

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

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal No. 95-369
	:	
THOMAS DANIELS	:	

**MEMORANDUM**

**Baylson, J.**

**April 24, 2003**

**I. Factual and Procedural Background**

This Court sentenced Daniels to life imprisonment in 1996 after a jury found him guilty of distributing cocaine base and cocaine in violation of 21 U.S.C. § 841(a)(1). Daniels appealed to the United States Court of Appeals for the Third Circuit, which affirmed the judgment of conviction and sentence in an unpublished opinion on June 11, 1997. United States v. Daniels, 118 F.3d 1578 (3d Cir. 1997), cert. denied, 522 U.S. 926, 118 S. Ct. 324, 139 L. Ed. 2d 251 (1997).

On February 26, 1998, Daniels filed a pro se Motion to Vacate, Set Aside or Correct Sentence Pursuant to 28 U.S.C. § 2255, which was denied by Judge Broderick in an opinion dated June 29, 1998. Daniels again appealed to the Third Circuit, which affirmed Judge Broderick's decision on December 7, 1999.

On March 5, 2002, the Third Circuit denied Daniel's application under 28 U.S.C. § 2244 to file a second or successive petition under 28 U.S.C. § 2255 because it found that Daniels had not made a prima facie showing that he met the requirements for filing a second or successive

petition under 28 U.S.C. § 2255 because Apprendi v. New Jersey, 530 U.S. 466, 147 L. Ed. 2d 435, 120 S. Ct. 2348 (2000) had not been made retroactive to cases on collateral review.<sup>1</sup>

Daniels then filed his Motion for Leave to Amend/Supplement and Motion to be Relieved of October 13, 1999 Order<sup>2</sup> to Extraordinary Circumstances Matured by Correct Interpretation of Controlling Law, which were both filed on November 15, 2002 are which are currently before the Court.

## **II. Discussion**

### **A. Motion for Leave to Amend/Supplement**

In his Motion for Leave to Amend/Supplement, Daniels “moves this Court to grant him leave to amend/supplement his § 2255 [petition].” (Mot. at 3). Daniels argues that his successive petition is permissible pursuant to 28 U.S.C. § 2255, which allows such a petition based on “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.” Daniels further argues that 28 U.S.C. § 2255 allows district courts and appellate courts to make retroactivity decisions and that the Third Circuit’s decision in United States v. Vasquez, 271 F.3d 93 (3d Cir. 2001), cert. denied, \_\_\_ U.S. \_\_\_, 122 S. Ct. 2672, 153 L. Ed. 2d 845 (2002), made the Supreme Court’s decision in Apprendi retroactive to convictions under 21 U.S.C. §§ 841 and 846 where an Apprendi violation occurred. (Mot. at 1-2).

In Apprendi, the defendant had fired several shots into the home of an African-American

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<sup>1</sup> For a discussion of Apprendi, see Part II. A.

<sup>2</sup> Although Daniels refers to Judge Broderick’s Order denying his 28 U.S.C. § 2255 petition as the October 13, 1999 Order, Judge Broderick Order was actually issued on June 29, 1998.

family that had recently moved into a New Jersey neighborhood. 530 U.S. at 469. After his arrest, the defendant reportedly stated that he did not know the occupants personally but did not want African-Americans in his neighborhood. Id. at 469. He later, however, denied making such a statement. Id. at 469, 471. The defendant pled guilty in state court to two counts of second-degree possession of a firearm for an unlawful purpose, each of which carried a sentencing range of 5 to 10 years. Id. at 469-70.

Subsequently, the prosecutor filed a motion to enhance the defendant's sentence pursuant to New Jersey's hate crime statute, which authorized an increased punishment for first-degree offenses based upon a trial judge's finding, by a preponderance of the evidence, that the defendant had committed the crime with a purpose to intimidate a person or group because of race. Id. at 470, 491-92 (discussing N.J. STAT. ANN. § 2C:44-3(e)). After a contested evidentiary hearing, the trial court found, by a preponderance of the evidence, that the shooting was racially motivated and imposed a 12-year sentence on one of the second-degree counts. Id. at 471.

The Supreme Court granted certiorari and reversed, holding that the New Jersey sentencing procedures violated the Due Process Clause of the Fourteenth Amendment. In doing so, the Court articulated a new rule of constitutional law: "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." Id. at 490. Further, with the exception for prior convictions, the Court endorsed the following concept: "It is unconstitutional for a legislature to remove from the jury the assessment of facts that increase the prescribed range of penalties to which a criminal defendant is exposed. It is equally clear that

such facts must be established by proof beyond a reasonable doubt.” Id. (quoting Jones v. United States, 526 U.S. 227, 252-53, 119 S. Ct. 1215, 143 L. Ed. 2d 311 (1999) (Stevens, J., concurring)).

The Third Circuit in Vasquez held an Apprendi violation only occurs if the drug quantity is not found by a jury beyond a reasonable doubt and the defendant’s sentence under 21 U.S.C. § 841 exceeds twenty years. 271 F.3d at 98. The Third Circuit held that an Apprendi violation had occurred in Vasquez because the judge, rather than the jury, determined the drug quantity.<sup>3</sup> Id. at 99. The Third Circuit, however, did not make Apprendi retroactive to convictions under 21 U.S.C. §§ 841 and 846 where an Apprendi violation occurred. In fact, the Third Circuit has consistently followed its holding in In re Turner, 267 F.3d 225, 227 (3d Cir. 2001) Apprendi has not been made retroactive to cases on collateral review by the Supreme Court. The Court, therefore, will deny Daniels’ Motion to Amend/Supplement.

**B. Motion to be Relieved of October 13, 1999 Order to Extraordinary Circumstances Matured by Correct Interpretation of Controlling Law**

In his Motion to be Relieved of October 13, 1999 Order to Extraordinary Circumstances Matured by Correct Interpretation of Controlling Law, Daniels requests the Court to reopen the June 29, 1998 Order denying his 28 U.S.C. § 2255 petition. (Mot. at 1.) Defendant argues that extra-ordinary circumstances have been created by the Third Circuit’s decision in Vasquez, which Daniels contends made Apprendi retroactive to convictions under 21 U.S.C. §§ 841. Id.

As stated above, the Third Circuit has consistently held that Apprendi has not been made retroactive to cases on collateral review by the Supreme Court. The Court, therefore, will deny

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<sup>3</sup> In Daniels’ criminal jury trial, the parties stipulated to the drug quantity.

Daniels' Motion to be Relieved of October 13, 1999 Order.

**III. Conclusion**

For the above reasons, Defendant's Motions will be denied.

An appropriate Order follows.

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**ORDER**

AND NOW, this 24th day of April, 2003, upon consideration of Daniels' Motion to Amend/Supplement (Docket No. 138) and Motion to be Relieved of October 13, 1999 Order to Extraordinary Circumstances Matured by Correct Interpretation of Controlling Law (Docket No. 137), the Governments Response (Docket No. 140), and Daniels' Reply (Docket No. 142), is hereby ORDERED that Daniels' Motions are DENIED.

**BY THE COURT:**

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**Michael M. Baylson, U.S.D.J.**