



No. 10-4351

*United States v. Newland*

testified to that effect at the hearing. But the court also found that the reason Tyack had not done so was that Newland had made clear that any plea deal which involved at least five years' imprisonment was a nonstarter for him. Here, even the bottom end of the Guidelines range for the plea deal exceeded that limit by six months. The court thus concluded that Tyack's failure to discuss the ranges in detail did not prejudice Newland, since there was no probability that he would have taken the plea deal if Tyack had done so. That conclusion was fatal to Newland's claim. *See generally Hodgson v. Warren*, 622 F.3d 591, 598 (6th Cir. 2010).

We review the district court's factual finding for clear error and its denial of the writ *de novo*. *Smith v. United States*, 348 F.3d 545, 550 (6th Cir. 2003) (citing *Nagi v. United States*, 90 F.3d 130, 134 (6th Cir. 1996)). We have no basis whatever to find that the district court erred with respect to its factual findings. And that leaves Newland's legal arguments untenable. He argues that the mere fact of the disparity between the two ranges under the Guidelines—about 40 months—shows that he was prejudiced by Tyack's failure to discuss that disparity in more detail. But none of the cases he cites involved a defendant who refused even to consider a plea deal involving more than a certain amount of time (here, five years) in prison.

It is true, as Newland points out, that the standard we apply here has an objective component—namely, that “a decision to reject the plea bargain would have been rational under the circumstances.” *Padilla v. Kentucky*, 130 S.Ct. 1473, 1485 (2010). But that is not all that Newland must prove. He must prove also that he personally would have taken the plea deal if only his lawyer had explained it better to him. *See, e.g., Humphress v. United States*, 398 F.3d 855, 859 (6th Cir. 2005). Newland has not proven that here: he insisted before trial that the government could never

No. 10-4351

*United States v. Newland*

prove him guilty, which caused him to draw a line at five years; and even after trial, he wrote letters to Tyack insisting that the government had not proven its case. His claim thus fails.

The district court's judgment is affirmed.