

ORIGINAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

U.S. DISTRICT COURT
N.D. GEORGIA

FEB 26 1992

UNITED STATES OF AMERICA

v.

VIRGINIA C. HIGH,

Defendant.

CRIMINAL ACTION BY: *Luther D. Thomas*
NO. 1:92-CR-182-5
LUTHER D. THOMAS, Clerk
Deputy Clerk

ORDER

This matter is before the court on the defendant's motion for new trial [Doc. No. 509], motion to vacate her sentence pursuant to 28 U.S.C. § 2255 [Doc. No. 510] as amended [Doc. No. 515], and motion for bond time credit [Doc. No. 542]. The government filed a motion to dismiss the defendant's motion to vacate [Doc. No. 514], but the court will treat that "motion" as a brief in response to the defendant's motion.

After a jury found the defendant guilty of various charges, this court sentenced the defendant to a term of 97 months for conspiring to distribute and possession with intent to distribute cocaine (Count One) and 60 months for conspiring to launder drug proceeds, structure currency transactions and defraud the government (Count Thirteen), with the terms to run concurrent with each other. The Court of Appeals affirmed the conviction and sentence on Count One, but reversed the conviction on Count Thirteen and remanded for a new trial on that count.

The defendant's motion for new trial simply restates arguments that have been made to and rejected by this court previously. The only new ground raised is the opinion of the Eleventh Circuit.

which affirmed in part and reversed in part the defendant's conviction. Because the government has now dismissed the count on which the Court of Appeals reversed the defendant's conviction, there is no viable basis for a new trial. Consequently, this motion is DENIED.

Because the defendant has provided no legal basis for this court to give her credit for the time she was released on bond pending the trial of her case, the court hereby DENIES that motion.

In her motion to vacate sentence, as amended, the defendant raises numerous arguments including, *inter alia*, that excessive bond was imposed, her right to a speedy trial was violated, and the government obtained evidence through an illegal search and seizure. She also alleges that her attorney did not provide effective assistance of counsel.

It is the general rule that "an available challenge to a criminal conviction or sentence must be advanced on direct appeal or else it will be considered procedurally barred in a § 2255 proceeding." *Mills v. United States*, 36 F.3d 1052, 1055 (11th Cir. 1994). A ground of error is "available" when its merits can be reviewed without further factual development. "When a defendant fails to pursue an available claim on direct appeal, it will not be considered in a motion for § 2255 relief unless he can establish cause for the default and actual prejudice resulting from the alleged error." *Id.* Normally, an allegation of ineffective assistance must be raised by collateral attack rather than on direct appeal because of the necessity of developing a factual

record to resolve the issue. *United States v. Arango*, 853 F.2d 818 (11th Cir. 1988).

All issues raised by the defendant, other than the ineffective assistance of counsel argument, could and should have been raised on direct appeal. The defendant gives no reason whatsoever for the failure to raise these issues on direct appeal. Consequently, they are procedurally defaulted and may not be raised in her motion pursuant to 28 U.S.C. § 2255

In analyzing an ineffective assistance of counsel claim, this court must follow the guidelines set out in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). In *Strickland* the Supreme Court recognized the inherent problems in reviewing an attorney's actions after the fact.

Judicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.

466 U.S. at 599, 104 S.Ct. at 2065.

To aid the courts in their review of ineffective assistance claims, the Supreme Court provided the following test:

[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct. A convicted defendant making a claim of ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment. The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.

466 U.S. at 690, 104 S.Ct. at 2066.

In the instant case the defendant contends that her counsel provided ineffective assistance by failing to (1) introduce polygraph evidence, (2) "to have witness on behalf of defendant," (3) to request a character investigation report, (4) to object to multiple conspiracy convictions and the concurrent sentences for same, (5) to object to the seizure of the defendant's personal bank account and the forfeiture of a \$15,000 insurance check, and (6) to appeal this court's denial of appeal bond. ~~_____~~

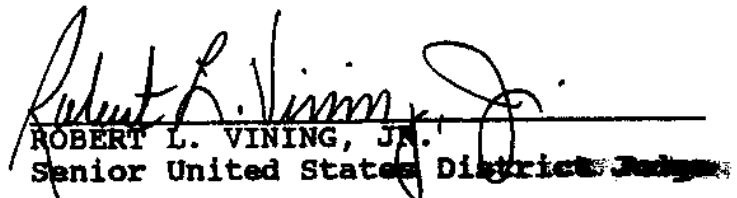
~~offers no factual evidence whatsoever to show how these _____~~
~~deficiencies affected the outcome of her trial. _____~~

~~_____ speculative and conclusory statements of ineffectiveness.~~

Such conclusory allegations are insufficient to obtain relief under section 2255. See *Wilson v. United States*, 962 F.2d 996 (11th Cir. 1992). Therefore, this court finds that the defendant has failed to make the requisite showing that she was denied ineffective assistance of counsel.

In summary, the defendant's motion for new trial [Doc. No. 509] is DENIED; her motion for bond time credit [Doc. No. 542] is DENIED; her motion to vacate her sentence pursuant to 28 U.S.C. § 2255 [Doc. No. 510] is DENIED; her request for appointment of counsel [Doc. No. 513] is also DENIED.

SO ORDERED, this 24th day of February, 1998.


ROBERT L. VINING, JR.
Senior United States District Judge