

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

COLEEN ALLIEFIER SEXTON,)	
)	Civil Action 7:99CV00840
Petitioner,)	
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
UNITED STATES OF AMERICA,)	
)	By: Samuel G. Wilson
Respondent.)	Chief United States District Judge

This is a motion pursuant to 28 U.S.C. § 2255 by Coleen Sexton challenging her conviction on drug trafficking and firearm charges on the grounds that she was subjected to an unlawful arrest and to unlawful searches and seizures and that her counsel was ineffective because he failed to raise and preserve those issues. She also seeks to raise an Apprendi claim. The court finds that Sexton’s Fourth Amendment claims are barred and that her Sixth Amendment and Apprendi claims are without merit. Accordingly, the court denies Sexton’s motion.

I.

The facts pertinent to Sexton’s Fourth Amendment claims are detailed in this court’s memorandum opinion and order denying Sexton’s motion to suppress and in the court of appeals’ opinion affirming. See United States v. Sexton, 1999 WL 288380 (4th Cir. May 10, 1999). Accordingly, the court will not repeat those facts here.

A jury found Sexton guilty of the following six counts: count one, possessing cocaine with intent to distribute in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C); count two, possessing amphetamine with intent to distribute in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(D); count three, carrying a firearm during and in relation to those offenses in violation of 18 U.S.C. § 924(c); count four, conspiracy to distribute and possess with intent distribute cocaine and marijuana in violation of 21 U.S.C. § 846; count five, conspiracy to use and carry

firearms in relation to the conspiracy to distribute and possess with intent to distribute cocaine and marijuana in violation of 18 U.S.C. § 924(c); and count six, possession of an unregistered firearm. The court sentenced Sexton to sixty-three months on counts one and four and sixty months on each of the remaining counts. The sentence on each count was concurrent, except for the sentence on count three, which was consecutive to the other counts.

Sexton appealed on the grounds that she was subjected to an unlawful arrest, search, and seizure in violation the Fourth Amendment. In affirming the district court, the court of appeals concluded that there was probable cause to arrest Sexton and that she had not been subjected to an unlawful search and seizure.

Sexton's original § 2255 petition raises four grounds for relief. First, she contends that her "conviction was obtained by use of evidence gained by [the] Virginia State Police pursuant to an unconstitutional stop, search and seizure"; second, she contends that her "conviction was obtained by use of evidence obtained pursuant to unlawful arrest by [the] Virginia State Police"; third, she maintains that she was denied the effective assistance of counsel because her counsel "erroneously stipulated" that her "stop, arrest, search and seizure were valid"; and fourth, she maintains that her counsel "failed to perfect her appeal as of right" because he "failed to present and preserve for appeal various Fourth Amendment claims." Sexton also filed an "amended petition," which makes additional arguments in support of her petition, and she filed a motion to amend her petition to assert an Apprendi claim.

II.

Sexton's Fourth Amendment Claims.

Although Sexton's current Fourth Amendment arguments differ somewhat from the arguments made on direct appeal, she challenges the same discrete events. Even if they were not

the same, however, one point is clear—the court cannot hear Fourth Amendment claims in a § 2255 proceeding if Sexton had a full and fair opportunity to litigate those claims. See Stone v. Powell, 428 U.S. 465, 482 (1976). The trial record and the court of appeals’ opinion disclose that Sexton had a full and fair opportunity to litigate her Fourth Amendment claims, and her arguments to the contrary are frivolous. Therefore, the court cannot review those claims here.

III.

Sexton’s Sixth Amendment Claims.

Sexton’s Sixth Amendment claims are premised on her view that she was subjected to Fourth Amendment violations and that her counsel’s stipulations and arguments prevented this court and the court of appeals from properly deciding the issues. Apart from counsel’s trial stipulations and arguments, however, this court is convinced that the police properly detained and ultimately arrested Sexton and that the ensuing searches were not unreasonable under the Fourth Amendment. To establish an ineffective assistance of counsel claim, Sexton must prove that her counsel’s performance was unconstitutionally deficient and that the deficiency prejudiced her defense. See Strickland v. Washington, 466 U.S. 668, 687 (1987). Even if Sexton were able to satisfy Strickland’s performance prong, she is unable to satisfy the prejudice prong. Accordingly, the court rejects Sexton’s Sixth Amendment challenge.

IV.

Sexton’s Apprendi Claim.

Relying on Apprendi v. New Jersey, 120 S. Ct. 2348 (2000), Sexton contends that the court could not sentence her based on the quantity of drugs involved in the drug trafficking counts because the quantity was not alleged in the indictment or submitted to the jury as an element of the offense. Sexton’s argument, however, is foreclosed by the Fourth Circuit’s decision in United

States v. Kinter, 235 F.3d 192, 201 (4th Cir. 2000), “which instructs that factual determinations that increase the defendant’s sentence under the sentencing guidelines do not implicate Appendi and may be made by the sentencing judge as long as the sentence imposed is less than the maximum permitted by statute for the offense for which the defendant was convicted.” United States v. Obi, 239 F.3d 662, 667 (4th Cir. 2001). The statutory maximum for count one is twenty years. The court sentenced Sexton to sixty-three months on count one. The statutory maximum for count four is twenty years. The court sentenced Sexton to sixty-three months on count four. The statutory maximum for count two is five years. The court sentenced Sexton to five years. In short, the court did not impose a sentence under any count that exceeded the statutory maximum. Nor did the court commit a prejudicial sentencing error warranting § 2255 relief. See United States v. White, 238 F.3d 537, 542 (4th Cir. 2001).

V.

For the reasons stated, the court denies Sexton’s § 2255 motion. An appropriate order will be entered this day.

ENTER this March 26, 2001.

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

COLEEN ALLIEFIER SEXTON,)
) **Civil Action 7:99CV00840**
Petitioner,)
)

v.) FINAL ORDER
)
UNITED STATES OF AMERICA,)
)
Respondent.) **By: Samuel G. Wilson**
) **Chief United States District Judge**

In accordance with the written Memorandum Opinion entered this day, it is hereby **ORDERED** and **ADJUDGED** as follows:

- (1) Sexton's motion under 28 U.S.C. § 2255 is hereby **DENIED**; and
- (2) this action is stricken from the active docket of the court.

Sexton is advised that she may appeal this decision pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure by filing a notice of appeal with this court within sixty (60) days of the date of entry of this Order, or within such extended period as the court may grant pursuant to Rule 4(a)(5).

The Clerk is directed to send certified copies of this Order and accompanying Memorandum Opinion to Sexton and to counsel of record for the Government.

ENTER this March 26, 2001.

CHIEF UNITED STATES DISTRICT JUDGE