



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
JAIME ECHEVERRI,

Petitioner,

-against-

MEMORANDUM & ORDER
98-CV-3076 (ILG)

UNITED STATES OF AMERICA,

Respondent.

-----x
GLASSER, United States District Judge

The petitioner has filed this motion on April 15, 1998, pursuant to 28 U.S.C. § 2255 for an order that would modify, vacate or reduce his sentence. The bases for his motion are that he should have been awarded a 2 or 3 level reduction in accordance with U.S.S.G. § 3B1.2(c) and that his criminal history category was improperly predicated upon a Massachusetts state connection he claims was obtained illegally.

Background

The petitioner was arrested together with his co-defendant on October 25, 1996, after being surveilled by agents of the Drug Enforcement Administration for several weeks. He was indicted on November 22, 1996, charged with conspiring to possess with intent to distribute cocaine in violation of 21 U.S.C. § 846 and pleaded guilty to that charge on January 13, 1997. Prior to sentencing, he moved for a downward departure based upon his assertion of extraordinary family circumstance and his characterization of his role in the offense as being minor. Rejecting his motion for a downward departure, he was sentenced on April 17, 1997, to 46 months imprisonment to be followed by supervised release for three years. His Massachusetts state conviction resulting in a criminal history category of II was not disputed at sentence nor

were his conviction and sentence appealed.

Discussion

As a threshold matter, the claims the petitioner raises are procedurally barred by the principle that claims which have not been raised on direct appeal may not be considered by way of collateral attack where the petitioner has not shown cause for failing to do so and actual prejudice resulting therefrom. Campino v. United States, 968 F.2d 187, 190 (2d Cir. 1992).

In Napoli v. United States, 32 F.3d 31, 35 (2d Cir. 1994) the Court succinctly stated the principles guiding the resolution of § 2255 claims as follows:

. . . not “every asserted error of law can be raised in a § 2255 motion.” Davis v. United States, 417 U.S. 233 (1974). The grounds provided in section 2255 for collateral attack on a final judgment in a federal criminal case are narrowly limited, and it has “long been settled law that an error that may justify reversal on direct appeal will not necessarily support a collateral attack on a final judgment.” United States v. Addonizio, 442 U.S. 178, 184 (1979). As a general rule, “relief is available under § 2255 only for a constitutional error, a lack of jurisdiction in the sentencing court, or an error of law that constitutes a fundamental defect which inherently results in a complete miscarriage of justice.” Hardy v. United States, 878 F.2d 94, 97 (2d Cir. 1989)

More recently, in Graziano v. United States, 83 F.3d 587 (2d Cir. 1996) the Court wrote, at 590:

Insofar as claims regarding a sentencing court’s error in failing to properly apply the Sentencing Guidelines are neither constitutional nor jurisdictional, we join several other circuits in holding that, absent a complete miscarriage of justice, such claims will not be considered on a § 2255 motion where the defendant failed to raise them on direct appeal.

Napoli and Graziano are plainly dispositive of the petitioner’s claims.

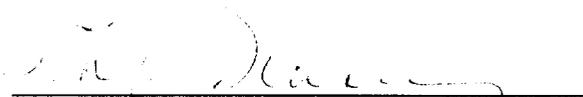
The petitioner requests that consideration of his § 2255 motion be suspended while a proceeding pending in Massachusetts to vacate his prior drug conviction is resolved. This

request is, in essence, one to extend indefinitely the time to file this motion. The time to file a § 2255 motion has been limited to one year from the date on which a judgment of conviction becomes final by the Antiterrorism and Effective Death Penalty Act of 1996. That time expired on April 17, 1998, and the court has no authority to extend it. See Application of Wattanasiri, 982 F.Supp. 955, 957 (S.D.N.Y. 1997); Thai v. United States, 97-CV-1219 (E.D.N.Y. March 24, 1997).

For the foregoing reasons, this motion is denied.

SO ORDERED.

Dated: Brooklyn, New York
June 15th, 1998



I. Leo Glasser

Copies of the foregoing memorandum and order were mailed to:

Catherine Friesen, Esq.
Assistant U.S. Attorney

Jaime Echeverri
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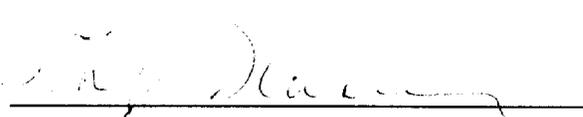
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