 780 F.2d 461, 464 (4th Cir. 1986), a petitioner is not entitled to habeas relief on the ground that the prosecution failed to disclose specified or unspecified evidence, where the petitioner fails "to show materiality as required under the standard enunciated in United States v. Bagley." In the Bagley decision, the Supreme Court held that non-disclosed evidence "is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." United States v. Bagley, 473 U.S. 667, 682 (1985). See also Id., 473 U.S. at 685 (concurring opinion of White, J., joined by Burger, C.J., and Rehnquist, J.); Bond v. Proconier, 780 F.2d at 464; United States v. Kraemer, 810 F.2d 173, 178 (8th Cir. 1987). Because Wilson cannot show that the allegedly suppressed NSA information would have probably resulted in a different verdict at his trial, this claim is without merit and must be denied.

Wilson's own examples of his alleged communications which he contends would have been monitored and recorded by the NSA (see Petition, at 14-15), indicate that the communications had little or no relevance to the issues involved in his trial. And as the district judge who presided over Wilson's trial, I am convinced that such communications, even if they exist and had been produced, would not have resulted in his acquittal. The evidence and events at trial are still fresh and clear in my mind; from this, and a review of the trial transcript and newly filed affi-

avits, I conclude that such allegedly suppressed evidence does not "undermine confidence in the outcome" of the trial. See McCarthy v. United States, 764 F.2d 28, 31 (1st Cir. 1985). In sum, Wilson's petition fails to raise anything that presents a "reasonable probability" of changing the result of his jury trial from conviction to acquittal. See Bagley, 473 U.S. at 682; Bond v. Proconier, 780 F.2d at 464. For this reason, the claim is without merit and his petition shall be dismissed without the grant of an evidentiary hearing.

Such an evidentiary hearing is unnecessary and unwarranted here, because "the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." 28 U.S.C. § 2255; see McCarthy v. United States, 764 F.2d 28, 31 (1st Cir. 1985); Hayden v. United States, 814 F.2d 888, 892 (2d Cir. 1987); United States v. Kraemer, 810 F.2d at 177-78.

Accordingly, the Petitioner is not entitled to any relief under § 2255 and his petition shall be dismissed with prejudice. An appropriate order shall issue.

Aug 8, 1988
DATE

Richard L. Williams
UNITED STATES DISTRICT JUDGE