

Scherrer v. United States

08-CV-002-SM 04/28/08

UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

Phillip S. Scherrer

v.

Civil No. 08-cv-2-SM

Opinion No. 2008 DNH 092

United States of America

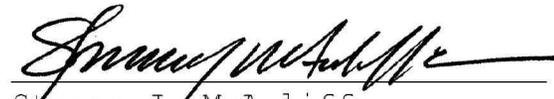
O R D E R

Petitioner seeks relief from his conviction and sentence under 28 U.S.C. § 2255, claiming, among other things, that his defense counsel provided ineffective assistance and that his guilty plea was not competently offered because, at the time, he was suffering from an overdose of a number of prescription drugs administered at the jail in which he was being detained. Essentially, petitioner asserts that he was not capable of understanding the nature of the plea proceedings, or of meaningfully participating in those proceedings, or communicating effectively with his counsel. Petitioner also says that counsel had no basis upon which to assure the court that he was capable of understanding the nature of the proceedings, and, indeed, claims that he was not only incapable of competently participating in the plea colloquy, but was also incompetent during plea negotiations, and had no understanding of the terms of the resulting negotiated agreement.

Having reviewed the petition, exhibits, and record, it is apparent that a hearing is required as petitioner's allegations, if true, would entitle him to relief. Petitioner has submitted medical records, albeit seemingly incomplete, that facially support his claim that he was taking several prescription medications, and the court cannot, based on the record as it stands, find that his improvident plea claims are "so evanescent or bereft of detail that they cannot reasonably be investigated," or that they amount to "threadbare allusions." David v. United States, 134 F.3d 470, 478 (1st Cir. 1998).

Accordingly, the clerk shall appoint counsel to represent the petitioner and schedule a hearing on the petition.

SO ORDERED.


Steven J. McAuliffe
Chief Judge

April 28, 2008

cc: Phillip S. Scherrer, pro se
Aixa Maldonado-Quinones, AUSA