

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

IMRAN MANDHAI,

Movant,

vs.

UNITED STATES OF AMERICA,

Respondent.

CASE NO. 07-60891-CIV-DIMITROULEAS
(02-60096-CR-DIMITROULEAS)

FINAL JUDGMENT AND ORDER DENYING MOTION TO VACATE

THIS CAUSE is before the Court on Movant's (Mandai) June 21, 2007 Motion to Vacate [DE-1]. The Court has considered the Government's August 3, 2007 Response [DE-6]. The Court received testimony from Leonard Fenn, Mohammed Mandhai, Yassar Billao and Movant at an evidentiary hearing held on November 1, 2007. The Court determined credibility of witness, heard arguments of counsel, has considered the Court files, and having presided over this cause, finds as follows:

1. On May 16, 2002, Mandhai was indicted and charged with Conspiracy to destroy property affecting interstate commerce [CR-DE-1]. A second solicitation count was later dismissed pursuant to a plea bargain.
2. On August 8, 2002, Mandhai pled guilty pursuant to a plea agreement [CR-DE-74]. There was a five (5) year mandatory minimum involved.
3. On October 17, 2002, Mandhai was sentenced to 140 months in prison. [CR-DE-94]. The Court overruled Mandhai's objections and accessed aggravating enhancements for his role

[U.S.S.G. § 3B1.1(C)] in the offense and for terrorism. [U.S.S.G. § 3A1.4]. However, the court reduced the guidelines by three levels because the crime was not completed. Consistent with the Government's plea bargained recommendation, the court sentenced Mandhai at the low end of the guidelines. [CR-DE-102, pp. 18-20].

4. On July 2, 2004, the Eleventh Circuit Court of Appeals reversed, in part, for re-sentencing. [CR-DE-115] U.S. v. Mandhai, 375 F. 3d 1243 (11th Cir. 2004). The appellate court held that it was error to award a three level reduction because the crime was not completed. Yet, the appellate court indicated that the penalty did not fit the crime.

5. On October 25, 2004, Mandhai was re-sentenced to 168 months in prison, a one level reduction from the reconfigured guideline range. [CR-DE-131].

6. On June 16, 2005, the Eleventh Circuit reversed for a re-sentencing in light of U.S. v. Booker, 543 U.S. 220 (2005). [CR-DE-148] U.S. v. Mandhai, 140 Fed. Appx. 54 (11th Cir. 2005).

7. On August 5, 2007, Mandhai was again sentenced to 168 months in prison. [CR-DE-153].

8. On May 2, 2006, the Eleventh Circuit Court of Appeals affirmed. [CR-DE-170]. U.S. v. Mandhai, 179 Fed. Appx. 576 (11th Cir. 2006).

9. On October 2, 2006, the United States Supreme Court denied certiorari [CR-DE-172]. Mandhai v. U.S., 127 S. Ct. 284 (2006).

10. Mandhai then filed this timely Motion to Vacate, alleging trial counsel was ineffective in advising him that his sentence could not be increased if he took an appeal.

11. Having assessed credibility, the Court finds that trial counsel, Leonard Fenn, properly

advised Mandhai regarding the possible negative ramifications of an appeal. Mandhai was told that it was possible, if they lost the appeal and the Government won their cross appeal, that the sentence could be increased. Mandhai willingly took that risk.

12. Moreover, both Mandhai and trial counsel believed that the sentence was overly harsh and that their appeal did not involve frivolous issues. The upside of the appeal (which would be the downside of the guideline range) was a possible sentence of five (5) years, (the mandatory minimum would have trumped the guideline range of 15-21 months). The worst case scenario, if the appeal were lost, would be the statutory maximum of 240 months, or more likely the worst scenario would have been the top end of the new, government advocated, guideline range: 235 months. However, since the Court had previously honored the plea bargained agreement for the low end of the guideline range, the probable exposure was no more than 188 months in prison. Given the situation as it existed in 2002, no reasonable defendant, including Mandhai, would have foregone their appeal, for fear of a higher sentence resulting afterwards.

13. Mr. Fenn made a reasoned, strategic decision, that Mandhai agreed with, to pursue an appeal. His inability to accurately predict the future did not render his representation to be ineffective. Smith v. Singletary, 170 F. 3d 1051, 1054 (11th Cir. 1999).

14. Mr. Fenn did an excellent job representing Mr. Mandhai. No relief is appropriate.

Wherefore, Mandhai's Motion to Vacate [DE-1] is Denied.

The Clerk shall close this case and deny any pending motions as moot.

DONE AND ORDERED at Fort Lauderdale, Broward County, Florida, this

5th day of November, 2007.


WILLIAM P. DIMITROFF
United States District Judge

Copies furnished to:

David Hodge, Esquire
Jeffrey Sloman, AUSA