

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

UNITED STATES OF AMERICA : CRIMINAL ACTION
:
vs. :
:
MICHAEL DENT : NO. 92-223-03

MEMORANDUM

ROBERT F. KELLY, Sr. J.

DECEMBER 27, 2004

Presently before the Court is Defendant Michael Dent's Petition for Writ of Error Coram Nobis. Dent was convicted and sentenced for a Class B felony, that is conspiracy to distribute more than five (5) grams of cocaine base ("crack"), in violation of 21 U.S.C. § 846. The procedural history for this case is set forth at United States v. Dent, 149 F.3d 180 (3d Cir. 1998), cert denied, 119 S. Ct. 833 (1999) (affirming conviction and sentence on direct appeal), post-conviction relief denied by, 1999 WL 717114 (E.D. Pa. September 10, 1999)(order denying motion under 18 U.S.C. § 2255 alleging trial errors, sentencing errors, ineffective assistance of counsel and jurisdiction errors), vacated by , 43 Fed.Appx. 477, 2002 WL 1885895 (3d Cir. August 16, 2002) remanding the case for a hearing on the sole issue of whether trial counsel rendered ineffective assistance when she advised the defendant about his criminal history, sentencing exposure and the government's pretrial plea offer.

Before a hearing was held however, the parties advised the Court that they had entered into an agreement which is embodied in this Court's Order of November 22, 2002. Among other things, the parties agreed and this Court approved a reduction of the period of supervised release from five years to three years with the opportunity for supervised release to be

terminated after 18 months if Michael Dent fully complied with the terms thereof.

After that Order was entered on November 22, 2002, Dent's case was transferred to the Southern District of New York for supervision by the U.S. Probation Office there. On September 30, 2004 Dent was sentenced to 30 months in prison by the Honorable Louis A. Kaplan, United States District Judge, Southern District of New York for violating the terms of his supervised release by engaging in narcotics trafficking activity. Dent has filed an appeal of Judge Kaplan's sentence with the United States Court of Appeals for the Second Circuit. He is currently in custody on the 30 month sentence at the Metropolitan Detention Center, Brooklyn, New York (MDC Brooklyn).

Dent, currently in custody serving a 30 month sentence based on a violation of supervised release, is required to challenge the validity of Judge Kaplan's 30 month sentence by way of a Motion under 28 U.S.C. § 2255, rather than by way of a Petition for Writ of Error Coram Nobis. See United States v. Woods, 986 F.2d 669, 676 (3d Cir. 1993), United States v. Stoneman, 870 F.2d 102, 106 (3d Cir. 1989); United States v. Osser, 864 F.2d 1056, 1059-60 (3d Cir. 1988). Such collateral attacks, however, may not be entertained by a District Court while there is a direct appeal pending. See Kapral v. United States, 166 F.3d 565 (3d Cir. 1999).

To the extent that Dent seeks to have the U.S. Bureau of Prisons (BOP) grant him credit under 18 U.S.C. § 3585(b) for the alleged "excess prison time" served due to a pretrial rejection of a plea offer based on erroneous advice from counsel regarding criminal history and sentencing exposure, Dent has failed to exhaust his administrative remedies before the BOP prior to seeking relief in the District Court. See United States v. Wilson, 503 U.S. 329, 334-35 (1992).

For these reasons we enter the following Order.

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ORDER

AND NOW, this 27th day of December, 2004, upon consideration of Defendant Michael Dent's Petition for Writ of Error Coram Nobis and the government's response to the Petition, it is hereby **ORDERED** that the Petition for Writ of Error Coram Nobis is **DENIED** for lack of jurisdiction.

BY THE COURT:

s/ Robert F. Kelly _____
ROBERT F. KELLY
SENIOR JUDGE