

3rd Circ. Won't Cut Jail Time Of Ex-Atty Claiming Bad Counsel

By **Craig Clough**

Law360 (April 22, 2020, 10:21 PM EDT) -- A Third Circuit panel on Wednesday affirmed a lower court's decision to reject a former attorney's bid to evade his six-year prison sentence for using a bogus law and accounting firm to defraud a foreign nation, saying the defendant "cannot show that his attorney's allegedly deficient performance prejudiced him."

Bobby Boye's argument that his defense counsel failed to argue at his sentencing that he deserved a credit against the loss amount for the legal services he performed for the country of Timor-Leste didn't add up, the panel said in an unpublished opinion authored by U.S. Circuit Judge Julio M. Fuentes.

"In no scenario would Boye's loss amount be zero, as he contends, and he has failed to set forth the purported off-set amount to show that his sentence would have been materially impacted, or that he would have been on stronger plea bargaining grounds," the panel said. "Additionally, any potential lower offense level could easily be negated by other benefits that Boye received in the agreed upon plea deal."

Boye served as an international petroleum legal adviser for the Ministry of Finance of Timor-Leste. As part of that role, he served on a three-person committee that was tasked with reviewing and evaluating bids solicited by the country in February 2012 for a multimillion-dollar contract to provide legal and tax accounting advice to the nation, the panel said.

To secure the contract for himself, Boye set up a sham law and accounting firm called Opus & Best Law Services LLC, which submitted a bid via email for the contract in March 2012. Unbeknownst to the country, Boye was the only person involved with Opus & Best, and it did not have multiple attorneys and others on staff, the panel said.

Under a 2015 plea agreement, Boye agreed to pay \$3.51 million in restitution to the country. As part of a stipulated offense level, the parties agreed that the amount of the loss was between \$2.5 million and \$7 million, the panel said. He was sentenced to six years in prison following his guilty plea to a single count of conspiracy to commit wire fraud.

Boye is scheduled to be released from prison in January 2021, according to the Federal Bureau of Prisons website.

In **seeking to vacate his sentence**, Boye asserted that his attorney was ineffective by advising him to stipulate to an incorrect loss figure in the plea agreement, but the district court rejected that argument.

The panel affirmed the lower court's 2018 decision and said Boye "fails to account for the fact that even if a credit for services rendered was taken from the loss amount, he would have to show enough credit against his losses to lower the loss amount below \$2,500,000," the panel said, noting that he did not include in his estimate a number of related costs including his salary, tax proceeds he diverted, the legal costs Timor-Leste spent uncovering the fraud and others.

"We conclude that Boye cannot show that his attorney's allegedly deficient performance prejudiced him," the panel said. "Boye failed to demonstrate that but for his counsel's purported errors, he would have gone to trial, received a more favorable plea deal, or have

been better off pleading guilty without the benefit of a plea agreement. Accordingly, we need not decide whether Boye's counsel performed deficiently."

Boye also benefited from the plea agreement, the panel said, including that six counts against him were dismissed.

U.S. Circuit Judges Julio M. Fuentes, Paul B. Matey and Michael A. Chagares sat on the panel for the Third Circuit.

Counsel for Boye and the government did not immediately respond to a request for comment.

Boye is represented by Michael Confusione of Hegge & Confusione LLC.

The government is represented by Sabrina G. Comizzoli of the U.S. Attorney's Office for the District of New Jersey.

The case is *Boye v. U.S.A.*, case number 18-3662, in the Court of Appeals for the Third District.

--Additional reporting by Bill Wichert. Editing by Nicole Bleier.