IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)	
	)	Civil No. 10-146 Erie
	)	Criminal No. 06-55 Erie
	)	Judge Sean J. McLaughlin
v.	)	
	)	
RIGOBERTO WILSON-GARCIA,	)	
	)	
	)	

MEMORANDUM OPINION AND ORDER

McLAUGHLIN, SEAN J., J.

This matter is before the Court upon Defendant Rigoberto Wilson-Garcia's Motion to Vacate Judgment pursuant to 28 U.S.C. § 2255. In his motion, Wilson-Garcia primarily alleges that his trial and appellate counsel provided him with ineffective assistance. For the reasons which follow, the motion will be dismissed.

I. BACKGROUND

On March 24, 2006, Wilson-Garcia was serving a sentence at the McKean Federal Correction Institution in Bradford, Pennsylvania when he was involved in an altercation with a fellow inmate, Benjamin Harris. Several officers of the Federal Bureau of Prisons, including Officer James Knight and Officer Jeff Labesky, intervened to break up the fight. At some point during the altercation, Wilson-Garcia injured Officer Knight and Officer Labesky with a pair of scissors that he had been using as a weapon during the altercation and which he continued to swing wildly while he was being restrained.

On July 11, 2007, a federal grand jury charged Wilson-Garcia with two counts of assault on two officers of the Federal Bureau of Prisons, while engaged in the performance of their duties, in violation of 18 U.S.C. §§ 111(a)(1) and (b). At trial, Wilson-Garcia was represented by Assistant Public Defender Thomas Patton. Wilson-Garcia's defense was that he lacked any intent to injure the officers, but rather,

was fighting for his life against an armed inmate and was acting in self-defense. Wilson-Garcia argued that, while in the midst of the altercation, he had no way to know whether the person attempting to subdue him was a corrections officer or another inmate jumping into the fray.

Following the close of evidence, the jury deliberated for approximately three hours before sending the following note to the Court: "Dead locked. Define number five. The forcible assault, resistance, opposition, impedance, intimidation, or forcible interference, was done voluntarily and by Garcia." (Trial Transcript, 8/7/07, p. 85). After conferring with counsel for both parties, the Court answered the jury's question by rereading the portion of the charge defining "intent." The jury eventually found Wilson-Garcia guilty of assaulting Officer Knight (Count 1) but acquitted with respect to Officer Labesky (Count 2). On November 5, 2007, Wilson-Garcia was sentenced to 150 months imprisonment.

On appeal, Wilson-Garcia, represented by Assistant Public Defender Candace Cain, argued that the instructions given to the jury with respect to self-defense and intent were in error. The Third Circuit affirmed the conviction after determining that the jury instructions given where the precise instructions requested by Wilson-Garcia and, as such, any error in those instructions was "invited error" that cannot form the basis for a reversal. U.S. v. Wilson-Garcia, 309 Fed. Appx. 633 (3rd Cir. 2009). Wilson-Garcia's petition for writ of *certiorari* was denied by the Supreme Court on June 15, 2009.

On June 14, 2010, Wilson-Garcia filed the instant *pro se* motion to vacate judgment. The government has filed a brief in opposition and Wilson-Garcia has filed a reply brief. As such, this matter is ripe for review.

II. STANDARD OF REVIEW

Pursuant to 28 U.S.C. § 2255, a federal prisoner may move the sentencing court to vacate, set aside or correct a sentence "upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of

the maximum authorized by law, or is otherwise subject to collateral attack." 28 U.S.C. § 2255. When a motion is made pursuant to 28 U.S.C. § 2255, the question of whether to order a hearing is committed to the sound discretion of the district court. In exercising that discretion, the court must accept the truth of the petitioner's factual allegations unless they are clearly frivolous on the basis of the existing record. United States v. Day, 969 F.2d 39, 41-42 (3rd Cir. 1992). Further, the court must order an evidentiary hearing to determine the facts unless the motion and files and records of the case show conclusively that the petitioner is not entitled to relief. Id.

Here, a limited evidentiary hearing was held on January 3, 2012 concerning Wilson-Garcia's allegation that his counsel had violated his attorney-client privilege by revealing incriminating facts to the prosecution immediately prior to closing arguments at his trial. With respect Wilson-Garcia's remaining claims for relief, upon consideration of his petition, the government's response thereto, and the pleadings and documents of record, I conclude that no hearing is warranted.

III. DISCUSSION

In his motion, Wilson-Garcia raises several prospective grounds for relief including: (1) trial counsel's failure to object to improper jury instructions concerning self-defense and intent; (2) appellate counsel's failure to raise ineffective assistance of trial counsel with respect to the aforementioned jury instructions on appeal; (3) trial counsel's failure to object to the court's proposed answer to a question from the jury during deliberations in his trial; and 4) an alleged violation of his attorney-client privilege by trial counsel and the government. Each is considered in turn.

A. Ineffective Assistance of Trial Counsel - Jury Instructions

In order to demonstrate ineffective assistance of counsel, Wilson-Garcia must satisfy the Supreme Court's two-pronged test as set forth in Strickland v. Washington, 466 U.S. 668 (1984). This test requires him to demonstrate (i) that defense counsel's performance fell "below an objective standard of reasonableness," thus rendering the

assistance so deficient that the attorney did not function as "counsel" as the Sixth Amendment guarantees, see id. at 687-88, and (ii) that counsel's ineffectiveness prejudiced the defense such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." See id. at 694. See also Flamer v. State of Delaware, 68 F.3d 710, 727-28 (3rd Cir. 1995). A "reasonable probability" is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694.

In explaining the defendant's burden under "prong one" of this test, the Supreme Court has admonished that "[j]udicial scrutiny of counsel's performance must be highly deferential" because "[i]t is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689. Under the second prong, a criminal defendant alleging prejudice must show "that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Lockhart v. Fretwell, 506 U.S. 364, 369 (1993). Accordingly, "an analysis focusing solely on the mere outcome determination, without attention to whether the result of the proceeding was fundamentally unfair or unreliable, is defective." Id.

Here, Wilson-Garcia argues that his trial counsel provided ineffective assistance with respect to two separate instructions that were given to the jury following his trial. First Wilson-Garcia contends that his counsel erred in requesting the following jury instruction on self-defense:

> In regard to the crime of forcible assault upon James Knight as alleged in count one of the indictment, the defendant, Rigoberto Wilson-Garcia, asserts that he was acting in self-defense.
>
> If Mr. Wilson-Garcia did not know the official status of the person assaulted and if Mr. Wilson-Garcia honestly believed that he was being attacked, Mr. Wilson-Garcia would be allowed to use reasonable force to defend himself. Mr. Wilson-Garcia,

> however, may not use more force than is necessary to defend himself.
>
> The government may answer this defense and sustain its burden of proof for the crime of forcible assault on a federal officer, if, in addition to proving the five essential elements of the offense charged as previously given to you, the government also proves, beyond a reasonable doubt, one of the following two propositions:
>
> One, at the time of the conduct charged in counts one of the indictment, Mr. Wilson-Garcia actually knew that the individual identified in the indictment as a federal officer was a government officer, or
>
> Two, the force used by Mr. Wilson-Garcia was excessive and would not have been justified even if the person identified in the indictment as a federal official was a private citizen and not a federal officer.
>
> The government must prove beyond a reasonable doubt that the defendant did not act in lawful self-defense.

(Transcript, p. 75). As noted above, Wilson-Garcia was charged with violating 18 U.S.C. § 111, which states that whoever "forcibly assaults, resists, opposes, impedes, intimidates, or interferes" with a federal officer engaged in the performance of official duties is guilty of assault. 18 U.S.C. § 111(a)(1). Invoking the specific language of the statute, Wilson-Garcia contends that the self-defense instruction submitted by trial counsel (and ultimately given to the jury) was erroneous because it failed to specify that self-defense could apply to forcible resistance, opposition, impedence, intimidation or interference, rather than just to the forcible assault aspect of the charged crime.

The jury instruction challenged by Wilson-Garcia is substantively identical to the standard model jury instruction applicable to an assertion of "lawful self-defense" with respect to an 18 U.S.C. § 111 charge of forcible assault on a federal officer. The model instruction reads as follows:

> In regard to the crime of forcible assault upon a federal officer as alleged in Count ___ of the indictment, Defendant _____

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