



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA :
 :
 -v- :
 :
 RAJAT K. GUPTA, :
 :
 Defendant. :
-----X

11 Cr. 907 (JSR)

ORDER

JED S. RAKOFF, U.S.D.J.

On March 5, 2015, defendant Rajat Gupta moved under 28 U.S.C. § 2255 (the federal version of habeas corpus) to set aside his conviction on three counts of securities fraud and one count of conspiracy to commit securities fraud, on the ground that the Court's jury instruction on the "personal benefit" element of an insider trading violation was, in Gupta's view, effectively held erroneous in the Second Circuit's subsequent decision in United States v. Newman, 773 F.3d 438 (2d Cir. 2014). Gupta conceded that he did not challenge the Court's instruction on his direct appeal; and, in a July 2, 2015 Memorandum Order, the Court concluded that, even if Newman were read as Gupta would read it, Gupta had neither shown "cause" for his procedural default nor proved his "actual innocence." United States v. Gupta, No. 11 Cr. 907, 2015 WL 4036158, at *1-2 (S.D.N.Y. July 2, 2015). Accordingly, the Court denied Gupta's motion in its entirety. Id. at * 4. Now pending before the Court

is Gupta's motion for a certificate of appealability pursuant to 28 U.S.C. § 2253(c).

Where a district court denies a habeas petition on procedural grounds, a certificate of appealability "should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000). No aspect of this Court's earlier ruling is reasonably open to such debate.

With respect to the Court's determination that Gupta had failed to show "cause" for his procedural default, Gupta's argument -- that appealing this Court's jury instruction on the ground he now raises would have been "futile" -- borders on the frivolous. Newman, on its face, did not purport to overrule prior binding precedent, and that is what "futility" requires. See Gutierrez v. Smith. 702 F.3d 103, 111-12 (2d Cir. 2012).

The Court's conclusion with respect to actual innocence is likewise not reasonably debatable. "To establish actual innocence, [the movant] must demonstrate that, in light of all the evidence, it is more likely than not that no reasonable juror would have convicted him." Bousley v. United States, 523

U.S. 614, 623 (1998) (internal quotation marks omitted).

Concerning the absence-of-pecuniary benefit issue on which Gupta now relies, Gupta and his tippee, Raj Rajaratnam, had a long history of conferring financial benefits on one another, a fact that, even under Gupta's reading of Newman, totally undermines the plausibility of any assertion that it is more likely than not that no reasonable juror would have convicted Gupta. See Gupta, 2015 WL 4036158, at *3. Further, as the Court explained, Gupta's tips had the potential of directly increasing the value of his own investments in Rajaratnam's funds. Id. at *4. The potential pecuniary benefit is plain.

The Court has considered Gupta's other arguments for issuing a certificate and finds them without merit. As the Court noted at sentencing, Mr. Gupta is a man of many laudable qualities, and his superb attorneys have energetically pursued his defense. But the hard fact remains that he committed a serious crime, the overwhelming proof of which has readily survived every challenge. No purpose would be served by further proceedings.

Accordingly, the Court hereby denies Gupta's motion for a certificate of appealability.

SO ORDERED.

Dated: New York, New York
August 5, 2015



JED S. RAKOFF, U.S.D.J.