UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

VINCENT HURLEY

v. C.A. No. 97-261T

UNITED STATES OF AMERICA

MEMORANDUM AND ORDER

ERNEST C. TORRES, United States District Judge.

Vincent Hurley has moved to vacate his sentence pursuant to 28 U.S.C. § 2255. For reasons hereinafter stated, that motion is denied.

Background

In 1992, Vincent Hurley was convicted of multiple counts of RICO conspiracy, money laundering and related offenses arising out of his activities in laundering the proceeds of illegal drug transactions. He was sentenced to 18 years in prison and was ordered to forfeit the $136 million in proceeds that he helped to launder. See United States v. Saccoccia, 823 F. Supp. 994 (D.R.I.

1993). Hurley's conviction and sentence were affirmed on appeal. See United States v. Hurley, 63 F.3d 1 (1st Cir. 1995).

Standard of Review

Hurley cites at least 17 grounds upon which he claims that he is entitled to relief. Many of them are either incomprehensible or so poorly developed that they do not warrant consideration. As the First Circuit had stated with respect to arguments made, on appeal:

> [I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived. . . . It is not enough merely to mention a possible argument in the most skeletal way, leaving the court to do counsel's work, create the ossature for the argument, and put flesh on its bones. As we recently said in a closely analogous context: "Judges are not expected to be mindreaders. Consequently, a litigant has an obligation 'to spell out its arguments squarely and distinctly,' or else forever hold its peace." Rivera-Gomez v. de Castro, 843 F.2d 631, 635 (1st Cir. 1988) (quoting Paterson-Leitch Co. v. Massachusetts Municipal Wholesale Elec. Co., 840 F.2d 985, 990 (1st Cir. 1988)).

United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990).

In assessing Hurley's remaining claims, the Court must accept the factual allegations in the petition as true, but it "need not give weight to conclusory allegations, self-interested

characterizations, discredited inventions, or opprobrious epithets." United States v. McGill, 11 F.3d 223, 225 (1st Cir. 1993). The petition may be denied without an evidentiary hearing "when (1)the motion is inadequate on its face, or (2) the movant's allegations ,even if true, do not entitle him to relief, or (3) the movant's allegations need not be accepted as true because they state conclusions instead of facts, contradict the record, or are inherently incredible." David v. United States, 134 F.3d 470, 477 (1st Cir. 1998)(citation omitted). No hearing is required if the petition is based on mere speculation, leaps of logic, or unreasonable inferences. See Aleman v. United States, 878 F.2d 1009, 1012, 1013 & n.9 (7th Cir. 1989).

Claims raising issues that were decided on direct appeal also may be denied summarily on the ground that the petitioner is procedurally barred from asserting them. See United States v. Michaud, 901 F.2d 5, 6 (1st Cir. 1990). The petitioner also is

barred from asserting claims that could have been asserted on appeal unless the failure to assert them is justified by a showing of cause and prejudice. See Reed v. Farley, 512 U.S. 339, 354 (1994); Knight v. United States, 37 F.3d 769, 774 (1st Cir. 1994).

Discussion

One of Hurley's claims is that the government withheld exculpatory evidence and failed to correct perjured testimony of several witnesses. That claim is identical to a claim made by co-defendant Stephen Saccoccia in his § 2255 motion, and the Court rejects it for the same reasons. (See Stephen A. Saccoccia v. United States of America, C.A. No. 97-248T, Mem. and Order dated September 15,1999.)

Hurley's remaining claims fall into two categories: claims that he is procedurally barred from making and claims alleging various forms of ineffective assistance of counsel.

I. Claims that are Procedurally Barred

The claims that are procedurally barred are those based on Hurley's assertions that the Court erred in calculating his offense level for sentencing purposes; that the Court erroneously instructed the jury with respect to the offense charged under 31 U.S.C. § 5313(a); and that the Court erred in refusing to allow his trial counsel to withdraw. The issues raised by all of those claims either were decided on appeal or could have been raised on appeal. Since Hurley has made no showing of cause and prejudice that would excuse his failure to raise issues that were not decided, he is procedurally barred from asserting any of these claims. Accordingly, the Court turns its attention to the claims of ineffective assistance.

II. Ineffective Assistance of Counsel

Under the Sixth Amendment, a criminal defendant has a right to effective assistance of counsel. See McMann v. Richardson, 397 U.S. 759, 771 n.14 (1970). In order to establish a deprivation of

that right, a defendant must show "(1) that counsel fell below the applicable standard for performance, and (2) that prejudice resulted." Carey v. United States, 50 F.3d 1097, 1100 (1st Cir. 1994); accord Strickland v. Washington, 466 U.S. 668, 687 (1984).

Hurley presents a litany of ways in which he asserts that his counsel's performance was deficient. They include the failure to object to currency transaction forms that were admitted into evidence; the failure to move to suppress evidence seized at Hurley's apartment pursuant to a search warrant; the failure to obtain Hurley's release on bail pending trial; the failure to arrange for Hurley to review certain electronic surveillance tapes made by the government and the failure to object to the jury instructions regarding the § 1952 charge. However, Hurley fails to provide any grounds for a finding that counsel's failure to do any of those things fell below acceptable standards of performance. Simply compiling a list of things counsel failed to do during the

course of a lengthy prosecution does not establish that counsel was deficient. A petitioner must present some reason for concluding that competent counsel would have done those things. Effective assistance does not require counsel to engage in meaningless acts even if demanded by the client. There must be some basis for believing that a proposed course of action is well founded.

Here, Hurley has failed to explain the grounds on which he claims that his counsel should have objected to the currency transactions forms or to the jury charge. Nor has Hurley explained the grounds on which he claims that his counsel should have moved to suppress the evidence seized at Hurley's apartment or to obtain Hurley's release on bail. In addition, Hurley has failed to make any showing as to how he was prejudiced by any of these alleged deficiencies.

Hurley also claims that his counsel was ineffective because he did not file a petition for a writ of certiorari after Hurley's

appeal was denied. However, the Supreme Court has made it clear that because the right to counsel does not extend to discretionary appeals–such as certiorari–a defendant cannot base a claim of ineffective assistance of counsel on an attorney's failure to pursue such an appeal. See Wainwright v. Torna, 455 U.S. 586, 587-88 (1982).

Conclusion

For all of the foregoing reasons, Hurley's § 2255 motion is denied.

IT IS SO ORDERED,

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Ernest C. Torres
United States District Judge

Date: , 1999

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