

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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EDWIN BADIA,
Petitioner,

95 CV 3212

-against-

MEMORANDUM
AND
ORDER

CHRISTOPHER ARTUZ, Superintendent,
Green Haven Correctional Facility,

Respondent.

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JULIE A. CLARKE, ESQ.
229 Flatbush Avenue
Brooklyn, New York 11217
for petitioner.

CHARLES J. HYNES
KINGS COUNTY DISTRICT ATTORNEY
(Roseanna B. MacKechnie, Dianne Malone, Ann Bordley,
Assistant District Attorneys, of counsel)
Brooklyn, New York 11201
for respondent.

NICKERSON, District Judge:

Petitioner Edwin Badia brought this proceeding
under 28 U.S.C. § 2254 for a writ of habeas corpus.

He was convicted on March 19, 1994, after a jury
trial in the Supreme Court of the State of New York,
Kings County, of murder in the Second Degree and
sentenced to twenty years to life. He has exhausted
his state court remedies and received no relief there.

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In the state courts he asserted that his counsel was ineffective, and he makes the same claim here.

The only issue of significance is raised by petitioner's claim that his trial attorney was ineffective because he allegedly did not inform petitioner of the prosecutor's plea offer of twelve and a half to twenty-five years. The court held a factual hearing on the issue.

Petitioner's trial counsel testified in the state court post-conviction hearing that in fact he had informed petitioner of the plea offer. Moreover, at the state court hearing petitioner was asked whether he had ever been told about a possible plea to manslaughter in the first degree. Petitioner responded that "there was an offer," although the word manslaughter was not mentioned.

At the hearing in this court he testified that he was not told of any plea offer. His state court trial counsel refuted that testimony and testified that he did advise petitioner of the offer.

The court finds that petitioner's testimony in
this court was not credible.

The petition is denied.

So ordered.

Dated: Brooklyn, New York
October 15, 1998

Eugene H. Nickerson
Eugene H. Nickerson, U.S.D.J.