

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

<b>JERMAINE L. CHASE,</b>	)	
<b>Petitioner,</b>	)	
	)	<b>Civil Action No. 7:03CV00811</b>
<b>v.</b>	)	
	)	
<b>UNITED STATES OF AMERICA,</b>	)	<b>By: Hon. Michael F. Urbanski</b>
<b>Respondent.</b>	)	<b>United States Magistrate Judge</b>

**REPORT AND RECOMMENDATION**

Petitioner Jermaine L. Chase, a federal inmate proceeding pro se, brings this petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2255, claiming ineffective assistance of counsel. Chase claims his attorney failed to inform him of his potential sentence and the strength of the government's case, such that petitioner was unable to make an informed decision to accept a plea agreement. By Order entered December 30, 2004, the court dismissed two of the claims brought by Chase in his petition, and referred this remaining ineffective assistance of counsel claim to the undersigned for evidentiary hearing.

An evidentiary hearing was held on November 18, 2005. Following the hearing, the parties were granted an opportunity to provide further written argument on the issue of ineffective assistance. As both parties have now fully briefed the issue, this matter is ripe for disposition. For the reasons outlined below, it is the recommendation of the undersigned that Chase's petition for relief be dismissed.

**I.**

**A. Procedural History.**

A grand jury in the Western District of Virginia named Chase in four (4) counts of a sixty-seven (67) count indictment on August 17, 1994. (Respondent's Response to Questions

Remaining and Renewed Motion to Dismiss, hereinafter Resp't Br., at 2) The indictment charged Chase with: Count 1: conspiracy to possess with intent to distribute crack cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 846; Count 3: possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g); Count 4: possession with intent to distribute crack cocaine, in violation of 21 U.S.C. § 841(a)(1); and Count 5: using or carrying a firearm during and in relation to a drug trafficking offense on January 8, 1993, in violation of 18 U.S.C. § 924(c). Chase was arraigned on the original indictment on September 2, 1994, and was represented by counsel, Ricky Young. (Arraignment Transcript, Sept. 2, 1994, hereinafter Sept. Arr. Tr.; Resp't Br. 3)

On September 22, 1994, the grand jury handed down a superseding indictment, naming Chase in six (6) counts as well as a forfeiture count. (Arraignment Transcript, Oct. 3, 1994, hereinafter Oct. Arr. Tr., at 10-13; Resp't Br. 2) In addition to the four counts alleged in the original indictment, Chase was named in two additional counts: Count 68: possession with intent to distribute cocaine powder, in violation of 21 U.S.C. § 841(a)(1); and Count 69: using or carrying a firearm during and in relation to a drug trafficking offense on August 30, 1994, in violation of 18 U.S.C. § 924(c). (Resp't Br. 2-3; Oct. Arr. Tr. 10-13) Chase was arraigned on the superseding indictment on October 3, 1994. (Oct. Arr. Tr.; Resp't Br. 3) By that time, Chase was represented by different counsel, P. Scott DeBruin ("DeBruin"). (Oct. Arr. Tr.; Resp't Br. 3)

During the October 3, 1994 arraignment, the prosecution specifically informed Chase of each charge lodged against him in the indictment, and detailed the possible sentence he may be ordered to serve in the event of conviction, including any mandatory minimum sentence and the maximum sentence which may be imposed for each count of the indictment. (Oct. Arr. Tr. 10-

13) Chase was told the penalties associated with Counts 1 and 4 depended on how much cocaine was involved in the conspiracy; Chase could face anywhere from a minimum of ten years up to life in prison. (Oct. Arr. Tr. 10, 11) The prosecutor further explained Count 3 carried a maximum penalty of ten years, Count 5 carried a mandatory five years to run consecutively with any other sentence imposed, Count 68 carried up to twenty years, and Count 69 carried a mandatory twenty years, if Chase also was convicted of the § 924(c) charge in Count 5. (Oct. Arr. Tr. 10-12) Chase indicated he understood the charges and potential penalties. (Oct. Arr. Tr. 13)

Chase was also informed of the potential pleas a defendant may enter in federal court. (Oct. Arr. Tr. 19-20) The district court made a finding that Chase understood the charges brought against him, the pleas available in the federal court system, and the potential penalties in the event of a conviction on each charge. (Oct. Arr. Tr. 20) Chase then entered a plea of not guilty to all charges. (Oct. Arr. Tr. 20)

On December 9, 1994, a jury found Chase guilty on all counts of the indictment, and on April 6, 1995, Chase was sentenced to 592 months in prison. (Resp't Br. 3) Chase appealed his two convictions for using or carrying a firearm during or in relation to a drug trafficking offense to the Court of Appeals for the Fourth Circuit. (Resp't Br. 3) On October 23, 1997, the Court of Appeals reversed his conviction as to the August 30, 1994 charge under 18 U.S.C. § 924(c), vacated the conviction as to the January 8, 1993 charge under the same statute, and remanded the case for resentencing. United States v. Chase, No. 95-5290, 1997 WL 657132 (4th Cir. Oct. 23, 1997). On August 24, 1998, Chase was resentenced to 360 months. (Resp't Br. 4)

Chase appealed his resentencing on August 31, 1998. (Resp't Br. 4) On November 22, 1999, the Fourth Circuit vacated his sentence and remanded his case to the district court for a

determination as to whether Chase's post-offense activities constituted "extraordinary and unusual" post-offense rehabilitation, justifying a downward sentence departure. See United States v. Chase, No. 98-4665, 1999 WL 1054140 (4th Cir. Nov. 22, 1999). On October 23, 2000, the court again resentenced Chase, and, finding that Chase's activities did not justify a downward departure, reimposed the 360 month sentence. (Resp't Br. 4-5) Chase appealed the sentence, but it was affirmed on July 10, 2002. See United States v. Chase, 296 F.3d 247 (4th Cir. 2002). Chase then filed a petition for a writ of certiorari, which was denied. (Resp't Br. 5) On December 17, 2003, Chase filed the pending § 2255 petition.

By Order dated December 30, 2004, the court dismissed two of petitioner's claims raised in his § 2255 petition. The court referred the remaining ineffective assistance issue to the undersigned for evidentiary hearing to determine what counsel advised regarding the strength of the government's evidence and the potential sentence petitioner faced if convicted at trial. Pursuant to the court's Order, an evidentiary hearing was held before the undersigned on November 18, 2005.

**B. Substantive History.**

The parties give conflicting accounts of the course of DeBruin's representation in the time period between petitioner's October arraignment and trial, which gives rise to this ineffective assistance claim. At the evidentiary hearing, Chase testified that he first met with DeBruin on October 26, 1994, at which time DeBruin questioned him count-by-count about the charges alleged in the superceding indictment. (Evidentiary Hearing Transcript, hereinafter Hr'g Tr., at 85, 96, 97) Time records submitted by DeBruin confirm a two hour meeting with Chase that day. (Plaintiff's Exhibit 1 to the Evidentiary Hearing, hereinafter Hr'g Ex. 1)

Petitioner claims he told DeBruin at that first meeting that he wanted to plead guilty, and that he had previously admitted his guilt to a probation officer. (Hr’g Tr. 83) Chase testified that upon learning of this admission of guilt, DeBruin became “very emotional,” called Chase a high school dropout and stated Chase knew nothing about the law. (Hr’g Tr. 83, 94) Based on the emotion DeBruin displayed, Chase claims to have been convinced that his attorney “knew what he was talking about.” (Hr’g Tr. 84-85) Chase then claims DeBruin led him to believe that he would only face fifty-one (51) months at trial for the 158 grams of cocaine found in petitioner’s home at the time of his arrest, as DeBruin said the government had no evidence of gun use, Chase denied using a gun while selling drugs, and DeBruin claimed as to some counts “they only had hearsay.” (Hr’g Tr. 83, 84, 86) Chase testified his attorney told him that the government was not offering him a deal, and even if it was, “they would require [him] to plead guilty to the drugs and to one gun. And that extra gun would result in the extra five years.” (Hr’g Tr. 84) Thus, he thought “[h]ey, I might as well go to trial.” (Hr’g Tr. 84) The root of Chase’s ineffective assistance claim lies in his belief that DeBruin told him he would receive more time by pleading guilty in order to obtain a plea deal than he would by going to trial.<sup>1</sup>

Chase asserts that he never met with agents of the government in a proffer setting before his trial and was never approached about a written plea agreement by DeBruin; the only proffer he gave was after his conviction. (Hr’g Tr. 85) Petitioner testified that if given the opportunity,

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<sup>1</sup> Chase appears to be asserting that his attorney represented as follows: should the government offer Chase a plea deal, he would have to plead guilty to Count 68, possession with intent to distribute cocaine powder found in his room at the time of his arrest, as well as one of the § 924(c) charges, either Count 5 or Count 69. Thus, Chase claims, he would receive five years for one § 924(c) charge in addition to his sentence for the cocaine. Chase did not opt to plead guilty because, as he contends, he thought he would only face 51 months for the cocaine at trial and by pleading guilty, he faced an additional five years on top of the 51 months for the cocaine, based on his attorney’s representations.

he would have pled guilty to the charges of possession of a firearm by a convicted felon and the cocaine that was found in his home at the time of his arrest.<sup>2</sup> (Hr’g Tr. 88) Chase later testified that “I would have taken a deal regardless, had [DeBruin] taken the time to explain to me the guidelines and my role and all of that other stuff that I could be charged with,” when questioned about his intentions to plead guilty solely to the charges stemming from the drugs and gun found at his home at the time of his arrest. (Hr’g Tr. 104) Through this testimony, Chase insinuates that had his attorney explained the conspiracy and other counts to him, he would have entered into a plea deal. (Hr’g Tr. 104) Chase repeatedly asserts that he did not have prior dealings with the federal government<sup>3</sup> and did not “understand too much of anything at the time of what was going on.” (Hr’g Tr. 92, 99, 105)

Besides the October 26, 1994 meeting, Chase claims he never met with DeBruin again at his office. (Hr’g Tr. 89, 90, 95) Petitioner stated he later spoke to his attorney in a series of phone calls, in which DeBruin asked him “Look, are we ready for trial?” (Hr’g Tr. 89) After losing a suppression hearing in November of 1994, Chase says he asked DeBruin, “Look, why don’t I just go ahead and [plead guilty]?” (Hr’g Tr. 92) According to Chase, “[DeBruin] said,

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<sup>2</sup> Petitioner seems to confuse his gun charges a number of times in his evidentiary hearing testimony. It appears that Chase is arguing he wanted to plead guilty to the cocaine charge in Count 68, stemming from the drugs found in his home at the time of the arrest, as well as the felon in possession charge, which would have been Count 3. Chase seems to think this felon in possession charge stemmed from the gun found in his home at the time of his arrest. (See Hrg. Tr. 87-88) However, the gun found in his home at the time of his arrest was charged in Count 69 as a § 924(c), not in Count 3 as a felon in possession charge. (Oct. Arr. Tr. 12)

While Chase later stated he wanted to plead guilty to “[t]he stuff that was at my home,” (Hr’g Tr. 98-99), his testimony throughout the hearing leads the court to believe that Chase is arguing he wanted to plead guilty to the cocaine charge and the felon in possession charge, despite the fact that he confuses Counts 3 and 69 of the superceding indictment.

<sup>3</sup> However, Chase admitted on cross examination at the hearing that he had previously been an informant for the Bureau of Alcohol, Tobacco and Firearms. (Hr’g Tr. 106)

‘Look, you all – did you forget what I told you?’ And he reminded me again that if I got the deal that I would be looking at more time.” (Hr’g Tr. 92) Chase further stated that his trial began in the beginning of November of 1994, a mere month after he was arraigned on the superceding indictment.<sup>4</sup> (Hr’g Tr. 90) Petitioner claims DeBruin never discussed a continuance with him. (Hr’g Tr. 90) Chase also testified that DeBruin failed to review any discovery received from the government with him, (Hr’g Tr. 90), and if he had the opportunity to review the evidence received through discovery, he would have pled guilty. (Hr’g Tr. 91) Chase alleges that he first realized what kind of sentence he was looking at when he received the pre-sentence report after trial. (Hr’g Tr. 93)

DeBruin, however, provides a different version of the events giving rise to this ineffective assistance claim. DeBruin testified that he was appointed by the court to represent Chase after he had been released on bond pending trial. (Hr’g Tr. 23) DeBruin stated he first met Chase at the arraignment on the superceding indictment, at which time Chase discussed his views of the charges with counsel. (Hr’g Tr. 24) According to DeBruin, Chase stated that he knew nothing about drug dealing, firearms, the conspiracy, or generally why he was being charged. (Hr’g Tr. 24-25) DeBruin denies petitioner told him that he had previously admitted guilt to a probation officer. (Hr’g Tr. 25) DeBruin testified that at the arraignment, he could not have allowed Chase to plead guilty given Chase’s statement that he was not involved in any of the alleged charges. (Hr’g Tr. 26)

DeBruin stated that he next met with Chase on October 26, 1994 at his office. (Hr’g Tr. 27) DeBruin claims Chase continuously denied any knowledge of drugs, drug conspiracies, and drug activity. (Hr’g Tr. 28) According to DeBruin, Chase maintained his innocence even

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<sup>4</sup> The trial actually began on November 30, 1994 and ended December 9, 1994.

after he was confronted with the fact that cocaine and a gun were found in his bedroom at the time of his arrest. (Hr'g Tr. 29) However, at some time prior to trial, Chase's story changed slightly, and Chase claimed he was an independent drug dealer with no knowledge of the conspiracy. (Hr'g Tr. 42)

Counsel said discovery documents revealed many of the defendants charged in the conspiracy were "cutting deals with the government" and the United States Attorney expressed interest in having Chase testify against a co-defendant, Dodson. (Hr'g Tr. 30) DeBruin testified that he expressed the urgency of providing substantial assistance to the government to Chase, (Hr'g Tr. 31), and that he attempted to get Chase to testify against his co-defendants even through the time of trial which began on November 30, 1994. (Hr'g Tr. 32-33)

DeBruin stated that "one of the problems I consistently had with Mr. Chase is that I thought it was in his best interest to work out an agreement with the government. And Mr. Chase just adamantly refused." (Hr'g Tr. 38) As DeBruin stated in his deposition on June 10, 2005, Chase told him all of the defendants were going to try the case; no one was going to testify and no one was going to plead guilty. (DeBruin Dep. 32) According to counsel, Assistant United States Attorney Fitzgerald wanted Chase to testify against the heads of the conspiracy in return for substantial assistance. (Hr'g Tr. 38) DeBruin testified that in order to get substantial assistance, Chase would need to sit down and do a proffer, then testify at trial, but Chase refused. (Hr'g Tr. 38-39) DeBruin stated that Chase ultimately did do a proffer prior to trial, though time records fail to document this proffer, but Chase denied knowledge of the drug conspiracy involving his co-defendant Dodson, "which was exactly the testimony that Mr. Fitzgerald was looking for." (Hr'g Tr. 40) Thus, no plea deal was offered. After trial and before sentencing, DeBruin stated Chase made a second proffer. (Hr'g Tr. 40) The two proffers reveal two

conflicting stories. DeBruin stated that in the first proffer Chase said he was an independent operator and knew nothing about the Dodsons, and in the second proffer, Chase admitted involvement with the Dodsons and the conspiracy and outlined his involvement; however, by that time, “[i]t was basically too little, too late.” (Hr’g Tr. 47, 66)

DeBruin testified that in addition to meeting with Chase at the October 3, 1994 arraignment and again on October 26, 1994, he also met with his client at the suppression hearing in November of 1994, and spoke on the phone with Chase numerous times, some of which he may not have billed for. (Hr’g Tr. 35) Counsel stated he was in touch with his client throughout the term of his appointment as counsel and remained engaged in his case, trying to do the best he could for Chase. (Hr’g Tr. 65) DeBruin claims he told Chase if convicted, Chase would face a sentence “tantamount to a life sentence.” (Hr’g Tr. 37) Facing both § 924(c) counts, DeBruin explained to Chase he would receive a minimum of twenty-five (25) years if convicted, in addition to the mandatory minimums for the other charged offenses. (Hr’g Tr. 37-38) DeBruin also claims he told Chase the testimony of other individuals involved in the drug conspiracy may lead to his conviction. (Hr’g Tr. 42)

DeBruin says Chase maintained throughout this period that he wanted to go to trial, and counsel claims he told petitioner that the government would not offer a deal that might give Chase a lighter sentence if Chase exercised his right to trial. (Hr’g Tr. 44) DeBruin further contends that he understood and conveyed to Chase the magnitude of this case, and admitted that it was not a strong case for the defense to try. (Hr’g Tr. 49) DeBruin denies ever telling Chase that he should go to trial, or that if convicted Chase would receive no more than fifty-one (51) months. (Hr’g Tr. 54) When asked by the court why such a statement would not have been in the realm of possibilities, DeBruin replied “[I]t is impossible ... there was no way I could have

told him 51 months, when I knew that there was 25 years minimum just on the guns.” (Hr’g Tr. 54-55) DeBruin also denies telling Chase that the gun charges brought against him were weak and not substantiated by evidence. (Hr’g Tr. 56) DeBruin explained the evidence for each of the two gun charges was different. One charge stemmed from the gun found with the cocaine in Chase’s bedroom, thus the evidence was strong; the other charge was based on a co-defendant’s testimony that Chase was seen clicking a gun while at a drug house, thus witness credibility was at issue. (Hr’g Tr. 56) DeBruin further maintains that he did not ask for a continuance in this case because “[w]hen this case was originally set with Judge Kiser, we were told this was the trial date, it will not be continued.” (Hr’g Tr. 68)

## **II.**

Chase alleges that counsel failed to advise him of the potential sentence he faced if convicted on all charges in the indictment, as well as the strength of the government’s case, such that petitioner was unable to make an informed judgment as to whether he should proceed to trial or enter into a plea agreement with the government. In support of these allegations, petitioner argues that DeBruin failed to adequately prepare Chase’s case, and as such, was unable to advise Chase as to the strength of the government’s evidence or the risk of conviction. Additionally, petitioner claims his counsel failed to review with him any of the discovery material provided by the government prior to trial. Finally, Chase objects to DeBruin’s failure to request a continuance of the trial date in order to more adequately prepare his defense. As a result of these failures, Chase contends, he was unable to enter into a plea agreement to reduce his sentence. Chase insinuates that the fact that there was no plea deal in a case of this magnitude reflects counsel’s lack of preparedness and inadequate representation.

In response to these allegations, the respondent asserts that counsel did in fact advise Chase of the lengthy sentence he could potentially face if convicted of all counts, as well as the strength of the government's case. Further, respondent argues that Chase was advised of his potential sentence at each of his arraignments. Additionally, respondent claims his counsel repeatedly advised Chase to consider testifying against his co-defendants and working with the government to reduce his sentence. Respondent states Chase adamantly proclaimed his innocence, and even after admitting he was an independent drug dealer, Chase continued to maintain that he had no involvement with or knowledge of a drug conspiracy. As such, the option of a plea agreement was simply unavailable.

Respondent also notes petitioner thrice appealed his conviction but never raised this ineffective assistance claim or alleged he was forced to plead not guilty. Chase, however, contends that his previous success in attaining sentence reductions on appeal should excuse the fact that he is raising this ineffective assistance issue for the first time in the instant motion. Petitioner asserts that the time spent in appeal was focused on bringing to light equally substantive issues to the one at hand.

### **III.**

The Sixth Amendment to the United States Constitution protects a criminal defendant's right to effective assistance of counsel. In Strickland v. Washington, 466 U.S. 668, 669 (1984), the Court outlined a two-pronged test that the defendant must satisfy in order to demonstrate a denial of his right to effective assistance of counsel. The first prong requires the defendant to prove that counsel's representation fell below an objective standard of reasonableness. Id. at 688. However, there is a strong presumption that an attorney acted reasonably. Id. at 688-89. The second prong requires the defendant to prove prejudice to his defense. This requires a

showing that but for his attorney's errors, there is a reasonable probability that the outcome of the trial would have been different. Id. at 694. A reasonable probability is a probability sufficient to undermine confidence in the outcome. Id. at 694. According to the standard set forth in Strickland, "it is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding. Virtually every act or omission would meet that test, and not every error that conceivably could have influenced the outcome undermines the reliability of the result of the proceeding." Id. at 693 (internal citations omitted).

The Supreme Court in Strickland recognized that judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Given this deferential standard, the undersigned finds that Chase has failed to present any credible evidence which suggests that counsel provided ineffective assistance.

**A. Chase has failed to establish that counsel's representation fell below an objective standard of reasonableness.**

The court finds Chase's account of his attorney's representation patently incredible. The idea that DeBruin told Chase he only faced fifty-one (51) months if convicted at trial is absurd; Chase's charges carried mandatory minimums and hefty maximum sentences far exceeding that period of time. Chase was arraigned twice, on September 2, 1994 and again on the superceding indictment on October 3, 1994. In both arraignments, Assistant United States Attorney Fitzgerald reviewed the charges and potential penalties with Chase and asked whether Chase understood them. In both arraignments, Chase indicated that he indeed understood the charges and potential penalties. (See Sept. Arr. Tr. 7; Oct. Arr. Tr. 13) Petitioner was informed on October 3, 1994 that if convicted of the conspiracy in Count 1 and the possession with intent to distribute crack cocaine as alleged in Count 4, he could face up to life imprisonment, depending

on the amount of crack cocaine involved in the conspiracy, (Oct. Arr. Tr. 10-11); that he could face up to ten (10) years for being a felon in possession of a firearm as alleged in Count 3, (Oct. Arr. Tr. 11); that the use of a firearm in a drug trafficking offense charge alleged in Count 5 carried a mandatory five (5) years to run consecutively to any other sentence that may be imposed, (Oct. Arr. Tr. 11); that Chase faced up to twenty (20) years for Count 68, possession with intent to distribute cocaine, (Oct. Arr. Tr. 12); and finally, that he faced an additional twenty (20) years if convicted of a second charge of use of a firearm in connection with a drug trafficking crime as alleged in Count 69, (Oct. Arr. Tr. 12). Clearly, Chase was made aware on the record in open court of his potential sentence.

The court gives no credit to Chase's assertion that DeBruin made him believe the evidence in his case was such that Chase was only looking at fifty-one (51) months at trial for the cocaine found in his bedroom at the time of his arrest. Chase's own testimony contradicts this assertion. Chase testified that "[DeBruin] questioned me as to Count Three of the indictment. And that particular count, I told him that I was a convicted felon already. And he said that he would not contest the facts surrounding that charge." (Hr'g Tr. 81) According to this statement, petitioner should have known he would be facing at the very *least* more than fifty-one (51) months for the cocaine, since he planned not to contest the felon in possession charge. The idea that his attorney convinced him he would only be convicted on the cocaine charge and face fifty-one (51) months is implausible in light of Chase's testimony that he planned not to contest the felon in possession charge, which alone carried up to a ten (10) year sentence.

In a case of this magnitude, with more than twenty defendants and six charges, the court refuses to believe Chase's nonsensical assertion that DeBruin promised a fifty-one (51) month

conviction at trial, or that counsel forced petitioner to try the case against his will. Chase's story does not add up, and the undersigned declines to accept it. Petitioner has offered no credible evidence to show his attorney's representation fell below an objective standard of reasonableness.

The court finds DeBruin's representation more than adequate in this case. The undersigned credits DeBruin's statements that Chase consistently maintained his innocence and refused to enter into a plea agreement. Chase's testimony supports DeBruin's position in this regard. At the hearing, Chase neglected to address any desire to plead guilty to the conspiracy and other charges, and instead focused solely on the drugs and gun found in his room at the time of his arrest. Such testimony supports DeBruin's contention that Chase failed to admit guilt as to the conspiracy and refused to testify against his co-defendant Mr. Dodson at the time of trial, as he still at this late date refuses to acknowledge any culpability as to the drug conspiracy.

While Chase argues that DeBruin did not adequately consult with him and should have asked for a continuance because he lacked sufficient time to prepare between arraignment and trial, time records prove otherwise. DeBruin met with petitioner for two hours on October 26, 1994 in addition to meeting petitioner at the arraignment. (Hr'g Ex. 1) Chase admitted that at that meeting, DeBruin "questioned [him] about each of the counts that [he] was charged with." (Hr'g Tr. 81) DeBruin spent six hours reviewing grand jury testimony and documenting exhibits on the same day, and five hours reviewing documents and videotapes prior to that first meeting. (Hr'g Ex. 1) In addition, counsel met with Chase at the suppression hearing before trial, and Chase admits DeBruin talked to him on the phone, and asked whether Chase was ready for trial. (Hr'g Tr. 95) Furthermore, counsel testified that the trial court specifically stated that the case

would not be continued. (Hr'g Tr. 68) After being appointed at the beginning of October 1994, DeBruin had nearly two months to prepare for the trial that commenced on November 30, 1994.

Chase cites Via v. Superintendent, Powhatan Correctional Center, 643 F.2d 167 (4th Cir. 1981), in support of his proposition that counsel was unprepared to try his case and thus was equally unprepared to advise Chase to accept a plea agreement. However, Via is clearly distinguishable from the case at hand. In Via, defendant retained his attorney three days prior to trial after previously discharging two attorneys, apparently unsatisfied that the best plea deal the first two could secure involved defendant agreeing to a twenty (20) year sentence. Id. at 169-70. The Fourth Circuit upheld the district court's finding that Via's attorney was not adequately prepared for trial, as counsel conducted no investigation until the morning of the trial and was not even prepared to effectively present a motion for a continuance. Id. at 174. As noted above, counsel in the instant action had adequate time to prepare for trial, and time records reveal DeBruin spent a great deal of time reviewing evidence and conducting investigation.

Petitioner additionally cites Fields v. Peyton, 375 F.2d 624, 627 (4th Cir. 1967), in support of the notion outlined in Turner v. State of Maryland, 318 F.2d 852, 854 (4th Cir. 1963), that a lawyer's representation should generally be treated as inadequate when a court-appointed attorney's initial consultation with his client occurs only a short time before trial. Again, the situations in Turner and Fields are factually distinguishable from Chase's. In Turner, defendant's counsel failed to meet with defendant until half an hour before the trial was to begin, despite his having been appointed two weeks prior. Turner, 318 F.2d at 853. Likewise in Fields, no more than fifteen to thirty minutes elapsed between the time counsel was appointed and the time defendant was sentenced. Fields, 375 F.2d at 625. Clearly, DeBruin spent a great deal more time preparing for Chase's case.

Chase also claims that counsel failed to provide him with material received through discovery, and but for that failure, he would have entered into a plea agreement with the government. Yet there is no evidence or allegation that Chase asked to see documents or videotapes, or that DeBruin denied him access to discovery materials. Chase has merely made an unsupported, conclusory statement that if he had reviewed the discovery materials, he would have pled guilty. The court finds Chase's hindsight 20/20 in light of his conviction and sizeable sentence.

Chase's testimony as to his counsel's representation is simply unbelievable and the court finds petitioner has failed to meet his burden of establishing DeBruin's representation fell below an objective standard of reasonableness.

**B. Chase has failed to establish prejudice.**

Even assuming Chase is able to meet the first prong of the Strickland ineffective assistance test, Chase is unable to establish his attorney's errors resulted in prejudice. A finding of prejudice may have been possible had Chase claimed he intended to plead guilty to all charges but failed to do so because of his attorney's ineffective counsel. Yet in this case, Chase repeatedly asserts he only intended to plead guilty to two of the charges: being a felon in possession of a firearm and the cocaine found in his bedroom. (See Hr'g Tr. 98-99) Chase admits he informed DeBruin only *once* of his desire to plead guilty to these two charges – at their first meeting on October 26, 1994. (See Hr'g Tr. 89, 95-96, 97)

Chase has not offered a scintilla of evidence to show that the government would have been willing to enter into a plea deal with him under these circumstances. Without offering the government assistance by means of his testimony against co-conspirators, there is no likelihood that a plea agreement would have been available to Chase. In short, there is no reasonable

probability that the result at trial would have been different had petitioner pled guilty to the cocaine charge and felon in possession charge as Chase claims he intended to do. He would have faced the same evidence and the same jury on the four remaining charges, resulting in a substantial sentence. Even if the court found plaintiff's assertions as to his attorney's failings to be credible, Chase is unable to establish that those failings resulted in prejudice.

#### IV.

Based on the foregoing, the undersigned finds that Chase has failed to establish any credible evidence which suggests that counsel provided ineffective assistance. Petitioner has not met the highly deferential standard outlined in Strickland, as he cannot show DeBruin's representation was objectively unreasonable or that any unreasonableness resulted in prejudice. The court also notes the fact that Chase failed to assert an ineffective assistance claim any time during the past eleven years and three appeals since his conviction undercuts his claim. Accordingly, the undersigned recommends that respondent's motion to dismiss be **GRANTED** and that petitioner's motion for relief pursuant to 28 U.S.C. § 2255 be **DISMISSED**.

The clerk is directed to immediately transmit the record in this case to the Honorable Jackson L. Kiser, Senior United States District Judge. Both sides are reminded that pursuant to Rule 72(b), they are entitled to note objections, if they have any, to this Report and Recommendation within ten (10) days hereof. Any adjudication of fact or conclusions of law rendered herein by the undersigned not specifically objected to within the period prescribed by law may become conclusive upon the parties. Failure to file specific objections pursuant to 28 U.S.C § 636(b)(1) as to factual recitations or findings as well as to the conclusions reached by the undersigned may be construed by the reviewing court as a waiver of such objection.

Further, the Clerk is directed to send a certified copy of this Report and Recommendation to all counsel of record.

Entered this 11<sup>th</sup> day of April, 2006.

/s/ Michael F. Urbanski  
United States Magistrate Judge