

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

| | | |
|---------------------------------|---|--------------------------------------|
| UNITED STATES OF AMERICA | : | CIVIL ACTION NO. 06-4393 |
| | : | |
| v. | : | CRIMINAL ACTION NO. 02-173-06 |
| | : | |
| MANUEL RAMIREZ MEZA | : | |

MEMORANDUM AND ORDER

Kauffman, J.

February 12, 2007

Petitioner Manuel Ramirez Meza (“Petitioner”) has filed a Petition to Vacate, Set Aside, or Correct his Sentence pursuant to 28 U.S.C. § 2255. For the reasons that follow the Petition will be denied.

I. Factual and Procedural Background

On August 15, 2002, Petitioner was charged by superseding indictment with conspiracy to possess over 1000 kg of marijuana and to possess over 1000 kg of marijuana with the intent to distribute, in violation of 21 U.S.C. § 846, and possession of over 1000 kg of marijuana and possession with intent to distribute over 1000 kg of marijuana, in violation of 21 U.S.C. § 841(a)(1). Petitioner entered a guilty plea to both counts on February 13, 2003.

On September 4, 2003, following three sentencing hearings, the Court sentenced Petitioner to a term of 120 months imprisonment on each count to run concurrently, five years of supervised release, and a fine of \$500. In so doing, the Court determined that, based on the quantity of marijuana involved and an offense level of 29, the Sentencing Guideline range was 87-108 months. However, the guideline range was superseded by the statutory

mandatory minimum sentence of 120 months imprisonment that, pursuant to 21 U.S.C. § 841(b)(1)(A), applies to any offense involving 1000 kilograms or more of marijuana. After weighing testimony from Petitioner and his co-defendants regarding the extent of his role in the offenses, the Court refused to grant “safety valve” relief pursuant to 18 U.S.C. § 3553(f) and U.S.S.G. § 5C1.2.

Defendant appealed his sentence to the Third Circuit, attacking the mandatory minimum provision in 21 U.S.C. § 841(b)(1)(A) as unconstitutional. On April 18, 2005, the Third Circuit rejected Petitioner’s constitutional challenge, but remanded the case for resentencing in light of the Supreme Court’s holding in Booker v. United States that the Sentencing Guidelines are not mandatory.

On October 20, 2005, the Court held a resentencing hearing. Following the hearing, the Court amended the Judgment of Conviction to reflect an offense level of 27 and a Sentencing Guideline range of 70-87 months. The Court also found that Petitioner was entitled to “safety valve” relief pursuant to 18 U.S.C. § 3553(f) and U.S.S.G. § 5C1.2, thus enabling the Court to depart below the statutory mandatory minimum 120 months imprisonment. However, finding that the factors in 18 U.S.C. § 3553(a) warranted a sentence above the advisory guideline range, the Court resentenced Petitioner to a term of 108 months imprisonment. Neither Petitioner nor the Government appealed the revised sentence.

II. Analysis

Petitioner seeks habeas relief from his sentence on two grounds: (1) he is entitled to a further reduction of his sentence because he had minimal participation in the crimes to which

he pled guilty; and (2) he should have been sentenced to a maximum of 87 months imprisonment under the Sentencing Guideline range applicable to his case. The Court need not evaluate the merits of either of Petitioner's claims because they are procedurally defaulted. Since Petitioner failed to raise either of these sentencing issues by filing a direct appeal following his resentencing, he is precluded from pursuing them through a § 2255 collateral attack absent a showing of cause and prejudice. See United States v. Frady, 456 U.S. 152, 166-68 (1982); United States v. Essig, 10 F.3d 968, 979 (3d Cir. 1993) (affirming the district court's dismissal of a § 2255 petition seeking relief from alleged errors in the petitioner's sentencing which he did not directly appeal).¹ Petitioner makes no attempt to show any cause which would excuse his procedural default.

III. Conclusion

For the foregoing reasons, the Court will deny the Petition to Vacate, Set Aside, or Correct Sentence. Because Petitioner has not made the requisite showing of the denial of a constitutional right, a certificate of appealability should not issue. See Slack v. McDaniel, 529 U.S. 473, 484 (2000); Ruddock, 82 Fed. Appx. at 758 (reaffirming the general rule that allegations of sentencing errors do not present a constitutional issue and therefore do not warrant a certificate of appealability).

¹ See also United States v. Ruddock, 82 Fed. Appx. 752, 758-59 (3d Cir. 2003) (“Section 2255 petitions are not substitutes for direct appeals and serve only to protect a defendant from a violation of the constitution or from a statutory defect so fundamental that a complete miscarriage of justice has occurred.”) (internal quotation marks omitted).

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ORDER

AND NOW, this 12th day of February, 2007, upon consideration of Petitioner Meza’s Petition to Vacate, Set Aside, or Correct Sentence (case no. 02-cr-173-06, docket no. 305), and the Government’s Response thereto (docket no. 312), it is **ORDERED** that:

- (1) The Petition is **DENIED**.
- (2) The Clerk of the Court shall mark Civil Action No. 06-4393 **CLOSED**.
- (3) Because there is no probable cause to issue a certificate of appealability, no certificate of appealability shall issue.

BY THE COURT:

/s/ Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.