

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Honorable Marcia S. Krieger

Civil Action No. 08-cv-02039-MSK
Criminal Action No. 00-cr-00439-MSK-MEH-4

UNITED STATES OF AMERICA,

Plaintiff,

v.

4. CHRISTOPHER HOLYFIELD,

Defendant.

**OPINION AND ORDER OVERRULING OBJECTIONS AND
ADOPTING RECOMMENDATION**

THIS MATTER comes before the Court pursuant to Defendant Christopher Holyfield's Objections (**#1893**) to United States Magistrate Judge Michael E. Hegarty's October 1, 2009 Recommendation (**#1892**) that Mr. Holyfield's motion to vacate, set aside, or correct his sentence (**#1854**) under 28 U.S.C. § 2255 be denied; and Mr. Holyfield's motion to amend (**#1897**).

In summary, Mr. Holyfield was convicted by a jury in the United States District Court for the District of Colorado of conspiring to distribute and possessing with intent to distribute over fifty grams of cocaine base and over five kilograms of powder cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 846. Because he had two prior felony convictions in California state court, a 1993 conviction in Superior Court, San Diego County, for transportation of a controlled substance and a 1998 conviction in Superior Court, Orange County, for possession of marijuana for sale, Mr. Holyfield was

sentenced to the mandatory minimum term of life in prison pursuant to 21 U.S.C. §§ 841(b)(1)(A) and 851. The life sentence was affirmed on direct appeal. *United States v. Holyfield*, 481 F.3d 1260 (10th Cir.), *cert. denied*, 552 U.S. 952 (2007).

Mr. Holyfield timely filed the § 2255 motion asserting five claims for relief, although there is substantial overlap among the claims. Mr. Holyfield specifically claims that: (i) his 1993 and 1998 California state convictions do not qualify legally as statutory predicate felony drug convictions as required by the mandatory minimum sentencing provision in § 841; (ii) the district court's erroneous life sentence affected his substantial rights; (iii) he is actually innocent of the prerequisites for imposition of the mandatory minimum sentencing provision in § 841; (iv) he was denied the effective assistance of counsel on direct appeal; and (v) the district court erred in preventing him from challenging the legal effect of his 1993 California state conviction at sentencing. The Magistrate Judge reviewed the merits of each of Mr. Holyfield's five claims for the purpose of evaluating whether Mr. Holyfield could demonstrate cause and prejudice for failing to raise them on direct appeal. The Magistrate Judge concluded that all five claims lack merit.

Mr. Holyfield's specific objections encompass two issues: (i) the Magistrate Judge failed to address Mr. Holyfield's argument that his 1993 California state conviction does not constitute a prior felony conviction because it was treated as a misdemeanor conviction as evidenced by the sentence and terms imposed; and (ii) the Magistrate Judge mistakenly determined that Mr. Holyfield's 1998 California state conviction was final at the time of the commission of the instant offense. Although Mr. Holyfield lists a third objection regarding his ineffective assistance of counsel claim, he

does not assert any specific argument in support of that objection and he concedes that the ineffective assistance of counsel claim is contingent on his objections regarding his 1993 and 1998 California state convictions. Therefore, because the Court finds, for the reasons discussed below, that Mr. Holyfield's objections regarding his 1993 and 1998 California state convictions lack merit, the Court need not address any objection regarding the ineffective assistance of counsel claim. Neither party objects to any other portion of the Recommendation and the Court adopts the remainder of the Recommendation for the reasons given.

In considering Mr. Holyfield's objections, the Court is mindful that Mr. Holyfield is a *pro se* litigant and, as such, his pleadings must be construed liberally. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). In other words, if the Court reasonably can read the pleadings to state a valid claim on which Mr. Holyfield could prevail, it should do so despite a failure to cite proper legal authority, confusion of various legal theories, poor syntax and sentence construction, or unfamiliarity with pleading requirements. *Hall*, 935 F.2d at 1110. However, the requirement that the Court read Mr. Holyfield's pleadings broadly does not relieve him of the burden of alleging sufficient facts on which a recognized legal claim could be based. *Id.* Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the Court reviews the objected-to portions of the Recommendation *de novo*.

Mr. Holyfield first argues that his 1993 San Diego County conviction does not constitute a prior felony conviction under § 841 because the 1993 conviction was treated as a misdemeanor conviction as evidenced by the sentence and terms imposed. Mr. Holyfield specifically argues that, because he was sentenced in the San Diego

County case to probation, county jail time, community service, and to pay a fine and restitution, the California court “automatically rendered the offense a misdemeanor pursuant to Cal. Penal Code, Section 17(b)(1).” (#1855 at 17.)

The Magistrate Judge determined that Mr. Holyfield could not attack the validity of his 1993 San Diego County conviction based on the statute of limitations in 21 U.S.C. § 851(e). Section 851(e) provides that “[n]o person who stands convicted of an offense under this part may challenge the validity of any prior conviction alleged under this section which occurred more than five years before the date of the information alleging such prior conviction.” Mr. Holyfield contends that his argument regarding whether the 1993 conviction actually was a felony conviction, as opposed to a misdemeanor conviction, does not implicate the validity of the 1993 conviction and is not precluded by § 851(e).

It appears to the Court that Mr. Holyfield’s challenge regarding the legal effect of his 1993 conviction does not implicate the validity of that conviction. *See United States v. Harris*, 369 F.3d 1157 (10th Cir. 2004). In *Harris*, the defendant argued that the district court erred in imposing a mandatory life sentence pursuant to § 841(b)(1)(A) because his two prior felony convictions were related and should have counted as only one prior felony conviction, which would not have triggered a mandatory life sentence. *Id.* at 1167-68. The Tenth Circuit determined that this argument did not challenge the validity of the prior convictions and was not precluded by § 851(e)). *Id.* at 1168; see also *United States v. Geer*, 320 F. Supp.2d 1335, 1343-44 (S.D. Fla. 2004) (stating that § 851(e) does not preclude challenges to the legal effect of prior convictions as long as defendant is not challenging the validity of the prior convictions). Mr. Holyfield similarly

does not challenge the fact that he was convicted in 1993 in the San Diego County case. Instead, he argues that the 1993 conviction is a misdemeanor conviction that does not constitute a prior felony offense under § 841(b)(1)(A). Pursuant to *Harris*, the Court finds that this argument is not precluded by § 851(e).

Under California law, “[a] felony is a crime which is punishable with death or by imprisonment in the state prison” and “[e]very other crime or public offense is a misdemeanor except those offenses that are classified as infractions.” Cal. Penal Code § 17(a). Section 17(b)(1) of the California Penal Code deals with so-called “wobbler” offenses that may be punished either as a felony or a misdemeanor. See, generally, *Ewing v. California*, 538 U.S. 11, 16, 123 S.Ct. 1179 (2003)(discussing offenses that may be classified either as felonies or misdemeanors under California law). *Garcia-Lopez v. Ashcroft*, 334 F.3d 840, 844 (9th Cir. 2003) (discussing the California “wobbler” statute). Under section 17(b)(1), “[w]hen a crime is punishable, in the discretion of the court, by imprisonment in the state prison or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes . . . [a]fter a judgment imposing a punishment other than imprisonment in the state prison.” Mr. Holyfield argues that the sentence imposed in the San Diego County case “automatically rendered the offense a misdemeanor pursuant to Cal. Penal Code, Section 17(b)(1).” (#1855 at 17.)

Mr. Holyfield’s argument misses the mark because the statute he was convicted of violating in that case, § 11352 of the California Health and Safety Code, is not a “wobbler” offense because it cannot be punished as either a felony or a misdemeanor.

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