

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

DAMON IVANHOE GRAHAM :
v. : 3:94CR58(AHN)
3:01CV177(AHN)
UNITED STATES OF AMERICA :

ORDER

David Ivanhoe Graham (the "movant") moves pursuant to 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence on the grounds that 1) he received ineffective assistance of counsel; 2) the Government violated the plea agreement by seeking a two point enhancement for obstruction of justice; and 3) the court erred by granting the obstruction of justice enhancement. After careful review of movant's motion, it is DENIED.

The Court finds that two of Graham's claims are "procedurally defaulted" inasmuch as they constitute substantive claims which could have been raised on direct appeal, but were not raised by the movant. These include the claims that the Government violated the plea agreement by arguing for an obstruction of justice enhancement and that the court erred in applying the obstruction of justice enhancement. The movant has not shown why he failed to raise these claims on appeal nor has he shown any resulting

prejudice. See United States v. Frady, 456 U.S. 152, 170 (1982); Rosario v. United States, 164 F.3d 729, 732 (2d Cir. 1998); Ciak v. United States, 59 F.3d 296, 302 (2d Cir. 1995).

Mr. Graham also claims that he was deprived of the effective assistance of counsel. That claim is also rejected. The movant fails to establish the requirements set forth by the Supreme Court in Strickland v. Washington, 466 U.S. 668 (1984). Under Strickland, movant must show 1) that his counsel's performance "fell below an objective standard of reasonableness;" and 2) that counsel's errors resulted in prejudice to the defendant. Strickland, 466 U.S. at 688. Movant fails the Strickland test.

Movant specifically argues that his attorney failed to raise the issue of the obstruction of justice enhancement in his appeal. However, movant cannot avoid the consequences of a procedural default by contending that counsel made a serious error. Movant instead must demonstrate that counsel's representation was constitutionally ineffective. See Murray v. Carrier, 477 U.S. 478, 487 (1986). As noted above, movant is unable to meet this burden.

For all of the above reasons, the movant's Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 is denied.

SO ORDERED this 17th day of May, 2002 at Bridgeport,

Connecticut.

Alan H. Nevas
United States District Judge