

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GEORGE HUMPHREY : CIVIL ACTION  
 :  
 v. :  
 :  
 IMMIGRATION AND :  
 NATURALIZATION SERVICE, ET AL. : 01-CV-4632

ORDER - MEMORANDUM

AND NOW, this 1<sup>st</sup> day of March, 2002, petitioner George Humphrey's habeas corpus petition is denied, and respondent Immigration and Naturalization Service's supplemental motion to dismiss is granted.<sup>1</sup> 28 U.S.C. § 2241.

Under the Immigration and Nationality Act in effect in 1993, an immigrant convicted of an aggravated felony who served a term of imprisonment of five years or more was prohibited from "212 (c) relief." 8 U.S.C. § 1182 (c) (1993). Here, according to the petition: "On or about June 15, 1993, the Petitioner was indicted in the States[sic] of New York to wit: Possession with Intent to Sell and was sentenced to 7 1/2 to 15 years. Petitioner was released by the State of New York Correctional Department to the custody of Immigration

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<sup>1</sup> Jurisdiction: § 2241. I.N.S. v. St. Cyr, 121 S. Ct. 2271, 2287 (2001).

On December 27, 2001, respondent's motion to dismiss the habeas corpus petition as moot was granted as to the indefinite detention claim, since petitioner had been deported to Guyana on November 20, 2001. However, the motion was denied with regard to the second ground of the petition, which contested the retroactive application of §§440 (d) and 304 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) to petitioner's 1993 conviction for drug possession with intent to sell. Petition at 10-12, citing I.N.S. v. St. Cyr, 121 S. Ct. 2271 (provisions of AEDPA and IIRIRA repealing discretionary relief from deportation do not apply retroactively to alien, who pleaded guilty to sale of controlled substance prior to statute's enactment).

and Naturalization Service on or about October 6, 1999.” Petition at 2.<sup>2</sup> Based on his release date, petitioner apparently served a sentence of at least six years. Accordingly, whether or not IIRIRA applies retroactively in this case, petitioner is ineligible for the relief sought.<sup>3</sup>

Respondent is directed forthwith to serve a copy of this order-memorandum on petitioner at his last known address in Guyana, or such other place where he can be located, and to file proof of service as soon as practicable thereafter. Petitioner shall have forty-five days from the date of service to show cause why the petition should not have been dismissed.

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Edmund V. Ludwig, J.

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<sup>2</sup> The petition also acknowledges that he was convicted of the crime for which he was prosecuted. Petition at 10.

<sup>3</sup> Under 8 U.S.C. § 1101 (a)(43)(1990), amended by 8 U.S.C. § 1101 (a)(43)(1996), an "aggravated felony" includes "any illicit trafficking in any controlled substance (as defined in section 802 of Title 21), including any drug trafficking crime as defined in section 924(c)(2) of Title 18 . . . for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 5 years." In Germier v. Holmes, 2002 WL 206155, at \*1 (3rd Cir. February 8, 2002), our Court of Appeals considered the history and scope of the "aggravated felony" definition. It affirmed the Board of Immigration Appeals' interpretation: "§ 924(c)(2) requires that, for deportation purposes, a state drug conviction, whether it be a felony or a misdemeanor, must either contain a "trafficking" component or be punishable as a felony under federal law in order for it to constitute an "aggravated felony." Here, petitioner's state felony drug conviction included a trafficking element - the intent to sell. Id. at 14. Therefore, it constituted an "aggravated felony."