

Lehrman v. United States CV-02-323-M 10/29/02
UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

Norman Lehrman,
Petitioner

v.

Civil No. 02-323-M
Opinion No. 2002 DNH 193

United States of America,
Respondent

O R D E R

Petitioner, Norman Lehrman, seeks post-conviction relief under the provisions of 28 U.S.C. § 2255. Lehrman was convicted by a jury of one count of conspiracy to commit mail fraud, two counts of making false statements to an agency of the United States, and twenty-two counts of mail fraud, in connection with a scheme designed to defraud the Medicare program. His convictions were affirmed on appeal. See United States v. Lehrman, No. 00-1855, slip op. (December 21, 2001).

In his petition, Lehrman generally raises the same issues raised earlier in his direct appeal - e.g., challenging the applicability of enhancements used in calculating his sentencing range under the United States Sentencing Guidelines, and suggesting that Guideline sentencing factors somehow constitute

additional crimes, that must be charged in an indictment. He also claims that his defense counsel provided constitutionally deficient representation when he failed to recognize either the inapplicability of various Guideline sentencing factors, or, failed to argue that absent an indictment charging those factors as "offenses," no enhancements were legally permissible.

Petitioner is wrong on all aspects of his petition. His sentence was properly calculated under the Guidelines, and did not exceed the statutory maximum sentence applicable to his crimes of conviction. Id. Secondly, applicability of Guideline sentencing factors (e.g., "Role in the Offense") are properly determined by the sentencing judge, by a preponderance of the evidence, and not by a jury, beyond a reasonable doubt. See United States v. Caba, 241 F.3d 98 (1st Cir. 2001). Defense counsel did not provide constitutionally deficient legal representation by failing to argue what are meritless legal points.

Because the petition and the files and records of the case conclusively show that the petitioner is entitled to no relief, the petition is denied and the case dismissed.

SO ORDERED.

Steven J. McAuliffe
United States District Judge

October 29, 2002

cc: Norman P. Lehrman
Peter E. Papps, Esq.