

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Criminal Action No. 01-068-JJF
	:	
	:	Civil Action No. 03-764-JJF
LUIS MANUEL VALDES,	:	
	:	
Defendant.	:	
	:	

April M. Byrd, Esquire, Assistant United States Attorney, Colm F. Connolly, Esquire, United States Attorney of the UNITED STATES DEPARTMENT OF JUSTICE, Wilmington, Delaware.
Attorney for Plaintiff.

Luis Manuel Valdes, Pro Se Defendant.

MEMORANDUM OPINION

February 2, 2004

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is a Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence By A Person In Federal Custody (D.I. 31) filed by Defendant, Luis Manuel Valdes. For the reasons discussed, Defendant's Motion will be denied.

BACKGROUND

On April 10, 2002, Defendant pled guilty to one count of possession of more than five grams of cocaine base in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B). On September 25, 2002, Defendant was sentenced to 120 months imprisonment, which reflected a sixty-eight month downward departure based on Defendant's substantial assistance to the Government.

Thereafter, Defendant timely filed the instant Section 2255 Motion alleging that his counsel provided ineffective assistance by failing to investigate the harsh pretrial confinement conditions that Defendant was subjected to at Salem County Correctional Center and failing to file a mitigating motion for a downward departure pursuant to U.S.S.G. § 5K2.0 based upon those substandard pretrial confinement conditions. The Government has filed a response to Defendant's Motion, and therefore, this matter is ripe for the Court's review.

DISCUSSION

I. Whether An Evidentiary Hearing Is Required To Address Defendant's Claims

Pursuant to Rule 8(a) of the Rules Governing Section 2255 Proceedings, the Court should consider whether an evidentiary hearing is required in this case. After a review of Defendant's Motion, the Government's response, and the record in this case, the Court finds that an evidentiary hearing is not required. See Rule 8(a) of the Rules Governing Section 2255 Proceedings. The Court concludes that it can fully evaluate the issues presented by Defendant on the record before it. Government of the Virgin Islands v. Forte, 865 F.2d 59, 62 (3d Cir.1989) (holding that evidentiary hearing is not required where motion and record conclusively show movant is not entitled to relief and that decision to order hearing is committed to sound discretion of district court), appeal after remand, 904 F.2d 694 (3d Cir.1990), cert. denied, 500 U.S. 954 (1991); Soto v. United States, 369 F.Supp. 232, 241-42 (E.D. Pa. 1973) (holding that crucial inquiry in determining whether to hold a hearing is whether additional facts are required for fair adjudication), aff'd, 504 F.2d 1339. Accordingly, the Court will proceed to the merits of Defendant's claim.

II. Whether Defendant's Counsel Was Ineffective For Failing To File A Motion For Downward Departure Under United States Sentencing Guideline § 5K2.0

By his Motion, Defendant contends that his counsel rendered ineffective assistance, because he failed to seek a downward departure under U.S.S.G. § 5K2.0 based on the alleged substandard

conditions of his pretrial confinement. According to Defendant, he was transferred on June 5, 2002, from the Federal Detention Center to the Salem County Correctional Center ("SCCC") in Woodstown, New Jersey for approximately three and one half months. Defendant contends that during this time, he was not provided with underwear and was forced to wear only shower shoes. Defendant contends that he was not provided with a dentist for two weeks, and that once he saw the dentist, he was only authorized to extract teeth and not fill them. Defendant also contends that SCCC had no inmate law library, inadequate access to legal research material, no leisure reading materials and no rehabilitative programs. Defendant contends that the overall facilities at SCCC were substandard and unsanitary. Defendant further contends that the guards would "say things to other prisoners to encourage them to attack" him. In this regard, Defendant contends that he lived in fear of an attack and "had to ward off two attacks by other prisoners because the [guards] wrongfully identified him to other prisoners as a child molester" (D.I. 33 at 3).

To succeed on an ineffective assistance of counsel claim, a defendant must satisfy the two-part test set forth by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668, reh'g denied, 467 U.S. 1267 (1984). The first prong of the Strickland test requires a defendant to show that his or her

counsel's errors were so egregious as to fall below an "objective standard of reasonableness." Id. at 687-88. In determining whether counsel's representation was objectively reasonable, "the court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Id. at 689. In turn, the defendant must "overcome the presumption that, under the circumstances, the challenged action 'might be considered sound ... strategy.'" Id. (quoting Michel v. Louisiana, 350 U.S. 91, 101 (1955)).

Under the second prong of Strickland, the defendant must demonstrate that he or she was actually prejudiced by counsel's errors, meaning that there is a reasonable probability that, but for counsel's faulty performance, the outcome of the proceedings would have been different. Strickland, 466 U.S. at 692-94; Frey v. Fulcomer, 974 F.2d 348, 358 (3d Cir.1992), cert. denied, 507 U.S. 954 (1993). To establish prejudice, the defendant must also show that counsel's errors rendered the proceeding fundamentally unfair or unreliable. Lockhart v. Fretwell, 506 U.S. 364, 369 (1993). Thus, a purely outcome determinative perspective is inappropriate. Id.; Flamer v. State, 68 F.3d 710, 729 (3d Cir.1995), cert. denied, 516 U.S. 1088 (1996).

After reviewing Defendant's claim in light of the applicable law, the Court concludes that Defendant cannot establish either prong of the Strickland analysis. The failure of counsel to move

for a downward departure may constitute ineffective assistance of counsel; however, counsel is not required to press meritless issues. Vega v. United States, 269 F. Supp. 2d 528, 533 (D.N.J. 2003). Although some courts have recognized that a downward departure pursuant to U.S.S.G. § 5K2.0 may be appropriate based on pretrial confinement conditions¹, at least one other court in this Circuit has concluded that the court does not have the authority to address prison conditions of confinement through the Sentencing Guidelines.² Thus, it appears to the Court that the Third Circuit has not yet squarely addressed this issue, and therefore, the law in this regard is not entirely settled.

Moreover, those courts that have recognized the authority to depart have only done so when the conditions of confinement are atypical or extraordinary. Conditions of confinement that impact all defendants facing incarceration are insufficient to warrant a

¹ See e.g. United States v. Francis, 129 F. Supp. 2d 612, 613-616 (S.D.N.Y. 2001) (recognizing split in authority, but concluding that court is authorized to grant departure under Sentencing Guidelines for prison conditions of confinement); United States v. Sutton, 973 F. Supp. 488, 492 (D.N.J. 1997) (holding that "a sentencing court is not foreclosed as a matter of law from considering the conditions of pre-trial confinement as a possible basis for departing downward," but declining to do so in the circumstances presented), aff'd. by unpublished decision, 156 F.3d 1226 (3rd Cir.1998) (TABLE).

² See United States v. Booher, 962 F. Supp. 629, 635-636 (D.N.J. 1997) (stating that inadequate conditions of confinement are more properly challenged through civil proceedings under 42 U.S.C. § 1983), rev'd by unpublished decision, 159 F.3d 1353 (3d Cir. 1998) (TABLE).

downward departure. United States v. Washington, 1997 WL 327459, *2-3 (E.D. Pa. June 12, 1997). Those cases in which a downward departure has been found to be appropriate involve lengthy periods of incarceration in deplorable conditions, most typically involving circumstance in which the inmate has been subject to physical abuse and/or sexual assault while imprisoned. See e.g. United States v. Rodriguez, 213 F. Supp. 2d 1298 (M.D. Ala. 2002) (granting downward departure where defendant was raped by prison guard); Francis, 129 F. Supp.2d at 619 (granting downward departure under § 5K2.0 where inmate was victim of attempted knife slashing, was repeatedly threatened during thirteen months of incarceration and experienced extraordinary stress and anxiety during incarceration resulting in twenty pound weight loss and insomnia). By contrast, courts have declined to award downward departures when the inmate has only been incarcerated for a few months, despite the inmate's allegations of substandard and deplorable conditions of confinement. See United States v. Miranda, 979 F. Supp. 1040, 1044-1045 (D.N.J. 1997) (declining to award downward departure under U.S.S.G. 5K2.0, despite unrebutted allegations of deplorable prison conditions where inmate was only incarcerated at the facility in question for 100 days and collecting similar cases).

Accepting as true Defendant's allegations regarding the conditions at SCCC, the Court cannot conclude that counsel's

failure to bring the downward departure motion was so egregious as to fall below objective standards of reasonableness. First, the law is not entirely settled in this Circuit as to whether a downward departure is appropriate based on conditions of confinement. Second, even if such a departure is authorized, the facts alleged by Defendant are not so extraordinary as to render counsel's failure to pursue such a motion unreasonable.

Defendant spent only three and one-half months incarcerated at SCCC, and although Defendant contends that he had to ward off prison attacks, he does not allege that he suffered any actual attacks or physical abuse during his brief period of confinement at SCCC. Given the facts asserted by Defendant, the Court cannot conclude that counsel's failure to file a departure motion was unreasonable.

Further, the Court concludes that Defendant cannot establish prejudice, because the circumstances alleged by Defendant and taken as true by the Court are, in the Court's view, insufficient to justify a downward departure. Many of the conditions of which Defendant complains, although troublesome to the Court, are common to all inmates incarcerated at SCCC and do not take this case out of the heartland of cases involving defendants who faced substandard conditions of pretrial confinement. See e.g. United States v. Ogembe, 41 F. Supp. 567, 571 (E.D. Pa. 1999) (declining to award downward departure where defendant complained that

prison he was incarcerated in for three months was infested with rodents, had no running water and was overcrowded); United States v. Pacheco, 67 F. Supp. 2d 495, 498 (E.D. Pa. 1999) (declining to award downward departure where defendant alleged deplorable prison conditions, because although conditions "sound[ed] deplorable" they were not so extraordinary bad so as to justify a departure and defendant did not show that the conditions of confinement were worse than other inmates housed at the facility). Further, Defendant was only incarcerated at SCCC for a brief period of time, which further removes this case from the type of cases in which downward departures have been found to be appropriate. See e.g. Francis, 129 F. Supp. at 616-619 (granting downward departure to defendant who was faced attempted assaults, daily threats and other inadequate conditions for over one year). In these circumstances, the Court would not have granted a motion for downward departure based on the allegations advanced by Defendant, if one had been filed, and therefore, Defendant cannot establish prejudice as a result of counsel's failure to file a downward departure motion.³ See e.g. United States v. Edwards,

³ In this regard, the Court further notes that the Court granted the Government's motion for a downward departure under U.S.S.G. § 5K1.1 based on Defendant's cooperation with the Government. In so doing, however, the Court went beyond the Government's recommendation of 150 to 188 months imprisonment and sentenced Defendant to 120 months imprisonment. Because the Court had already given Defendant a substantial reduction in his sentence that exceeded the reduction sought by the Government and conformed to the reduction sought by Defendant's counsel, the

2003 WL 23095403, *5 (E.D. Pa. 2003) (finding that counsel's decision to forgo filing of downward departure motion under § 5K2.0 for extraordinary familial responsibilities was not prejudicial, because the court would not have granted such a motion if it had been filed); Doe v. United States, 112 F. Supp. 2d 398, 409 (D.N.J. 2000) (finding that defendant could not establish prejudice prong of Strickland, because court would not have granted downward departure under § 5K2.0 for rehabilitative efforts that were not extraordinary). Accordingly, the Court concludes that Defendant cannot establish that his counsel was ineffective for failing to move for a downward departure under U.S.S.G. § 5K2.0 based on his allegations of substandard conditions of pretrial confinement.

III. Whether A Certificate Of Appealability Should Issue

The Court may issue a certificate of appealability only if Defendant "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In this case, the Court has concluded that Defendant is not entitled to relief, and the Court is not convinced that reasonable jurists would debate otherwise. Because Defendant has not made a substantial showing of the denial of a constitutional right, the Court declines to issue a certificate of appealability.

Court would not have granted a further reduction, even if a second downward departure was sought under § 5K2.0. (D.I. 37 at 5).

CONCLUSION

For the reasons discussed, Defendant's Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside Or Correct Sentence By A Person In Federal Custody will be denied.

An appropriate Order will be entered.

UNITED STATES OF AMERICA,
:
:
Plaintiff,
:
:
v.
: Criminal Action No. 01-068-JJF
:
: Civil Action No. 03-764-JJF
LUIS MANUEL VALDES,
:
:
Defendant.
:

At Wilmington, this 2nd day of February 2004, for the reasons set forth in the Memorandum Opinion issued this date;

1. Defendant's Motion Under 28 U.S.C. § 2255 To Vacate,
Set Aside Or Correct Sentence By A Person In Federal Custody
(D.I. 31) is DENIED.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE