

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION**

<b>UNITED STATES OF AMERICA</b>	)	<b>Case No. 5:12-cr-00015-1</b>
	)	
<b>v.</b>	)	<b><u>MEMORANDUM OPINION</u></b>
	)	
<b>JOSHUA SAMUEL KNAFEL,</b>	)	<b>By: Hon. Michael F. Urbanski</b>
<b>Petitioner.</b>	)	<b>United States District Judge</b>

Joshua Samuel Knafel, a federal prisoner proceeding pro se, filed a motion to vacate, set aside, or correct sentence, pursuant to 28 U.S.C. § 2255. Petitioner challenges his 96-month sentence that was imposed after he pleaded guilty to conspiring to distribute 100 kilograms or more of marijuana, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B), and 846 (“Count One”). Because the record clearly establishes that Petitioner’s counsel did not render ineffective assistance in violation of the Sixth Amendment of the United States Constitution, Petitioner’s motion is dismissed.

Petitioner fails to establish that counsel rendered ineffective assistance by not allegedly securing a beneficial plea deal. Counsel negotiated a plea agreement that fixed a specific, 96-month term of incarceration for Count One, pursuant to Rule 11(c)(1)(C).<sup>1</sup> Also, the United States agreed to dismiss two other charges, one of which would have imposed a mandatory, consecutive sentence of 60 months’ incarceration.<sup>2</sup> Without the benefits of the plea agreement, Petitioner would have faced a guideline sentencing range of 292 to 365 months’ incarceration if he was convicted of all three charges.

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<sup>1</sup> Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure allows the United States to “agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply.” Such an agreement “binds the court once the court accepts the plea agreement.” Fed. R. Crim. P. 11(c)(1)(C).  
<sup>2</sup> The two dismissed charges were carrying and using a firearm during and in relation to drug trafficking, in violation of 18 U.S.C. § 924(c), and intimidating a witness, in violation of 18 U.S.C. § 1512(b)(3).

Petitioner also fails to establish counsel was ineffective for not requesting a downward departure due to Petitioner's criminal history and general characteristics. Rule 11(c)(1)(C) bound the court to impose the 96-month term of incarceration upon accepting Petitioner's guilty plea. Furthermore, the court weighed those characteristics, pursuant to 18 U.S.C. § 3553(a), after reading counsel's sentencing memorandum and listening to Petitioner's allocution, and the court ultimately determined that the agreed-upon sentence of 96-months was appropriate for Petitioner.

Petitioner's final argument challenges counsel's performance with related forfeiture proceedings, which were also described in the plea agreement. Section 2255 affords relief to a "prisoner in custody" who is "claiming the right to be released" from a sentence. Petitioner cannot attack the validity of the forfeiture order via § 2255 because the outcome would not have any impact on the length of his custody pursuant to the criminal judgment.<sup>3</sup>

For the foregoing reasons, Petitioner fails to establish that counsel performed deficiently or that Petitioner was prejudiced as a result. See, e.g., Strickland v. Washington, 466 U.S. 668 (1984). Accordingly, Petitioner is not entitled to relief and his § 2255 motion is dismissed, pursuant to Rule 4 of the Rules Governing § 2255 Proceedings. Based upon the court's finding that Petitioner has not made the requisite substantial showing of a denial of a constitutional right as required by 28 U.S.C. § 2253(c), a certificate of appealability is denied.

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<sup>3</sup> Nonetheless, Petitioner's argument is meritless as the record evinces his knowing and voluntary guilty plea pursuant to the written plea agreement, by which Petitioner agreed to forfeit illicit cash or assets worth \$100,000.00.

The Clerk is directed to send a copy of this Memorandum Opinion and the accompanying Order to Petitioner and counsel of record for the United States.

Entered: December 5, 2013

*/s/ Michael F. Urbanski*

Michael F. Urbanski  
United States District Judge