

SEP 11 2003

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

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For Publication on Web Site

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS

|                           |   |                            |
|---------------------------|---|----------------------------|
| KWON, Soon Oh,            | ) | Civil Action No. 03-0029   |
|                           | ) |                            |
| Plaintiff                 | ) |                            |
|                           | ) |                            |
| v.                        | ) | ORDER DENYING 28 U.S.C.    |
|                           | ) | § 2255 PETITION TO VACATE, |
| UNITED STATES OF AMERICA, | ) | SET ASIDE, OR CORRECT      |
|                           | ) | SENTENCE                   |
| Defendant                 | ) |                            |
| _____                     | ) |                            |

THIS MATTER is before the court on *pro se* plaintiff's 28 U.S.C. § 2255 petition to vacate, set aside, or correct his sentence. For the following reasons, the petition is deemed timely filed but otherwise denied.

Plaintiff pleaded guilty to one count of conspiracy, in violation of 18 U.S.C. § 241. He was sentenced on February 22, 2000. His appeal was decided by the U.S. Court of Appeals for the Ninth Circuit on July 2, 2002, and the

1 mandate issued July 24, 2002. Plaintiff's petition was signed and placed in his  
2 correctional institution's internal mail system on July 13, 2003, and is deemed  
3 filed as of that date. See Houston v. Lack, 487 U.S. 266, 270-277, 108 S.Ct. 2379,  
4 2383-2385 (1988); Ford v. Hubbard, 305 F.3d 875, 882 (9th Cir. 2002); Huizar v.  
5 Carey, 273 F.3d 1220, 1223 (9th Cir. 2001) (petitions are deemed filed the  
6 moment they are delivered to prison authorities for forwarding to the clerk of  
7 district court). Because the petition was filed within one year of the Ninth  
8 Circuit's mandate, it is timely.

12 Plaintiff claims ineffective assistance of counsel in two particulars: that his  
13 attorney "erroneously instructed [plaintiff] to enter into a plea of guilty in  
14 which the [he] stipulated that the vulnerable victim enhancement should be  
15 applied at sentencing...in spite of the fact that the evidence of the present case  
16 demonstrated that no upward departure was warranted under existing  
17 precedence (*sic*) in the Ninth Circuit," and that he "was coerced into entering a  
18 plea agreement that is necessarily the product of ineffective assistance of  
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1 counsel.”<sup>1</sup>

2 The first claim was considered by the Ninth Circuit and rejected in its  
3 memorandum decision of July 2, 2002 (Ninth Circuit No. 00-10131). This court  
4 cannot again consider it.  
5

6  
7 As to the second claim, the instant motion and the files and records in this  
8 case conclusively show that plaintiff is entitled to no relief, for exactly the same  
9 reasons as the court stated in its February 1, 2000, order denying then  
10 defendant’s motion to withdraw his guilty plea:  
11

12 The only motion[s] which require comment [are] defendants’  
13 motions to withdraw their guilty pleas and plea agreements. On  
14 October 5, 1999, the court accepted the individual guilty pleas and  
15 the separate and distinct plea agreements entered into by each of the  
16 three defendants. At that time, and in accordance with  
17 Fed.R.Crim.P. 11(d) and the case law, the court exhaustively and  
18 painstakingly reviewed with defendants all their constitutional  
19 rights and appellate rights and elicited from each of them  
20 individually a factual basis for their respective pleas of guilty. After  
21 accepting defendants’ guilty pleas, the court, in accordance with

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23 The court notes that plaintiff’s affidavit attached in support of his petition  
24 claims that he does not read, write, speak or comprehend” the English language  
25 and “is absolutely reliant on others to correspond with [the] court.” Affidavit of  
26 Sooh Oh Kwon, Ex. B-1, p. 1, dated and notarized May 13, 2003. Yet, plaintiff  
nowhere in his petition or affidavit states that he did not prepare it and that it  
was prepared by another and fully translated to him. Nor does the notary  
indicate in any way that it was translated to affiant in her presence and that he  
indicated to her that he understood what he was signing.


1 Fed.R.Crim.P. 11(e)-(g) and the case law, reviewed with each  
2 defendant the entire contents on his or her individual plea  
3 agreement, working through each agreement section by section.  
4 The transcript will reflect that defendants, and each of them,  
5 repeatedly expressed, under oath, that they fully understood what  
6 they were doing and were undertaking the pleas of guilty and  
7 entering their respective plea agreements intelligently, knowingly,  
8 and voluntarily, with a full understanding of the various avenues  
9 open to them and the consequences of their choices. Defendants'  
10 bald (and unprovable) assertions that they were intimidated by the  
11 government's counsel and their own counsel and did not  
12 understand the proceedings are belied by the overwhelming  
13 objective indicia that they did fully understand, appreciate, and  
14 participate in all phases of their defense to this prosecution, up to  
15 and including their respective decisions to enter into their respective  
16 plea agreements and plead guilty.

17 "Notice of Orders," United States v. Kwon, Soon Oh, et al., Criminal No. 98-  
18 00044 (Feb. 1, 2000) [Docket No. 161].

19 FOR THE FOREGOING REASONS, plaintiff's petition under 28  
20 U.S.C. § 2255 is denied.

21 IT IS SO ORDERED.

22 DATED this 11th day of September, 2003.

23  
24 

25 ALEX R. MUNSON

26 Judge