

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 00-3021

September Term, 2000

United States of America,
Appellee

Filed On: November 29, 2000 [559048]

v.

Andre Lamont Gainey, *a/k/a* Muhammad Ali El,
Appellant

Appeal from the United States District Court
for the District of Columbia
(No. 94cr00055-02)

Before: EDWARDS, *Chief Judge*, WILLIAMS and TATEL, *Circuit Judges*.

JUDGMENT

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. While the issues presented occasion no need for a published opinion, they have been accorded full consideration by the Court. See D.C. Cir. Rule 36(b). It is hereby

ORDERED and ADJUDGED that the judgment of the district court denying appellant's motion to vacate, set aside or correct his sentence be affirmed.

Appellant Gainey pursues his motion on the grounds that his trial counsel provided ineffective assistance. Specifically, he argues that his counsel (1) did not call Dorothea Epps as a witness, (2) did not call the Radio Shack manager as a witness, (3) did not introduce a photograph of appellant taken two days after the robbery, and (4) did not impeach Doris Feintuch with written statements made shortly after the robbery. Trial counsel's explanations for the first three decisions are reasonable. Strickland v. Washington, 466 U.S. 668, 688-89 (1984). As to the fourth, counsel did impeach Feintuch with her

oral statements to the FBI and the only information "added" by the written statements is that, unlike Feintuch's trial testimony, they include no mention of the defendant's headgear. Moreover, the impeaching written statements were the notes of an FBI agent, not Feintuch. Had counsel not made the "errors" suggested, the likely conclusion that jurors would have drawn is that the witnesses were confused as to whether Gainey was carrying a briefcase and his attire during the robbery; there would still be little doubt as to his participation in the robbery. Strickland, 466 U.S. at 694; United States v. Askew, 88 F.3d 1065, 1070 (D.C. Cir.), cert. denied, 519 U.S. 986 (1996).

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Cir. Rule 41.

FOR THE COURT:

Mark J. Langer, Clerk

BY:

Deputy Clerk