IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

UNITED STATES OF AMERICA	)	CR. NO. 9:14-00054
	)	
v.	)	
	)	
MARY MOONEY	)	

UNITED STATES' OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS

Less than one month before the defendant is set to be sentenced on her guilty plea for falsely certifying an accreditation application, and more than one year after she pleaded guilty, the defendant asks the Court to vacate her guilty plea and dismiss the charges against her. The defendant claims that her "extradition" was illegal because it violated the rule of specialty and that her prior counsel provided ineffective assistance by failing to raise this defense. The defendant, however, was not extradited, but rather Belize authorities issued an "Order to Leave" for the defendant and returned the defendant to the United States. The United States never submitted a request for the extradition of the defendant, and therefore, the defendant could not have been "extradited" to the United States. The rule of specialty is a provision found in some extradition treaties, including the bilateral extradition treaty between the United States and Belize. Because the United States never submitted an extradition request in this case, the rule of specialty would not apply, nor would any other defense related to extradition. Consequently, the Court should deny her motion.

BACKGROUND

The defendant, a U.S. citizen, was indicted on January 21, 2014, and a Magistrate Judge of this Court issued a warrant for her arrest. At the time, the defendant was in Belize. On

February 3, 2014, an agent with the Diplomatic Security Service ("DSS") provided a copy of the arrest warrant for the defendant to a DSS agent assigned to the U.S. Embassy in Belmopan, Belize. On February 10, 2014, the DSS agent in Belize provided a copy of that arrest warrant to the Belizean Police.

On February 11, 2014, two officers with the Belizean Police, with the assistance of a DSS agent and another U.S. Embassy employee, took the defendant into custody and transported her to appear before an immigration officer at Philip Goldson International Airport in Belize. The immigration officer reviewed a copy of the defendant's arrest warrant and the defendant's U.S. passport. The immigration officer then issued an Order to Leave directing the defendant "to leave Belize . . . immediately." (Attach. A.) Later that day, after DSS agents booked Mooney, the same two Belizean law enforcement officers then escorted the defendant on a flight from Belize to Miami, Florida. The defendant was then arrested by DSS agents when she arrived at Miami International Airport. The United States never requested that the government of Belize extradite the defendant to the United States. No extradition proceedings involving the defendant occurred in Belize.

On January 14, 2015, the defendant pleaded guilty to an information charging her with one count of making a false statement to an accreditation agency, in violation of 42 U.S.C. § 14944. (Dkt. 136.) In entering her guilty plea, the defendant advised the Court under oath that she was "fully satisfied" that a guilty plea was in her best interest. (1/14/15 Tr. 3.) The defendant also told the Court that she was satisfied with her attorney's services and that he had "been over these charges against [her] in detail and explained them all to [her]" and that she was "fully satisfied" that she understood them. (1/14/15 Tr. 4.) The defendant stated that she had not been threatened or forced to sign a plea agreement and had signed it "of [her] own free will and

accord, after conferring with [her] attorney and feeling it was in [her] best interest." (1/14/15 Tr. 10-11, 14.)

On March 12, 2015, the defendant filed a motion with this Court to withdraw her guilty plea. (Dkt. 142.) In that motion, the defendant asserted that her plea was not voluntary and that she was actually innocent of the charge in the information to which she had pleaded guilty. (Dkt. 142.) After hearing the parties' arguments, the Court denied that motion on August 4, 2015. (Dkt. 166, 168.)

The defendant is scheduled to be sentenced on August 29, 2016. (Dkt. 221.)

APPLICABLE LEGAL PRINCIPLES

In order to prevail on a claim of ineffective assistance of counsel, the defendant must show that: (1) an error by counsel was professionally unreasonable; and (2) there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 691-94 (1984).

Under the "rule of specialty," an extradited defendant, once returned to the requesting country, may be tried only for offenses for which extradition was granted by the requested country. *Zhenli Ye Gon v. Holt*, 774 F.3d 207, 211 (4th Cir. 2014). But the rule of specialty applies only to defendants who were actually extradited. It does not apply to defendants who were deported. *United States v. Valot*, 625 F.2d 308, 310 (9th Cir. 1980) ("[W]here no demand for extradition is made by the United States and the defendant is deported by the authorities of the other country which is party to the treaty, no 'extradition' has occurred and the failure to comply with the extradition treaty does not bar prosecution.").

ARGUMENT

The defendant's motion is based on an incorrect set of facts – she was never extradited and therefore the rule of specialty does not apply as a matter of law. Contrary to the defendant's claim, she was not extradited from Belize, and the United States government never invoked its extradition treaty with Belize in connection with her removal from the country. Rather, the defendant was ordered to leave Belize by a Belizean immigration official pursuant to Belizean law. Because the defendant was not extradited from Belize, it is impossible for the United States government to have violated its extradition treaty with Belize. An extradition treaty cannot be violated where it was not invoked. *See United States v. Herbert*, 313 F. Supp.2d 328, 330 (S.D.N.Y. 2004) ("[T]he U.S. government may act to obtain custody of the defendant through other channels without invoking or violating an extradition treaty."). Foreign countries "often deport aliens as undesirable or excludable under their immigration laws; sometimes the effect of deportation is to return the person to a state where he has been charged with a crime." Restatement (Third) Foreign Relations Law of the United States, § 475 note 6*; cf. Herbert*, 313 F. Supp.2d at 328-29 ("The extradition treaty between the United States and Belize is not the exclusive method by which the United States can gain custody over a Belizean national."). An extradition treaty does not limit the ability of a sovereign nation, such as Belize, to deport foreign nationals, such as the defendant, for other reasons and in other ways should it wish to do so. *United States v. Cordero*, 668 F.2d 32, 37-38 (1st Cir. 1981).

For the same reason, the defendant's argument that her prior counsel was ineffective for failing to raise this "jurisdictional issue" at the time of her guilty plea is also without merit. The defendant was not extradited from Belize and thus could not legally make a claim that her removal from Belize violated the rule of specialty set forth in the extradition treaty. Thus, her

prior counsel cannot be said to have made any error—let alone a professionally unreasonable error—by failing to raise a "jurisdictional issue" that did not exist. *Strickland*, 466 U.S. at 691.[1]

CONCLUSION

For the foregoing reasons, the defendant's motion should be denied and the Court should proceed with sentencing on August 29, 2016.

Respectfully submitted,

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[1] Although it appears that the defendant's reference to a "jurisdictional issue" in her motion relates to the rule of specialty, it is worth noting that there is no question of the Court's jurisdiction over the defendant. It is well settled that the means by which a fugitive defendant is brought before a U.S. court is immaterial in considering whether the defendant may be prosecuted in the United States. *See, e.g.*, *United States v. Alvarez-Machin*, 504 U.S. 655, 670 (1992) ("The fact of respondent's forcible abduction does not therefore prohibit his trial in a court in the United States for violations of the criminal laws of the United States."); *United States v. Shibin*, 722 F.3d 233, 243 (4th Cir. 2013) ("Under the *Ker–Frisbie* doctrine, the manner in which the defendant is captured and brought to court is generally irrelevant to the court's personal jurisdiction over him." (citations omitted)).

CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2016, I caused a copy of the foregoing to be served upon counsel for the defendant, George Bishop, Esq., via the Court's e-noticing system, but if that means failed, then by regular mail on all parties of record.

/s/ *Jamie Lea Nabors Schoen*
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