UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

VICKI RANNI	)	
Movant	)	
v.	)	Civil No. 04-97-P-S
	)	Criminal No. 03-90-P-S
UNITED STATES OF AMERICA,	)	
Respondent	)	

RECOMMENDED DECISION ON 28 U.S.C. § 2255 MOTION

Vicki Ranni is serving a sentence for armed robbery and related firearms offenses. She has filed a motion pursuant to 28 U.S.C. § 2255 challenging her conviction. (Docket No. 1.) She was sentenced to two concurrent terms of thirty-seven months on one count of bank robbery by force or violence and one count of attempted armed bank robbery. She also received a consecutive term of sixty months on a third count for aiding and abetting the use of a firearm in relation to a crime of violence. Ranni posits what is in essence one § 2255 ground broken down into two plaints: her attorney told her she should plead guilty even though she did not know about the gun used in the robbery saying that Ranni would get "the least amount of time" and her attorney gave her bad advice when he told Ranni to indicate to the court that she knew about the gun even though she did not.[1] The United States has filed a motion to summarily dismiss (Docket

[1] The United States notes that on her form § 2255 motion Ranni explains why she did not take a direct appeal by stating that she was told at sentencing that she gave up her right of appeal. Ranni does not indicate who so advised her. Covering all its bases, the United States discusses this as a third ground but I see it as no more than an explanation of her reason for not taking an appeal. Certainly, Ranni offers no hint

No. 6) to which Ranni has not responded. I now recommend that the Court **GRANT** the United States' motion and **DISMISS** the motion with prejudice.

Prosecution Version

A prosecution version of the offense (Docket No. 39), signed by Ranni, explained that if the case went to trial, evidence would show that on Friday, March 21, 2002,[2] Shafer drove Ranni's tractor trailer to the Wells Plaza Shopping Mall in Wells, Maine. Surveillance videos showed that at 12:54 a.m.,[3] Shafer and Ranni walked in front of the federally insured Fleet Bank at 75 Wells Plaza. At 1:20 p.m., Ranni, entered the bank wearing a hooded sweatshirt, a jean jacket, and dark sunglasses. She carried a black bag. Ranni presented a robbery demand note that had been written on the outside of a large yellow envelope to teller Candace Derochers. Derochers gave Ranni $2,186.01 in cash. Ranni fled the bank, escaped with Shafer in the tractor trailer, and shared the robbery proceeds with him.

On May 1, 2002, Ranni and Shafer prepared to rob the same branch of the Fleet Bank again. This time they drove Shafer's white tractor trailer. Shafer took with him a Raven Arms, .22 caliber, semi-automatic pistol. Two tellers, Karen Reed and Denise Letellier, noticed Shafer and Ranni in the front of the bank and recognized them as the couple depicted in the surveillance video of the March 21 robbery. Shafer lost his nerve and he and Ranni abandoned the robbery attempt.

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at what she thought her ground for an appeal might have been and why she was prejudiced by not pursuing an appeal. With respect to her dispute with counsel's performance on the advice not to contest her knowledge of her co-defendant's use of a gun, the § 2255 motion is the preferred vehicle for such a challenge as Ranni's case is postured. See Massaro v. United States, 538 U.S. 500, 504, 509 (2003).

[2] The Prosecution Version has a couple of typographical errors in which the date appears as 2003 rather than 2002.

[3] The Prosecution Version indicates the time as 12:54 a.m. The correct time may be 12:54 **p.m.** given that it is alleged Ranni entered the bank at 1:20 **p.m.**

At 10:14 a.m. on May 5, 2003, Shafer and Ranni went to the Fleet Bank a third time. Shafer entered first, wearing a light colored cap with a blue visor, a blue shirt, and a bandana covering his face. He carried the Raven Arms, .22 caliber, semi-automatic pistol in his left hand. Ranni followed him but stayed near the door to act as lookout. After Shafer demanded money, Derochers fled into Letellier's office, closed the door, and sat on the floor. Shafer pressed his face against the door, tried to open it, and ordered Derochers to "get out here." After Derochers and Letellier refused to comply, Ranni yelled "let's go" and she and Shafer fled lootless. They returned to Shafer's tractor trailer, which was parked in the shopping center parking lot. Ranni hid under the bed of the trailer's sleeping compartment while Shafer changed clothes and withdrew money from a nearby ATM.

When Wells Police Department detectives responded to the bank, they recognized Shafer from the surveillance photographs of the earlier robbery. Finding Shafer about to enter the cab of his tractor trailer, the officers detained him. One of the detectives then identified Shafer as the man who had just tried to rob the bank. After Shafer consented to the search of the tractor trailer, a detective found the pistol hidden in a false stereo speaker. Shafer was arrested, waived his Miranda rights, and was taken to the police station. After Shafer told the police that his accomplice was still hiding in the tractor trailer, officers surrounded the tractor trailer and ordered Ranni to surrender. Ranni was arrested and she waived her Miranda rights, admitting her involvement with Shafer in the robbery attempt that day, the completed robbery on March 21, and the attempted robbery on May 1. She said that she came up with the idea of committing the robberies because she needed money to make truck and child support payments.

Discussion

The United States has set forth in its memorandum a complete picture of the Rule 11 proceedings, the presentence report, and the sentencing hearing, (Gov't Mot. Summ. Dismissal at 2- 12), on which the court can rely in determining whether an evidentiary hearing on the § 2255 motion is warranted, see United States v. DiCarlo, 575 F.2d 952, 954-55 (1st Cir. 1978).

To succeed with her ineffective assistance claim Ranni must demonstrate, one, that counsel's performance fell below an objective standard of reasonableness, and, two, that, but for the error or errors, the outcome of her case would likely have been different, Strickland v. Washington, 466 U.S.668, 687 (1984). See also Cofske v. United States, 290 F.3d 437, 441 (1st Cir. 2002) (applying Strickland in the context of ineffective assistance claim vis-à-vis sentencing determinations). The Strickland analysis applies to representation in cases that are resolved by a guilty plea. See Hill v. Lockhart, 474 U.S. 52, 58-60 (1985).

Ranni's skeletal motion does not approach meeting the minimum pleading burdens of a § 2255 movant. In United States v. McGill the First Circuit stated:

> When a petition is brought under section 2255, the petitioner bears the burden of establishing the need for an evidentiary hearing. See Mack v. United States, 635 F.2d 20, 26-27 (1st Cir.1980); United States v. DiCarlo, 575 F.2d 952, 954 (1st Cir. [1978]), cert. denied, 439 U.S. 834 (1978). In determining whether the petitioner has carried the devoir of persuasion in this respect, the court must take many of petitioner's factual averments as true, but the court need not give weight to conclusory allegations, self-interested characterizations, discredited inventions, or opprobrious epithets. See Mack, 635 F.2d at 27; Otero-Rivera v. United States, 494 F.2d 900, 902 (1st Cir.1974). ...
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> We have distilled these principles into a rule that holds a hearing to be unnecessary "when a § 2255 motion (1) is inadequate on its face, or (2) although facially adequate is conclusively refuted as to the alleged facts by the files and records of the case." Moran v. Hogan, 494 F.2d 1220, 1222

> (1st Cir.1974). In other words, a "§ 2255 motion may be denied without a hearing as to those allegations which, if accepted as true, entitle the movant to no relief, or which need not be accepted as true because they state conclusions instead of facts, contradict the record, or are 'inherently incredible.'" Shraiar v. United States, 736 F.2d 817, 818 (1st Cir.1984) (citations omitted); see also Rule 4(b), Rules Governing Section 2255 Proceedings.

11 F.3d 223, 225-26 (1st Cir. 1993).

The Second Circuit has explained vis-à-vis this plea terrain:

> Counsel's conclusion as to how best to advise a client in order to avoid, on the one hand, failing to give advice and, on the other, coercing a plea enjoys a wide range of reasonableness because "[r]epresentation is an art," Strickland, 466 U.S. 693, and "[t]here are countless ways to provide effective assistance in any given case," id. at 689. Counsel rendering advice in this critical area may take into account, among other factors, the defendant's chances of prevailing at trial, the likely disparity in sentencing after a full trial as compared to a guilty plea (whether or not accompanied by an agreement with the government), whether the defendant has maintained his innocence, and the defendant's comprehension of the various factors that will inform his plea decision.

Purdy v. United States, 208 F.3d 41, 45 (2d Cir.2000). See also United States v. Sparrow, 371 F.3d 851, 854 (3d Cir. 2004).

The most that can be inferred from Ranni's very minimal description of her grounds is that she faults her attorney for advising her to concede at the plea and sentencing phase that she knew that her co-defendant used a firearm during their visitations to the Fleet bank. Count Three alleged a violation of 18 U.S.C. § 2113(a) and (d) for attempted armed bank robbery and Count Four alleged a violation of 18 U.S.C. § 924(c)(1)(A)(i). Both counts of the information alleged a violation of 18 U.S.C. § 2, the aiding and abetting lasso. (Docket No. 31.)

Section 924(c)(1) of title 18 provides for consecutive sentences for "any person who, during and in relation to any crime of violence or drug trafficking crime (including

a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) ... uses or carries a firearm." Section 2113, as relevant, applies to individuals who enter or attempt to enter any bank or like institution, or any building used in whole or in part thereby, with intent to commit a felony. 18 U.S.C. § 2113(a). Subsection (d) provides that a person in committing, or in attempting to commit, any offense defined in subsections (a) who "assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined under this title or imprisoned not more than twenty-five years, or both." Id. § 2113(d). Subsection 2 of title 18 states:

> **(a)** Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.
> **(b)** Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 U.S.C. § 2.

The law of accomplice liability provides the basis of Ranni's plea. See Haugh v. Booker, 210 F.3d 1147, 1151 (10th Cir.2000); Wright v. United States, 139 F.3d 551, 552 (7th Cir.1998); Barrett v. United States, 120 F.3d 900, 900 -01 (8th Cir.1997). Thus, the aiding and abetting element informing the plea decision on the firearm counts would require the United States to prove (a) that Ranni's co-defendant, the principal, committed the substantive firearm offenses, and (2) that Ranni, as accomplice, "became associated with the endeavor and took part in it, intending to ensure its success." United States v. Spinney, 65 F.3d 231, 234 -35 (1st Cir.1995). Ranni does not contend that her co-defendant did not commit the Count 3 and 4 offenses. Accordingly, the United States would only need to prove her "constructive knowledge" of the use of the firearm to

obtain her conviction. Id. at 237. Ranni's presence, though unarmed, during the commission of the crimes made it easier -- "'by the division of labor'" -- for her co-defendant "to carry a firearm and therefore aid and abet that act.'" Santoro v. United States, 187 F.3d 14, 17 (1st Cir. 1999) (quoting United States v. Medina, 32 F.3d 40, 47 (2d Cir.1994) and citing United States v. Nelson, 137 F.3d 1094, 1104 (9th Cir. 1998)).

The bottom line is that Ranni offers no detail what-so-ever as to the factual predicate for challenging her aiding and abetting liability under these statutes.[4] It is not even possible to ascertain whether she would have liked to have counsel challenge it as to all counts, two, or one. Given the nature of accomplice liability and the picture of Ranni's undisputed participation in the three robberies, the advice to plead – on the record before this court -- is within the range of reasonable advocacy. It must be noted that in the plea agreement the United States agreed to recommend that the Court find an acceptance of responsibility and reduce Ranni's offense level by three. (Plea Agreement at 3, Docket No. 38.) Although at the time of sentencing the United States had some reservations about recommending acceptance of responsibility because of Ranni's "accounting of the lack of use – her lack of possession of the gun in the first robbery" (Pre-Sentence Conf. at 5, Docket No. 53) the Government withheld objection and recommended the acceptance of responsibility (Id.; Sentencing Tr. at 6, Docket 54). The

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[4] As, the First Circuit reflected in Spinney:

> In this case, the scheme called for a lone robber to enter a bank during business hours with the intent of looting it. One would expect tellers, guards, customers, and other persons unsympathetic to an unauthorized withdrawal of funds to be on the premises. Under those circumstances, not even the most sanguine criminal would expect clear sailing without some menace in the wind. In short, the circumstances gave rise to constructive knowledge beforehand that the intruder would need a gun or some other dangerous device to accomplish the felons' agreed goal.

65 F.3d at 237.

Court's acceptance of this recommendation meant that Ranni's range fell from fifty-one to sixty-three months to thirty-seven to forty-six months on the concurrent counts. The United States also forwent seeking an enhancement for brandishing a firearm. (Pre-sentence Conf. at 5.)

Conclusion

For the reasons above I recommend that the Court **GRANT** the United States' motion to dismiss and **DENY** this 28 U.S.C. § 2255 motion with prejudice.

NOTICE

> A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.
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> Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

August 23, 2004.

/s/Margaret J. Kravchuk
U.S. Magistrate Judge

RANNI v. USA
Assigned to: JUDGE GEORGE Z. SINGAL
Referred to: MAG. JUDGE MARGARET J. KRAVCHUK
Demand: $
Lead Docket: None
Related Cases: 2:03-cr-00090-GZS
Case in other court: None
Cause: 28:2255 Motion to Vacate / Correct Illegal Sentenc

Date Filed: 05/17/04
Jury Demand: None
Nature of Suit: 510 Prisoner: Vacate Sentence
Jurisdiction: U.S. Government Defendant

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