IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	No. 97-0021
v.	:	
	:	(CIVIL ACTION
JAMAL HART	:	No. 00-5204)

MEMORANDUM AND ORDER

HUTTON, J. February 25, 2002

Currently before the Court is Petitioner Jamal Hart's Motion to Vacate, Set Aside or Correct a Sentence pursuant to 28 U.S.C. § 2255 (Docket No. 100), the Government's Response to Hart's Petition to Vacate, Set Aside or Correct his Sentence Pursuant to § 2255 (Docket No. 102), and Hart's Response to the Government's Answer (Docket No. 103). For the following reasons, the Court denies Petitioner the relief sought.

I. BACKGROUND

Officers of the Philadelphia Police Department arrested Jamal Hart ("Petitioner") on October 11, 1996 and seized a loaded .357 magnum Smith and Wesson revolver from his person during a traffic stop in North Philadelphia. Petitioner was indicted on January 21, 1997 under 18 U.S.C. § 922(g)(1)[1] for being a previously-convicted

[1] 18 U.S.C. § 922(g)(1) provides "It shall be unlawful for any person . . . who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . . to ship or transport any firearm or ammunition interstate or foreign commerce."

felon in possession of a firearm. On February 18, 1998, following a guilty verdict, a sentencing hearing was held. At the hearing, the Court granted defense counsel's request for a downward departure. As a result, the Court sentenced Petitioner to a term of imprisonment of 188 months. Following the imposition of sentence, Petitioner filed an appeal of his conviction and sentence to the United States Court of Appeals for the Third Circuit. On February 19, 1999, the Judgment of the Court was affirmed. See 175 F.3d 1011 (3d Cir. 1999) (unpublished opinion). The United States Supreme Court subsequently denied Petitioner a Writ of Certiorari on October 12, 1999.

As a result, Petitioner filed the instant Motion pursuant to 28 U.S.C. § 2255 raising two grounds for relief. First, Petitioner alleges that the United States Attorney engaged in prosecutorial misconduct by withholding pertinent exculpatory evidence, and by allowing "false testimony from false arresting officers." Pet'r Reply Mem. at 2-3. Second, Petitioner asserts that trial counsel was ineffective (1) for failing to investigate, interview and subpoena an Officer Santiago; (2) for failing to investigate allegedly false traffic tickets; (3) for failing to protect Petitioner during a critical stage at the suppression hearing; and (4) for failing to investigate Petitioner's "constitutionally invalid prior convictions." See id. at 3.

II. LEGAL STANDARD

A prisoner who is in custody pursuant to a sentence imposed by a federal court who believes "that the sentence was imposed in violation of the Constitution or laws of the United States, . . . or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence." 28 U.S.C. § 2255 (West 2001); see also Daniels v. U.S., 532 U.S. 374, 377, 121 S.Ct. 1578, 149 L.Ed.2d 590 (2001). The district court is given discretion in determining whether to hold an evidentiary hearing on a petitioner's motion under section 2255. See Gov't of the Virgin Islands v. Forte, 865 F.2d 59, 62 (3d Cir. 1989). In exercising that discretion, the court must determine whether the petitioner's claims, if proven, would entitle him to relief and then consider whether an evidentiary hearing is needed to determine the truth of the allegations. See Gov't of the Virgin Islands v. Weatherwax, 20 F.3d 572, 574 (3d Cir. 1994).

Accordingly, a district court may summarily dismiss a motion brought under section 2255 without a hearing where the "motion, files, and records, 'show conclusively that the movant is not entitled to relief.'" U.S. v. Nahodil, 36 F.3d 323, 326 (3d Cir. 1994) (quoting U.S. v. Day, 969 F.2d 39, 41-42 (3d Cir. 1992)); Forte, 865 F.2d at 62. For the reasons outlined below, the Court finds that there is no need in the instant case for an evidentiary hearing because the evidence of record conclusively demonstrates

that Petitioner is not entitled to the relief sought.

III. DISCUSSION

A. Prosecutorial Misconduct

Petitioner avers that the prosecutor engaged in professional misconduct by withholding potentially exculpatory evidence and by offering witness testimony that the prosecutor knew, or should have known, to be false. See Pet'r Reply Mem. at 12. Preliminarily, the Court notes that an evaluation of Petitioner's prosecutorial misconduct claim is not required because this issue is procedurally barred. See Reed v. Farley, 512 U.S. 339, 354, 114 S.Ct. 2291, 129 L.Ed.2d 277 (1994) (prohibiting section 2255 petitioner from asserting claims he failed to raise at trial or on direct appeal unless he can show "cause" for the default and "prejudice" resulting from it). This issue was not raised in Petitioner's appeal of his criminal conviction[2], and Petitioner has not met the standard of showing cause and prejudice such as would require this Court to hear these arguments. Because Petitioner had a full opportunity to assert prosecutorial misconduct in his appeal, and he has not shown cause as to why this issue was not raised then,

[2] Petitioner's appeal to the Third Circuit raised the following issues: (1) "The Court violated 28 U.S.C. § 445 and deprived [Petitioner] of due process of law at the suppression hearing . . ."; (2) "The District Court erred in refusing to suppress the gun allegedly seized during a frisk incident to an automobile stop . . ."; (3) Evidence that the gun in question had been manufactured out of state prior to 1983 is insufficient under the commerce clause to prove [Petitioner's] possession of the firearm was 'in or affecting commerce'"; (4) "The District Court erred and the defendant was deprived of effective assistance of counsel in connection with the downward departure under USSG § 4A1.3 (p.s.) from the 'armed criminal' guideline." See U.S. v. Hart, No. 98-1139, at 2 (3d Cir. Feb. 19, 1999) (unpublished opinion).

the issue is barred from this section 2255 petition. Notwithstanding this procedural defect, the Court chooses to evaluate Petitioner's arguments.

The thrust of Petitioner's claim is that the prosecutor withheld exculpatory evidence in violation of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). In Brady, the United States Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of good faith or bad faith of the prosecution." 373 U.S. at 87. Reversal for a Brady violation is required "'only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" Kyles v. Whitley, 514 U.S. 419, 433-34, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995) (quoting U.S. v. Bagley, 473 U.S. 667, 682, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985)). "Thus, 'the question is not whether the defendant would more likely than not have received a different verdict with the [concealed] evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence.'" Smith v. Holtz, 210 F.3d 186, 194 (3d Cir. 2000) (quoting Kyles, 514 U.S. at 434).

In this case, Petitioner claims that the Government failed to provide him with information regarding an Officer Santiago's

participation in Petitioner's October 11, 1996 arrest. In the instant motion, Petitioner contends that the name of his initial arresting officer was Santiago, not Ralph Maldonado and Jeffery Ryan, as presented at trial. See Pet'r Reply Mem. at 11. According to Petitioner, the prosecutor knew of Officer Santiago's involvement with the car-stop and arrest, yet failed to call him as a witness because Santiago would have testified "that he was the arresting officer initiating the pretextual car stop, and Maldonado and Ryan was [sic] not there at the scene . . . and there was no traffic violation." See id. at 12. Petitioner further contends that Officer Santiago would have "exposed [the prosecution's] improper methods . . . [b]ecause her notes and interviews [with him] were probably very consistent with the defense strategy, that the car stop was unlawful." Pet'r § 2255 Mem. at 6. The Government counters that the evidence at trial clearly established that Officers Maldonado and Ryan were the first officers on the scene of the arrest, and therefore, Petitioner has no basis for relief on this claim. The Court agrees.

First, Petitioner has failed to establish that the Government withheld any information that was favorable to his defense. During discovery, the Government disclosed to defense counsel information pertaining to Officer Santiago's involvement in the October 1996 arrest. See Gov't Resp. to Pet'r § 2255 Mot., Ex. A (Letter from U.S. Attorney Kathy L. Echternach to Elizabeth K.

Ainslie, Esq. dated May 16, 1997). In May of 1997, defense counsel forwarded to Petitioner information she received regarding Officer Santiago's potential participation. See Pet'r § 2255 Mot., Ex. A.1. In this correspondence, defense counsel explained that documents she received in discovery "[did] not mean that Officer Santiago could not have been on the scene when [Petitioner] w[as] stopped on October 11, but it does not establish that he was there either." Id.

Second, the evidence presented at trial, including records of contemporaneous police radio calls, established that Officers Maldonado and Ryan were the initial arresting officers. Therefore, the prosecution did not knowingly permit false testimony when it placed Officers Maldonado and Ryan on the stand as the arresting officers. Moreover, at trial, Petitioner himself testified that the name of his arresting officer was "Murphy" (See Trial Tr., Oct. 16, 1997, at 124, lines 14-16 ("His name was Murphy. So I kept seeing his badge, Murphy, 3936.")), even though Petitioner had previously filed a motion with the Court for a new suppression hearing to include "the original arresting officers; Santiago . . . and unknown black officer also from the 35th District." Pet'r § 2255 Mem., Ex. A.5. Finally, other than his unsupported assumptions that are contrary to the clear weight of the evidence, Petitioner presents no evidence of how testimony from Officer Santiago would have been "favorable to the accused" at trial.

It is clear from the evidence of record that the prosecution did not withhold evidence regarding the participation of Officer Santiago in the October 1996 arrest of Petitioner, and that, even in the absence of Santiago's testimony, Petitioner received a fair trial that resulted in a verdict worthy of confidence. Petitioner has not made a colorable showing that the Government withheld evidence from the defense, or that the prosecution engaged in misconduct by presenting false testimony. In sum, there is no basis for these allegations in the record, and Petitioner's argument to the contrary is without merit.

B. Ineffective Assistance of Counsel

As noted above, a petitioner is procedurally barred from bringing any claims on collateral review which could have been, but were not, raised on direct review. See Bousley v. U.S., 523 U.S. 614, 621, 118 S.Ct. 1604, 1610 (1998)(exception to procedural default rule for claims that could not be presented without further factual development); U.S. v. Biberfeld, 957 F.2d 98, 104 (3d Cir. 1992). Once claims have been procedurally defaulted, the petitioner can only overcome the procedural bar by showing "cause" for the default and "prejudice" from the alleged error. See Biberfeld, 957 F.2d at 104 (stating "cause and prejudice" standard). Even though Petitioner did not raise an ineffective assistance of counsel claim on direct appeal, these claims are not barred from collateral review. In general, an ineffective

assistance claim which was not raised on direct appeal is not deemed procedurally defaulted for purposes of habeas review and such a claim is properly raised for the first time in the district court under section 2255. See U.S. v. Garth, 188 F.3d 99, 107 n.11 (3d Cir. 1999).[3] Therefore, the Court will consider the merits of Petitioner's claims.

1. The Strickland Test

The Sixth Amendment to the United States Constitution provides that a criminal defendant is entitled to reasonably effective assistance of counsel. See U.S. Const. amend. VI. A petitioner's claim of ineffective assistance of counsel is governed by the standard promulgated by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984). In Strickland, the Supreme Court stated that an ineffective assistance of counsel claim requires the petitioner to show that their counsel's performance was defective and that the deficient performance prejudiced the defense. See id.; see also Meyers v. Gillis, 142 F.3d 664, 666 (3d Cir. 1998) (stating that to be entitled to habeas relief, the defendant must establish ineffectiveness as well as resultant prejudice). Counsel's performance is be measured against a standard of reasonableness.

[3] In Garth, the Third Circuit explained that the general rule that an ineffective assistance claim which was not raised on direct appeal is not deemed procedurally barred is rooted in the fact that (1) trial counsel is often the same attorney on direct appeal and it would be unrealistic to expect or require that attorney to argue that his performance was constitutionally deficient, and (2) resolution of ineffective assistance claims often requires consideration of factual matters outside the record on direct appeal. Garth, 188 F.3d at 107 n.11

In analyzing that performance, the court must make "every effort . . . to eliminate the distorting effects of hindsight," and determine whether "in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." See Strickland, 466 U.S. at 690.

Once it is determined that counsel's performance was deficient, the court must determine if "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different." Id. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. Only after both prongs of the analysis have been met will the petitioner have asserted a successful ineffective assistance of counsel claim. Moreover, "judicial scrutiny of an attorney's competence is highly deferential." Diggs v. Owens, 833 F.2d 439, 444-45 (3d Cir. 1987). "[A]n attorney is presumed to possess skill and knowledge in sufficient degree to preserve the reliability of the adversarial process and afford his client the benefit of a fair trial." Id. at 445. "Nevertheless, if 'from counsel's perspective at the time of the alleged error and in light of all the circumstances' it appears that counsel's actions were unreasonable, the court must consider whether that error had a prejudicial effect on the judgment." Id. (citation omitted).

2. Failure to Investigate, Interview and Subpoena Officer Santiago

First, Petitioner alleges that defense counsel was ineffective in that she failed to investigate, interview and subpoena Officer Santiago. See Pet'r Reply Mem. at 16. Again, Petitioner asserts that Officer Santiago was the initial arresting officer and that trial counsel's decision not to "pursue a line of investigation" regarding Officer Santiago left possible exculpatory evidence undiscovered. See Pet'r § 2255 Mem. at 10.

"[A]n attorney must investigate a case, when [s]he has cause to do so, in order to provide minimally competent professional representation." U.S. v. Kauffman, 109 F.3d 186, 190 (3d Cir. 1997). When assessing an ineffective assistance of counsel claim for a failure to investigate, a court must assess the decision not to investigate "for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Strickland, 466 U.S. at 691; see also Duncan v. Morton, 256 F.3d 189, 201 (3d Cir. 2001). "[S]trategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 691-92. Even if counsel is deficient in the decision not to conduct an investigation, a petitioner must show a reasonable likelihood that, but for the deficiency, the result of the proceeding would have been different.

Lewis v. Mazurkiewicz, 915 F.2d 106, 115 (3d Cir. 1990).

In the instant case, the evidence of record demonstrates that counsel did pursue a line of investigation regarding Officer Santiago's participation in Petitioner's arrest on October 11, 1996, and that her investigation failed to produce any credible evidence that Officer Santiago effectuated Petitioner's arrest. Rather, as noted above, the clear weight of the evidence indicated that Officers Maldonado and Ryan were the initial arresting officers. Although Officer Santiago may have arrived on the scene after Petitioner was already in police custody, "[t]rial counsel [is] not bound by an inflexible constitutional command to interview every potential witness." Lewis, 915 F.2d at 113. Based on the evidence produced through discovery, counsel made a reasonable decision that further investigation regarding Officer Santiago's involvement was unnecessary. The investigation undertaken by counsel did not fall below an objective standard of reasonableness. Therefore, the Court concludes that trial counsel acted reasonably and complied with constitutional standards in deciding not to interview or subpoena Officer Santiago.

Nevertheless, Petitioner encourages the Court to speculate that if a more intensive investigation was conducted it would have very likely resulted in Officer Santiago testifying that the traffic stop at issue was in fact pretextual. There is nothing in the record to support this contention. Even if the Court were to

find that counsel should have investigated the issue further, the Court finds that the failure to do so did not prejudice the Petitioner because all of the evidence of record indicates that Officers Maldonado and Ryan were the initial arresting officers, and if Santiago did in fact arrive on the scene of the arrest, this occurred after Petitioner was already in custody. Since Petitioner has not made any showing that a more intensive investigation of Officer Santiago's role would have produced evidence which could have undermined the confidence in the outcome of his trial, the Court finds that his claim of ineffective assistance of counsel for failure to investigate must be denied.

3. Failure to Investigate Traffic Tickets

Next, Petitioner claims that trial counsel was ineffective by failing to sufficiently investigate when the traffic tickets in question were actually issued. See Pet'r § 2255 Mem. at 18. According to Petitioner, had counsel "followed up on this exculpatory evidence after subpoenaing it . . ., it would have changed the outcome of the case." Id. at 19. Petitioner contends that counsel abandoned the subpoena to the Traffic Court, thereby dismissing information that the tickets were false, and issued to cover-up a pretextual arrest. Pet'r Reply Mem. at 25. Again, Petitioner's claim for relief is baseless.

For a failure to investigate to constitute ineffective assistance, Petitioner must show what exculpatory evidence would

have been uncovered by further investigation. See U.S. v. Williams, 166 F.Supp.2d 286, 306 (E.D. Pa. 2001); see also U.S. v. Gray, 878 F.2d 702, 712 (3d Cir. 1989). Trial counsel's decision not to investigate is assessed "for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Strickland, 466 U.S. at 691. "[S]trategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Id. at 691-92.

Here, despite trial counsel's efforts to vigorously contest the validity of the traffic violations during the suppression hearing, Petitioner asserts that his representation was ineffective because counsel failed to adequately investigate the timing and issuance of the tickets. To the contrary, counsel investigated the timing and issuance of Petitioner's traffic violations in an attempt to establish that the car-stop in question was pretextual. In defense counsel's Motion for Permission to Subpoena and Inspect Documents, counsel explained the defense strategy regarding the traffic violations. See Pet'r § 2255 Mem., Ex. B.1.

> We also need to subpoena a copy of Citation J0201416 from the Philadelphia Traffic Court. . . . We want to find out on what date the citation was issued, because this citation number is the number immediately preceding the citation received by Jamal Hart for the stop sign violation, and since Mr. Hart did not receive that violation until approximately one week after the incident in question, we suspect that the issuance of this citation was an afterthought so as to create paperwork in support of the pretext for the stop of Mr. Hart's

vehicle.

Id. Moreover, counsel aggressively pursued this theory during the cross-examination of Officer Maldonado at the suppression hearing. See Tr. Suppression Hr'g, May 19, 1997, at 35-43.

Accordingly, contrary to Petitioner's assertions, counsel's investigation regarding the traffic violations did not fall below an objective standard of reasonableness. Petitioner has failed to demonstrate that counsel dismissed information that the tickets were issued to cover-up a pretextual arrest. Rather, the evidence of record conclusively demonstrates that counsel aggressively pursued this theory during discovery and her cross-examination of Officer Maldonado at the suppression hearing. There is no indication that any additional evidence regarding the issuance of the traffic tickets existed, or that further investigation would have produced evidence that could have undermined the confidence in the outcome of his trial. Therefore, the Court finds that Petitioner's claim of ineffective assistance of counsel for failure to investigate must be denied.

4. Failure to Protect Petitioner at Suppression Hearing

Petitioner next alleges that counsel was ineffective for "failing to protect [Petitioner] at a critical stage . . . before the suppression hearing." Pet'r Reply Mem. at 28. While Petitioner's precise basis for this claim is unclear, the allegation appears to be premised on Petitioner's belief that a

conflict developed between him and counsel. According to Petitioner, this alleged conflict led counsel not to pursue exculpatory evidence and not to call Petitioner to testify during the suppression hearing. See Pet'r § 2255 Mem. at 22-23; Pet'r Reply Mem. at 29. Specifically, Petitioner complains that "counsel failed to properly prepare and investigate . . . exculpatory evidence concerning the false traffic tickets . . ." Pet'r Reply Mem. at 29. Accordingly, this count appears to rehash most Petitioner's claims discussed above.

Again, contrary to Petitioner's allegations, the Court does not find that a "complete denial of advocacy" occurred during the suppression hearing. There is no support in the record for Petitioner's conclusory allegations that counsel failed to prepare for trial through adequate investigation. Nor is there any support that counsel abandoned Petitioner after he voiced his belief to the Court that he and counsel were having "irreconcilable differences." At the beginning of the suppression hearing, Petitioner asserted that the motion to suppress was "meritless" and that he wished defense counsel to withdraw from the case. See Tr. Suppression Hr'g, May 19, 1997, at 6-10. Defense counsel responded to Petitioner's comments in turn:

> MS. AINSLIE: Your Honor, I obviously will defer to the Court, if the Court believes that replacement is appropriate, but I have no desire to be replaced. . . .
> I also would press the motion to suppress. I think it has substantial

> merit, your Honor, and I am prepared to go forward this morning.
>
> THE COURT: Very fine. The motion to withdraw as counsel is denied . . . the motion to suppress withdraw request made by the defendant is denied.

Id. at 11-12. Defense counsel proceeded to zealously advocate for the suppression of the gun as illegal evidence seized from an illegal traffic stop.

Petitioner also appears to be complaining that counsel deterred him from testifying at the suppression hearing, and that, if he had testified, the outcome of the hearing would have been different. See Pet'r § 2255 Mem. at 23. Again, this complaint seemingly stems from Petitioner's argument that Officers Maldonado and Ryan were not the arresting officers. See id. Defense counsel's advice that Petitioner not testify at the suppression hearing was a tactical decision that, as the Government suggests, was likely designed to prevent the Government from obtaining material to use against Petitioner on cross-examination. In this case, Petitioner "was . . . wise to acquiesce to this strategy . . ." U.S. v. Walker, Nos. 94-488, 99-584, 2000 WL 378532 (E.D. Pa. Apr. 4, 2000). Moreover, Petitioner fails to state what his testimony would have been at this hearing, or why his testimony would have changed the outcome of the Court's ruling on the issue of suppression. See U.S. v. Swint, Crim. No. 94-276, Civ. No. 98-5788, 2000 WL 987861, at *8 (E.D. Pa. July 17, 2000). Even if

Petitioner was able to satisfy Strickland's first prong, he is again unable to establish that he suffered any prejudice. Thus, the Court must reject this claim.

5. Failure to Investigate Prior Convictions

Finally, Petitioner claims that counsel was ineffective in that she failed to investigate the constitutionality of Petitioner's prior convictions. See Pet'r § 2255 Mem. at 27. By properly researching Petitioner's prior convictions, Petitioner alleges that counsel "would have nullified the career criminal enhancement" at his sentencing. Id. at 29. This ground, too, fails to provide Petitioner with a basis for relief.

In Custis v. United States, 511 U.S. 485, 114 S.Ct. 1732, 128 L.Ed.2d 517 (1994), the Unites States Supreme Court held that, "with the sole exception of convictions obtained in violation of the right to counsel, a defendant has no right to . . . [collaterally attack the validity of previous state convictions] in his federal sentencing proceeding." Daniels v. U.S., 532 U.S. 374, 376, 121 S.Ct. 1578, 149 L.Ed.2d 590 (2001). Six years later, the Court expanded the holding in Custis to prevent a petitioner from collaterally attacking his prior convictions through a section 2255 motion. See id. at 382. In Daniels v. United States, the Court noted that while "[i]t is beyond dispute that convictions must be obtained in a manner that comports with the Federal Constitution . . . it does not necessarily follow that a § 2255 motion is an

appropriate vehicle for determining whether a conviction later used to enhance a federal sentence was unconstitutionally obtained." Id. at 380-81.

In reaching this decision, the Court recognized that a district court evaluating a section 2255 motion is unlikely "to have the documents necessary to evaluate claims arising from long-past proceedings in a different jurisdiction." Id. at 379. Moreover, the Court found that "if, by the time of sentencing . . . a prior conviction has not been set aside on direct of collateral review, that conviction is presumptively valid and may be used to enhance the federal sentence." Id. at 382. The Court recognized only one exception to this general rule in cases where an enhanced sentence is based in part on a prior conviction obtained in violation of the right to counsel. Id.

In the instant case, Petitioner's claim is based on his contention that his previous guilty pleas were unconstitutional since they were not made knowingly, intelligently or voluntarily. See Pet'r § 2255 Mem. at 30. Specifically, Petitioner contends that he "was a juvenile that lacked full 12 years education, therefore could not know the complex[] ramifications of the law . . ." Pet'r Reply Mem. at 32. Under Daniels, such claims do not provide a basis for relief. Petitioner was fully capable of challenging the constitutionality of his five prior convictions when he was in custody on those charges. See Daniels, 532 U.S. at

384.

> [A] defendant generally has ample opportunity to obtain constitutional review of a state conviction . . . [b]ut once the "door" to such review "has been closed" . . . by the defendant himself – either because he failed to pursue otherwise available remedies or because he failed to prove a constitutional violation – the conviction becomes final and the defendant is not entitled to another bite at the apple simple because that conviction is later used to enhance another sentence.

Id. at 383. Accordingly, the Court declines to grant Petitioner the relief sought on this ground.

IV. CONCLUSION

For the foregoing reasons, the Court declines to grant Petitioner the relief sought. No evidentiary hearing is necessary since the records before this Court establish that Petitioner is not entitled to relief under section 2255. Moreover, since Petitioner has failed to make a "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), no certificate of appealability will issue.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	No. 97-0021
vi.	:	
	:	(CIVIL ACTION
JAMAL HART	:	No. 00-5204)

ORDER

AND NOW, this 25th day of February, 2002, upon consideration of Petitioner Jamal Hart's Motion to Vacate, Set Aside or Correct a Sentence pursuant to 28 U.S.C. § 2255 (Docket No. 100), the Government's Response to Hart's Petition to Vacate, Set Aside or Correct his Sentence Pursuant to § 2255 (Docket No. 102), and Hart's Response to the Government's Answer (Docket No. 103), IT IS HEREBY ORDERED THAT:

1) Petitioner's Motion to Vacate, Set Aside or Correct a Sentence pursuant to 28 U.S.C. § 2255 (Docket No. 100) is **DENIED;**

2) The Court finds that there are no grounds to issue a certificate of appealability;

3) The Clerk of the Court shall mark this case as **CLOSED.**

BY THE COURT:

_____
HERBERT J. HUTTON, J.