

Blastos v. United States CV-02-039-M 01/30/02
UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

Alexander Blastos,
Petitioner

v.

Civil No. 02-039-M
Opinion No. 2002 DNH 031

United States of America,
Respondent

O R D E R

Petitioner seeks relief under 28 U.S.C. § 2255 from his wire fraud conviction and sentence on two grounds: 1) his sentence was improperly enhanced by factors determined by the sentencing judge, by a preponderance of the evidence, rather than by the jury, beyond a reasonable doubt, as allegedly required by the Supreme Court's decision in Apprendi v. New Jersey, 530 U.S. 466 (2000); and 2) defense counsel's assistance was constitutionally defective in that he failed to raise the Apprendi issue at trial or on appeal.

Neither claim has merit. Petitioner simply misreads the law of this circuit. Petitioner's sentence did not exceed the statutory maximum for the offense of conviction. And, as the court of appeals for this circuit has reiterated, Apprendi is not applicable to cases such as this:

We heretofore have concluded, and today reaffirm, that Apprendi does not apply to findings by the sentencing judge, under a preponderance-of-the-evidence standard, that elevate a defendant's guideline sentencing range (and, thus, his ultimate sentence), so long as the imposed sentence does not outstrip the default statutory maximum. See United states v. Caba, 241 F.3d 98, 101 (1st Cir. 2001) ("Apprendi simply does not apply to guideline findings.>").

United States v. Gomez, 255 F.3d 31, 40 (1st Cir. 2001).

Accordingly, petitioner's sentence was not imposed in violation of the Apprendi rule, and, consequently, defense counsel's representation was obviously not ineffective, since defense counsel is not obligated to raise issues of no legal merit.

Because the petition, files, and records of the case conclusively show that petitioner is entitled to no relief, the petition for post-conviction relief is hereby denied.

SO ORDERED.

Steven J. McAuliffe
United States District Judge

January 30, 2002

cc: United States Attorney
Alexander Blastos, pro se