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8-16-2002

**USA v. Dent**

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NOT PRECEDENTIAL

IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

No. 99-1780

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UNITED STATES OF AMERICA

v.

MICHAEL DENT, Appellant

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On Appeal From the United States District Court  
For the Eastern District of Pennsylvania  
(D.C. Crim. No. 92-cr-00223-03)  
District Judge: Honorable Robert F. Kelly

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Submitted Under Third Circuit LAR 34.1(a)  
July 29, 2002  
Before: BECKER, Chief Judge, ROTH and RENDELL  
Circuit Judges.

(Filed August 16, 2002)

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OPINION

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BECKER, Chief Judge.

This is an appeal from a final order of the District Court for the Eastern District of Pennsylvania denying petitioner Michael Dent's motion under 28 U.S.C. 2255 to vacate, set aside, or correct his sentence. We issued a certificate of appealability, and have jurisdiction over this appeal. This case was previously before us on direct appeal. See *United States v. Dent*, 149 F.3d 180 (3d Cir. 1998), cert. denied, 525 U.S. 1085 (1999), post-conviction relief denied, Civ. A. 99-2878, 1999 WL 717114 (E.D. Pa. Sept. 10, 1999).

Dent contends that the District Court erred in denying his 2255 motion without a hearing on his allegations that trial counsel rendered ineffective assistance by failing to properly advise him about the maximum penalties that could be imposed in the event that he proceeded to trial and was found guilty. More specifically, Dent alleges that his attorney went over the agreement with him and advised him that he would be classified as a career offender due to two previous felony convictions and that he would receive a sentence of 21-27 years whether or not he accepted the plea offer; he claims that this frightened him into not accepting the plea, and that he did not find out that he would not be classified as a career offender until he received the pre-sentence report.

The government notes that the District Court properly accepted as true Dent's 2255 claim that he would have accepted the government's plea offer if counsel had not told him that he was a career offender, and that it then concluded from the record without conducting an evidentiary hearing under *United States v. Day*, 969 F.2d 39 (3d Cir. 1992), that trial counsel's statements did not fall below an objective standard of reasonableness in light of Dent's extensive criminal history involving drug trafficking crimes. The government, citing an apparent acknowledgment by trial counsel, which was not disclosed in the District Court, then notes that the appellant was not fully aware of the details surrounding the appellant's prior conviction, and acknowledges that Dent "has raised certain factual matters which appear to necessitate an evidentiary hearing."

The government goes on to state that it:

agrees that in an abundance of caution, the appellant's case should be remanded to the district court for an evidentiary hearing on the sole issue for which a certificate of appealability was granted, that is, 'whether counsel was ineffective in failing to properly advise Dent about the proposed plea agreement.'

We agree that this is the proper course to follow. Accordingly the order of the District Court will be vacated and the case remanded for a hearing and factfinding.

TO THE CLERK:

Please file the foregoing Opinion.

BY THE COURT:

/s/ Edward R. Becker  
Chief Judge