IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

TREVOR BOUTTE	§	
	§	CIVIL ACTION NO. 4:15CV575
v.	§	CRIMINAL NO. 4:12CR249(1)
	§	
UNITED STATES OF AMERICA	§	

ORDER OF DISMISSAL

The above-entitled and numbered civil action was referred to United States Magistrate Judge Kimberly Priest Johnson. The Report and Recommendation of the Magistrate Judge (the "Report") (Civ. Dkt. 7),[1] which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. The Report recommends that the court deny Boutte's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 (Dkt. 1), dismiss the case with prejudice, and deny a certificate of appealability. Boutte has filed written Objections (Civ. Dkt. 8). Having made a *de novo* review of the Objections, the court concludes that the findings and conclusions of the Magistrate Judge are correct and adopts the same as the findings and conclusions of the court.

I. BACKGROUND

On October 12, 2012, the Drug Enforcement Agency ("DEA") was investigating a suspected drug conspiracy involving Boutte and a cooperating defendant ("CD"). *See* Crim. Dkt. 33 at 4. Working with DEA agents, the CD had arranged to meet Boutte at a restaurant in Plano, Texas, where Boutte and the CD would complete a transaction involving five (5) kilograms of

[1] When referencing the docket, the court will designate any reference to Civil Action No. 4:15CV575 as "Civ." and Criminal No. 4:12CR249(1) as "Crim."

cocaine. *See id.* At the restaurant, Boutte placed a bag containing $147,520.00 into the CD's vehicle. *See id.* After receiving the bag of money from Boutte, the CD told Boutte he would deliver the cocaine to Boutte's residence at a later time. *See id.* Shortly thereafter, the CD received a telephone call from Boutte asking about the status of the cocaine delivery. *See id.* Following this incident, DEA agents went to Boutte's residence and placed him under arrest. *See id.* DEA agents also executed a search warrant on the residence; agents seized $30,628.00 in cash, multiple firearms, and approximately 3.4 grams of cocaine from the home. *See id.*

On November 7, 2012, Boutte was charged by indictment with two counts. *See* Crim. Dkt. 15. Count One charged Boutte with participating in a conspiracy to possess with the intent to distribute five (5) kilograms or more of cocaine in violation of 21 U.S.C. §§ 841(a)(1) and 846. *See id.* at 1. The conspiracy was allegedly active for over six years, between January of 2006 and November of 2012. *See id.* Count Two charged Boutte with possession of firearms on or about October 11, 2012, in furtherance of the drug conspiracy described in Count One, in violation of 18 U.S.C. § 924(c). *See id.* at 2.

On January 24, 2013, Boutte entered guilty pleas as to both counts without a written plea agreement. *See* Crim. Dkt. 24. At the change of plea hearing, the Government informed Boutte of the charges against him, the elements of the charges, and the Government's burden to prove the elements beyond a reasonable doubt should he proceed to trial. *See* Crim. Dkt. 36 at 6-7. The court advised Boutte that the conspiracy charge carried a statutory penalty of not less than ten (10) years' and not more than life imprisonment and the firearm charge carried a statutory penalty of not less than five (5) years' and not more than life imprisonment. *See id.* at 7-8. The court further advised Boutte that any sentence imposed on the firearm charge would run consecutive to a sentence on the drug trafficking charge. *See* Civ. Dkt. 1-3 at 4; Crim. Dkt. 36 at 7-8. The court

engaged in a colloquy with Boutte to ensure he understood the meaning of "consecutive" in the context of his sentence:

> THE COURT: Now, do you understand that that particular count, I believe, is served consecutively? That means you'll be sentenced first on count one and then whatever sentence you receive on count one, you'll get a sentence on count two, and you'll have to serve count two after you serve count one?
>
> DEFENDANT BOUTTE: Yes, Sir.
>
> THE COURT: Okay. Very well. That's what consecutive means. All right.

See Crim. Dkt. 36 at 8. Boutte verbally acknowledged that he understood the elements of the charges and the applicable penalties. *See id.* at 8. He further represented to the court that he had thought about entering a guilty plea and decided of his own free will to enter a guilty plea, without regard to force, threats, or promises from anyone else. *See id.* at 9.

Notwithstanding his attestations at the change of plea hearing, on April 4, 2013, Boutte filed a Motion to Withdraw Guilty Plea as to the firearm charge on the grounds that the plea was unknowing and involuntary. *See* Crim. Dkt 32. At the hearing on the motion, Boutte asserted that, after reading the Presentence Investigation Report ("PSR"), he had come to believe the Government lacked a factual basis to prove the weapons recovered from his home had been used "in furtherance of" the drug trafficking crime, as required for conviction under 18 U.S.C. § 924(c). *See* Crim. Dkt. at 23-29. Boutte also stated he plead guilty on the firearm charge because he thought he "couldn't plead guilty just to one count, but . . . had to plead guilty to both of the counts." *See id.* 50 at 23. Boutte stated he came to this conclusion based on the advice of counsel. *See id.* However, Boutte's defense counsel testified that he never gave Boutte any such advice. *See id.* at 32-33. Ultimately, the court denied Boutte's Motion to Withdraw Guilty Plea. *See id.* at 35.

Thereafter, the court sentenced Boutte to the mandatory minimum sentence on both counts, to be served consecutively. *See* Crim. Dkt. 47. The court entered formal judgment on September 24, 2013. *Id.*

Boutte appealed and, on May 29, 2014, the United States Court of Appeals for the Fifth Circuit affirmed his conviction. *See United States v. Boutte*, 569 F. App'x 311, 312 (5th Cir. 2014). Among other things, the Fifth Circuit held Boutte's guilty plea on the firearm charge was knowing and voluntary, and the trial court's denial of Boutte's motion to withdraw his guilty plea was not error. *See id*. at 312-13.

On August 21, 2015, Boutte filed the instant § 2255 motion, challenging his guilty plea on the firearm charge and his sentence. *See* Civ. Dkt. 1. Boutte argued: (1) his guilty plea on the firearm charge was not knowing and voluntary because he entered the plea without understanding a sentence imposed on the firearm charge would run consecutive to a sentence imposed for the drug conspiracy charge; (2) his trial counsel rendered ineffective assistance when advising him of the sentencing consequences of a guilty plea on the firearm charge; and (3) he was entitled to a safety-valve reduction to his sentence pursuant to Amendment 782 of the Sentencing Guidelines. The Magistrate Judge concluded each of Boutte's claims lacked merit and recommended that his § 2255 motion be denied. *See* Civ. Dkt. 7 at 8. Boutte now objects to the findings and conclusions of the Magistrate Judge. *See* Civ. Dkt. 8.

II. ANALYSIS

A. THE COURT ADOPTS THE MAGISTRATE JUDGE'S CONCLUSION THAT BOUTTE'S GUILTY PLEA WAS KNOWING AND VOLUNTARY

Boutte objects to the Magistrate Judge's conclusion that he failed to establish his claim that his guilty plea on the firearm charge was unknowing and involuntary. *See* Civ. Dkt. 8 at 1. Boutte argues the Magistrate Judge should have accorded greater weight to evidence that his defense

counsel did not properly explain that a sentence on the firearm charge would run consecutive to a sentence on the conspiracy until April 3, 2013, well after the change of plea hearing, when counsel met with Boutte to review the PSR. *See id.* at 5. Boutte cites evidence that counsel brought a printed copy of the text of 18 U.S.C. § 924 to the April 3, 2013, meeting; the printout had a date-stamp of April 2, 2013. *See id.* Based on this evidence, Boutte asserts, "[i]t is reasonable to conclude that had trial counsel done his job and explained the consequences of pleading guilty to the 924(c)(1) weapons count to Movant **before** January 24, 2013 (when Movant pleaded guilty to both counts), trial counsel would **not** have had [to] print out 18 U.S.C. § 924 from the Cornell Law School Legal Information Institute on April 2, 2013 to show Movant on April 3, 2013." *See id.*

However, the court does not agree that this conclusion is reasonable. The mere fact that counsel printed a copy of the statute before meeting with Boutte does not support Boutte's contention that counsel failed to review or discuss the elements of the statute with Boutte before the change of plea hearing. Nor does it support an inference that counsel was unfamiliar with the statute at earlier dates. Boutte's argument to the contrary is pure speculation.

Boutte also contends the Magistrate Judge should have accorded more weight to Boutte's statements that he was confused about the meaning of the word "consecutive" at the change of plea hearing; therefore, he did not understand the nature of the punishment associated with the firearm charge when he pled guilty. *See id.* at 1-2. However, Boutte's contention that he did not appreciate the meaning of "consecutive" is unsupported by the record. The trial court conducted a colloquy with Boutte at the change of plea hearing regarding the meaning of "consecutive" in the context of his sentence. *See* Crim. Dkt. 36 at 8. The court explained "consecutive" in laymen's terms, and Boutte unequivocally indicated he understood the penalty he faced. *See id.* In light of this record, the court agrees with the Magistrate Judge's finding that "Movant's own statements in

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