

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO
3:15 pm, Feb 27, 2024
JEFFREY P. COLWELL, CLERK

United States District Court for the District of Colorado
Criminal Case No. 1:23-cr-00074-NYW-1
Civil Action No. 1:23-cv-03027-SBP
Civil Action No. 1:2023cv03024

RESPONSE TO PROSECUTION'S REBUTTAL / 2255 / INEFFECTIVE COUNSEL

I. Introduction

In response to the prosecution's rebuttal, it is imperative to provide a comprehensive analysis of the assertions made therein. The prosecution's arguments attempt to downplay the significance of counsel's errors and the resulting prejudice suffered by the defendant, Ms. Lattany. However, upon closer examination, it becomes evident that these arguments fail to withstand scrutiny. This response will thoroughly address each point raised by the prosecution, highlighting the deficiencies in their reasoning and emphasizing the importance of addressing the constitutional violations in Ms. Lattany's case.

II. Prejudice from Erroneous Advice

The prosecution contends that Ms. Lattany was adequately informed about the uncertainties of sentencing outcomes and, therefore, any additional advice from counsel would not have prejudiced her. However, this argument overlooks the fundamental role of counsel in ensuring that defendants fully understand their options and the potential consequences. While it is true that Ms. Lattany was advised about general uncertainties, counsel's specific errors regarding the impact of her state conviction on sentencing and eligibility for safety-valve relief deprived her of critical information necessary for making an informed decision.

Furthermore, the prosecution argues that Ms. Lattany's decision to plead guilty was rational given the potential consequences of going to trial. However, this argument fails to acknowledge the flawed basis upon which Ms. Lattany made that decision. Had she been properly advised, she may have chosen to pursue trial as a rational course of action specifically for her STATE case. Thus, the prosecution's assertion that Ms. Lattany was not prejudiced by counsel's erroneous advice lacks merit.

Moreover, the prosecution's emphasis on the benefits of the plea agreement, such as a reduction for acceptance of responsibility and a low-end recommendation by the government, fails to address the fact that these benefits may have been insufficient to offset the potential consequences of counsel's errors. Additionally, the prosecution's reference to the likelihood of additional charges and a higher guidelines range in the event of a trial further underscores the importance of ensuring that Ms. Lattany's decision was based on accurate information.

III. Deficiency in Counsel's Performance

The prosecution dismisses counsel's errors as mere miscalculations or misunderstandings, failing

to acknowledge the gravity of these mistakes in a criminal proceeding. It is not sufficient to excuse deficient performance by labeling it as harmless error. Counsel's failure to accurately advise Ms. Lattany about the impact of her state conviction on sentencing and eligibility for safety-valve relief constitutes a serious deficiency that cannot be overlooked.

Furthermore, the prosecution's contention that Ms. Lattany's lack of counsel during the presentence report interview does not constitute deficient performance is misguided. While it is true that defendants do not have a constitutional right to counsel during presentence report interviews, counsel's absence may have deprived Ms. Lattany of the opportunity to effectively advocate for herself and address any inaccuracies in the report. Therefore, counsel's failure to be present during the interview may constitute deficient performance.

Additionally, the prosecution's attempt to discredit Ms. Lattany's claims of inadequate communication with counsel overlooks the evidence she provided, which demonstrates a breakdown in communication and resulting confusion on her part. The text messages she provided underscore the importance of effective communication between counsel and client, which was lacking in this case.

Moreover, the prosecution wrongly suggests that counsel's performance in the state case is irrelevant to evaluating his performance in the federal case. However, counsel's overall competence and diligence are pertinent factors in assessing his effectiveness in representing Ms. Lattany. Therefore, the prosecution's attempt to minimize counsel's errors and deficiencies in communication is unfounded.

IV. Notice of Significant Developments

Dated February 12, 2024 - Notice sent to Court

Significant developments in my circumstances have emerged, necessitating a "Notice" to be served to courts. I, Ms. DeJane Reaniece Lattany, have been transferred from Victorville Federal Women's Camp to Federal Metropolitan Detention Center Los Angeles due to a detainer stemming from my state case. This transfer occurred without proper explanation or opportunity for me to review the details.

Moreover, an email was sent yesterday, 2/8/24, on my behalf to my former Counsel, Mr. Jason Flores-Williams, who represented me in both my State case pleading and sentencing as well as my Federal criminal case. However, he has refused to provide assistance in this matter. (See email dated by Ms. Holli Coulman to Mr. Jason Flores-Williams. (See response from Mr. Jason Flores-Williams.)

V. Ineffective Counsel

It is evident from the recent developments, particularly Mr. Jason Flores-Williams' refusal to

engage in discussions or review the case, that Ms. Lattany has been abandoned by her counsel. This constitutes a clear instance of ineffective assistance of counsel, as Mr. Flores-Williams has failed to fulfill his duties to his client, leaving her without representation or support during this critical phase of her legal proceedings. Additionally, the lack of communication and assistance from Mr. Flores-Williams further exacerbates the prejudice Ms. Lattany has suffered due to his earlier errors and deficiencies in representation.

VI. Conclusion

In conclusion, it is evident from the detailed analysis presented in this Rebuttal Motion that Ms. Lattany's original motion to vacate her sentence on grounds of ineffective counsel is well-founded and should be granted by the court. The deficiencies in counsel's performance, coupled with the resulting prejudice suffered by Ms. Lattany, underscore the need for corrective action to ensure that justice is served in her case.

Furthermore, in addition to seeking the court's approval to vacate her sentence, Ms. Lattany also requests an alternative means of relief. She humbly asks the court to be released from the Federal Bureau of Prisons and placed back under the supervision of the Department of Justice Pre-Trial supervision until a new sentencing date could be docketed, considering her high-risk pregnancy and additional health concerns. The government's lack of awareness of her pregnancy at the time of her surrender, coupled with her deteriorating health conditions as evidenced by various medical reports, highlights the urgent need for compassionate consideration of her circumstances.

Ms. Lattany's health issues, including high blood pressure, borderline diabetes, chest pains, and insufficient medical care, have significantly worsened since her time at Victorville and MDC. Her arrival at MDC LA resulted in a rapid decline in health, with a loss of 10 pounds in just two days and ongoing stress and anxiety exacerbated by inadequate medical support. Despite her medical needs, the medical facilities at MDC LA have been insufficient, and the limited options provided, such as psychotropic medications, are unsuitable for Ms. Lattany due to her pregnancy.

Additionally, Ms. Lattany continues to experience numbness in her hands and toes daily, further adding to her discomfort and distress. The lack of proper dental care and overall deterioration in her health necessitate urgent intervention to safeguard her well-being and ensure that she receives the necessary medical attention and support.

In light of these compelling circumstances, Ms. Lattany respectfully urges the court to consider both her original motion to vacate her sentence and her request to be released from the Federal Bureau of Prisons and placed back under the supervision of the Department of Justice Pre-Trial supervision until a new sentencing date could be docketed. Granting these requests would not only address the injustices she has faced but also provide her with the opportunity to receive the medical care and support she urgently needs during this critical time.

Thank you for your attention to this matter, and we trust that the court will carefully consider the gravity of Ms. Lattany's situation in rendering its decision.

Respectfully,

Dejane Lattany, Registration Number 51090-510

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