

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

UNITED STATES OF AMERICA

vs.

JAMAL EZELL

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**CRIMINAL ACTION
NO. 02-815**

ORDER AND MEMORANDUM

ORDER

AND NOW, this 31st day of August, 2005, upon consideration of defendant's *pro se* "Motion for an Order to Show Cause Why Judgement Should Not be Vacated" (Document No. 150, filed July 25, 2005) and the Government's Response to Defendant's Pro Se Documents (Document No. 155, filed August 12, 2005), **IT IS ORDERED** that defendant's *pro se* "Motion for an Order to Show Cause Why Judgement Should Not be Vacated" is **DENIED**.

MEMORANDUM

I. BACKGROUND

On December 17, 2002, defendant Jamal Ezell was charged in a twelve-count Indictment with six counts of obstructing, delaying, and affecting interstate commerce by robbery (Hobbs Act Robbery), and aiding and abetting such crimes, in violation of 18 U.S.C. §§ 1951 and 2, and six counts of using and carrying a firearm during and in relation to such robberies, and aiding and abetting such crimes, in violation of 18 U.S.C. § 924(c) and 2. Ezell was convicted by a jury on all twelve counts on May 6, 2005. Ezell is scheduled to be sentenced by this Court on September 14, 2005.

II. DISCUSSION

Presently before the Court is defendant's *pro se* Motion for an Order to Show Cause Why Judgement Should Not be Vacated. The Court construes defendant's *pro se* Motion as a motion for a judgment of acquittal pursuant to Federal Rule of Criminal Procedure 29(c) or a motion for a new trial pursuant to Federal Rule of Criminal Procedure 33. Defendant's Motion alleges, *inter alia*, deficiencies in the Indictment, lack of proof at trial, lack of federal jurisdiction, and the unconstitutionality of the statutes of conviction.

Federal Rule of Criminal Procedure 29(c) allows a defendant "to question the sufficiency of the evidence to support a conviction." United States v. Cohen, 301 F.3d 152, 156 (3d Cir. 2002). It provides that a defendant must move for judgment of acquittal within seven (7) days after a guilty verdict or after the judge discharges the jury, whichever comes later. Fed. R. Crim. P. Rule 29. After the seven day period has expired, a district court lacks jurisdiction to consider a motion for judgment of acquittal under Rule 29(c). Carlisle v. United States, 517 U.S. 416, 420-422 (1996); United States v. Gaydos, 108 F.3d 505, 512 (3rd Cir. 1997) ("District courts are without discretion to consider untimely motions for judgment of acquittal under Rule 29(c)."). Thus, "regardless of whether the motion is accompanied by a claim of legal innocence, is filed before sentencing, or was filed late because of attorney error," a court may not grant an untimely motion for judgment of acquittal. Carlisle v. United States, 517 U.S. 416, 420 (1996).

In this case, defendant's guilty verdict was returned on May 9, 2005. Ezell filed the instant Motion on July 25, 2005, approximately ten (10) weeks after expiration of the seven day period for filing a Rule 29 motion. Moreover, defendant did not request, and the Court did not grant defendant, an extension of time for filing such a motion. Accordingly, the Court lacks

jurisdiction to consider the merits of Ezell's Rule 29 Motion.

The Court also construes defendant's Motion as a Motion for a new trial under Federal Rule of Criminal Procedure 33 on grounds that the verdict was against the weight of the evidence. Rule 33(b)(2) requires that a "motion for a new trial grounded on any reason other than newly discovered evidence must be filed within 7 days after verdict or finding of guilty or within such further time as the court may fix during the 7-day period." Fed. R. Crim. P. Rule 33. "A district court is powerless to entertain untimely motions under Rule 33 unless it grants an appropriate extension within seven days after the verdict." Gaydos, 108 at 512. Thus, the time limit for filing motions for a new trial under Rule 33 is jurisdictional. Id. For the same reasons as stated above, the Court lacks jurisdiction to consider Ezell's Motion under Rule 33.

III. CONCLUSION

For the foregoing reasons, the Court denies defendant's Motion for an Order to Show Cause Why Judgement Should Not be Vacated.¹

BY THE COURT:

JAN E. DUBOIS, J.

¹ In the Motion, Ezell asserts deficiencies in the Indictment, lack of proof at trial, lack of federal jurisdiction, and the unconstitutionality of the statutes of conviction. Because of the Court's disposition of the Motion on jurisdictional grounds, it does not address in detail the merits of the Motion. Suffice it to say that even if defendant had filed the Motion within the time provided under Federal Rules of Criminal Procedure 29 or 33, the Motion would have been denied on the merits. Specifically, there is nothing deficient about the Indictment, the proof at trial supported the conviction, there is federal jurisdiction over the charges and the defendant, and the statutes of conviction are not unconstitutional.