UNITED STATES DISTRICT COURT

DISTRICT OF RHODE ISLAND

LINWOOD BEALE

v. Civ. # 95-091

UNITED STATES OF AMERICA

MEMORANDUM AND ORDER

This is a motion brought pursuant to 28 U.S.C. § 2255 in which Linwood Beale seeks to vacate his sentence for possession of a firearm by a convicted felon. For the reasons stated below, Beale's motion is denied and dismissed.

Background

In 1991, Beale pled guilty to a charge of possession of a firearm by a convicted felon. He was sentenced to imprisonment for a term of 120 months. No appeal was taken.

The grounds on which Beale seeks to vacate his sentence are that:

1. He was denied effective assistance of counsel in that his lawyer failed to obtain or use evidence that Beale had been shot in the back, which evidence Beale asserts was critical to his defense.

2. The government failed to disclose evidence tending to establish that Beale was shot in the back.

3. The failure to present such evidence caused Beale to be

denied credit for acceptance of responsibility thereby subjecting him to a harsher sentence than he should have received.

Discussion

Section 2255 motions may be summarily denied when they are facially inadequate or when the record conclusively contradicts them. United States v. Butt, 731 F.2d 75, 80 (1st Cir. 1984) (citations omitted). In this case, summary dismissal is appropriate for both of those reasons.

As already noted, Beale pled guilty and the validity of that plea has not been challenged. By entering a valid plea of guilty, Beale waived all defenses except those relating to jurisdiction. United States v. Chantal, 902 F.2d 1018, 1020 (1st Cir. 1990). Therefore, to the extent Beale contends that the missing evidence might have allowed him "to contravert [sic] the story that the police offered in order to prosecute the defendant," that claim is foreclosed by his guilty plea.

Beale's claim that his counsel's failure to obtain evidence that he was shot in the back deprived Beale of credit for acceptance of responsibility also lacks merit. For one thing, the contention that he was shot in the back is inconsistent with the facts recited by the government and confirmed as accurate by Beale himself at his change of plea hearing. It is well settled that "[T]he accuracy and truth of an accused's statements at a Rule 11 proceeding in which his guilty plea is accepted are 'conclusively' established by that proceeding unless and until he makes some

reasonable allegation why this should not be so." United States v. Butt, 731 F.2d 75, 80 (1st Cir. 1984)(quoting Crawford v. United States, 519 F.2d 347, 350 (1st Cir. 1975)); see also, United States v. Morrison, 938 F.2d 168, 171 (10th Cir. 1991)(citing U.S. v. Broce, 488 U.S. 563 (1989)(in sentencing challenge defendant could not assert facts contrary to those to which he pled guilty).

Furthermore, whether Beale was shot in the back had no bearing on either his guilt or innocence or on the Court's decision to deny him credit for acceptance of responsibility. Beale was convicted of possessing a firearm after having previously convicted of a felony. It is uncontroverted that he fired the weapon at another individual. Whether Beale was shot in the back while attempting to flee the scene or shot in the chest as the arresting officer testified has nothing to do with the validity of his conviction. Nor did it affect the court's decision to deny Beale credit for acceptance of responsibility. Rather, the Court's decision was based on its finding that Mr. Beale was less than candid in describing the circumstances under which he fired at the other individual.

Conclusion

For all of the foregoing reasons, Beale's motion is denied and dismissed.

IT IS SO ORDERED:

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Ernest C. Torres
United States District Judge

Date: _____, 1995