

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

UNITED STATES

CRIMINAL ACTION

v.

NATE SWINT

NO. 94-276

ORDER

AND NOW, this 17th day of November, 2017, upon consideration of letter dated October 25, 2017, from *pro se* defendant, Nate Swint,¹ Motion for Permission to Resubmit Defendant's Motions Due to Defendant's Disability as a Pro Se Litigant That Was Unable to Discern the Difference Between Court and Clerk, Respectively, filed by *pro se* defendant, Nate Swint (Document No. 552, filed November 7, 2017), and Motion Seeking Permission to File the Attached Pleading and Certification in Compliance With the June 16, 2014 and July 21, 2014 Orders, filed by *pro se* defendant, Nate Swint (Document No. 554, filed November 13, 2017), the Court noting that *pro se* defendant filed the Motion in violation of this Court's Orders dated June 16, 2014, and July 21, 2014, which prohibited the filing of any motions of any kind without first seeking leave of Court, and that in seeking leave of Court to file a motion, *pro se* defendant must certify: (1) the claims he wishes to present are new claims never before raised and disposed of on the merits by any federal court; (2) he believes the facts alleged in his motion to be true; and, (3) he knows of no reason to believe his claims are foreclosed by controlling law, **IT IS**

ORDERED as follows:

1. The relief requested in the letter dated October 25, 2017, from *pro se* defendant, Nate Swint, is **DENIED**;

¹ A copy of the letter from *pro se* defendant dated October 25, 2017, shall be docketed by the Deputy Clerk.

2. Motion for Permission to Resubmit Defendant's Motions Due to Defendant's Disability as a Pro Se Litigant That Was Unable to Discern the Difference Between Court and Clerk, Respectively, filed by *pro se* defendant, Nate Swint, is **DENIED**;

3. Motion Seeking Permission to File the Attached Pleading and Certification in Compliance With the June 16, 2014 and July 21 2014 Orders, filed by *pro se* defendant, Nate Swint, is **DENIED**;

4. The Court **IMPOSES** a sanction of \$150.00 on *pro se* defendant, Nate Swint, for violation of this Courts Orders dated June 16, 2014, and July 21, 2014, by falsely certifying that (1) the claims he wishes to present are new claims never before raised and disposed of on the merits by any federal court; (2) he believes the facts alleged in his motion to be true; and, (3) he knows of no reason to believe his claims are foreclosed by controlling law.²

IT IS FURTHER ODERED that *pro se* defendant, Nate Swint, is enjoined from filing any pleadings related to No. 94-cr-276 in this Court until the sanction imposed by this Order and the sanction imposed by Order dated October 17, 2017 (Document No. 548) have been paid in full.³

The decision of the Court is based on the following:

1. The relevant procedural history of this case is outlined in the Court's Orders dated June 16, 2014, and July 21, 2015. That procedural history will be recited in this Order only to the extent necessary to explain the Court's decision on the instant Motions.

² The Court notes that, by Order dated August 23, 2017, *pro se* defendant was advised “. . . that any further violations of this Court's Orders dated June 16, 2014, and July 21, 2014, will result in the imposition of monetary sanctions on *pro se* defendant.” (Document No. 543). By Order dated October 17, 2017, the Court sanctioned *pro se* defendant for continued violation of this Court's Orders dated June 16, 2014, and July 21, 2014. (Document No. 548).

³ The Court of Appeals for the Third Circuit previously enjoined defendant from filing any pleadings related to his criminal conviction until he paid in full a \$250.00 sanction imposed by the Third Circuit. Order, United States v. Swint, 94-cr-276 (3d Cir. March 28, 2013).

2. Defendant was convicted on February 24, 1995, after a jury trial, of crimes related to the distribution of, *inter alia*, at least one kilogram of heroin, in violation of 21 U.S.C. §§ 841(a)(1), 846. See *United States v. Swint*, No. 94-cr-276, 1996 WL 383118 (E.D. Pa. July 2, 1996) (DuBois, J.); Presentence Investigation Report ¶ 12, May 10, 1995. At the time of defendant's conviction and sentencing, 21 U.S.C. § 841(b)(1)(A) provided that any person who was convicted of violating 21 U.S.C. § 841(a) for conduct involving one kilogram or more of heroin, and who committed the crime "after two or more prior convictions for a felony drug offense have become final," shall be "sentenced to a mandatory term of life imprisonment without release." 21 U.S.C. § 841(b)(1)(A) (1994). On January 6, 1995, the government filed an Information under 21 U.S.C. § 851 establishing that defendant had been convicted of two prior felony drug offenses. Information Charging Prior Offense (Document No. 65, filed January 6, 1995). Accordingly, at sentencing on September 20, 1996, the Court sentenced defendant to mandatory life imprisonment. *United States v. Swint*, No. 94-cr-276, 2000 WL 987861 (E.D. Pa. July 17, 2000).

3. Defendant filed a notice of appeal on October 9, 1996, and the U.S. Court of Appeals for the Third Circuit affirmed the conviction and sentence on November 12, 1997. On November 2, 1998, defendant filed a *pro se* Motion to Vacate, Set Aside or Correct his Sentence pursuant to 28 U.S.C. § 2255. The Court denied that motion by Memorandum and Order dated July 17, 2000. See *United States v. Swint*, No. 94-cr-276, 2000 WL 987861 (July 17, 2000). Thereafter, defendant filed a number of second and successive habeas motions, all of which have been dismissed.

4. In the Order dated July 21, 2014, the Court enjoined defendant from filing any

motions of any kind related to Criminal No. 94-276 in the future without first seeking leave of the Court. In seeking leave of the Court to file a motion, the Order provided that defendant must certify that: (a) the claims he wishes to present are new claims never before raised and disposed of on the merits by any federal court; (b) he believes the facts alleged in his motion to be true; and, (c) he knows of no reason to believe his claims are foreclosed by controlling law. The Court further stated in its Order that upon a failure to certify or upon a false certification, defendant may be found in contempt of court and punished accordingly.⁴

5. Despite the Court's June 16, 2014, and July 21, 2014, *pro se* defendant has continued to file repetitive, frivolous motions challenging his sentence. The Court warned *pro se* defendant in its August 23, 2017, Order (Document No. 543) that upon continued failure to certify or upon false certification, he would be found in contempt of court and subject to sanctions. On October 17, 2017, after *pro se* defendant filed a Motion Pursuant to Rule 37, Federal Rules of Criminal Procedure ("Fed. R. Crim. P.") and/or Rule 62.1, Federal Rules of Civil Procedure ("Fed. R. Civ. P.") for an Indicative Ruling to Seek1 [sic] Remand in violation of the June 16, 2014, and July 21, 2014 Orders, the Court imposed a sanction of \$100.00. Order, Document No. 548, Oct. 17, 2017.

6. On October 25, 2017, *pro se* defendant submitted a letter to this Court, to which he attached "Permission for Leave to File The Attached Motion In Compliance With the Court's June 16, 2014 and July 21, 2014 Orders," along with a "Motion for Certification of a Final Judgment Where the Court Has Not Determined All Causes of Action." On November 7, 2017, defendant filed a Motion for Permission to Resubmit Defendant's Motions Due to Defendant's

⁴ Defendant appealed this Court's Orders dated June 16, 2014, and July 21, 2014, to the United States Court of Appeals for the Third Circuit. That Court, by Order dated May 21, 2015, summarily affirmed the rulings of this Court and warned Swint that "... filing repetitive, frivolous motions with arguments that have already been rejected may result in monetary sanctions and further filing limitations."

Disability as a Pro Se Litigant That Was Unable to Discern the Difference Between Court and Clerk, Respectively (Document No. 552). Subsequently, on November 13, 2017, defendant filed a Motion Seeking Permission to File the Attached Pleading and Certification in Compliance With the June 16, 2014 and July 21, 2014 Orders, to which he attached a Petition for a Writ of Mandamus to the United States Attorney’s Office, Eastern District of Pennsylvania, or Alternatively a “Show Cause” Order (Document No. 554).

7. In his October 25, 2017, Letter and the attached motions,⁵ as well as his Motion for Permission to Resubmit Defendant’s Motions Due to Defendant’s Disability as a Pro Se Litigant That Was Unable to Discern the Difference Between Court and Clerk, Respectively, *pro se* defendant seeks a writ of *audita querela*.

The writ of *audita querela* is available to federal courts in criminal cases under the All Writs Act. 28 U.S.C. § 1651(a). The All Writs Act is “a residual source of authority to issue writs in exceptional circumstances only.” *Hazard v. Samuels*, 206 Fed. App’x 234, 236 (3d Cir. 2006) (citations omitted). While common law writs “can be used to the extent that they ‘fill in the gaps’ in post-conviction remedies,” *United States v. Hannah*, 174 Fed. App’x 671, 673 (3d Cir. 2006), “a prisoner may not circumvent valid congressional limitations on collateral attacks by asserting that those very limitations create a gap in post-conviction remedies.” *United States v. Paster*, 190 Fed. App’x. 138, *3 (3d Cir. 2006).

The United States Court of Appeals for the Third Circuit affirmed defendant’s conviction and sentence on August 8, 1997, *United States v. Swint*, 127 F.3d 1097 (3d Cir. 1997); the

⁵ To the extent that *pro se* defendant argues that this Court did not rule on two of his motions,—Motion to Buttress Defendant’s Pending Motions in Light of *Moncrieffe v. Holder*, 133 S.Ct. 1687 (2013) (Document No. 527, filed June 7, 2017) and Motion for Leave and Motion to Supplement ‘Hypothetical Approach’ (Document No. 530, filed June 26, 2017)—that assertion is incorrect. The Court’s June 9, 2017 Order (Document No. 528) granted the Motion to Buttress Def.’s Pending Motions in Light of *Moncrieffe v. Holder*, and the Court’s June 27, 2017 Order (Document No. 531) granted the Motion for Leave and Motion to Supplement the ‘Hypothetical Approach.’

Supreme Court denied his petition for a writ of certiorari on May 4, 1998. Defendant sought habeas relief under 28 U.S.C. § 2255, which was denied. *United States v. Swint*, 94-cr-276, 2000 WL 987861, at *20. (E.D. Pa. July 17, 2000). Defendant has since filed numerous motions seeking relief from this Court’s denial of his habeas motions, all of which were dismissed or denied by this Court. All appeals to the Third Circuit were similarly rejected. *United States v. Swint*, No. 94-cr-276, 2009 WL 10678263, at *1. The fact that this Court and the Third Circuit have rejected his numerous claims for relief does not entitle *pro se* defendant to a writ of *audita querela*. Accordingly, *pro se* defendant’s request for a writ of *audita querela* is denied.

8. In his November 13, 2017, motion, *pro se* defendant seeks to file a request for a writ of mandamus pursuant to 28 U.S.C. § 1361—or alternatively, a “show cause” order—to compel the government to dismiss the indictment under Federal Rule of Criminal Procedure 48(a). *Pro se* defendant relies on *In re Richards*, 213 F.3d 773 (3d Cir. 2000), in which the Court of Appeals issued a writ of mandamus to compel the district court to grant the government’s Federal Rule of Criminal Procedure 48(a) motion to dismiss the indictment. This case has no bearing on *pro se* defendant’s case, because the government has not—nor did it ever—file a motion to dismiss the indictment pursuant to Federal Rule of Criminal Procedure 48(a). Moreover, the Court has no authority to compel the government to dismiss an indictment after defendant has been convicted, sentenced, and has exhausted all available appeals and other remedies. *See Hirabayashi v. United States*, 828 F.2d 591, 607 (9th Cir. 1987) (“There is no precedent for applying Rule 48 to vacate a conviction after the trial and appellate proceedings have ended.”).

9. In each of the three motions that *pro se* defendant seeks leave of the Court to file,

he asserts that subsequent Supreme Court decisions invalidate his sentence. The cases that defendant cites in support of his requested relief—*Burgess v. United States*, 553 U.S. 124 (2008), *Carachuri-Rosendo v. Holder*, 560 U.S. 563 (2010), and *Moncrieffe v. Holder*, 569 U.S. 184 (2013), *Descamps v. United States*, 133 S.Ct. 2276 (2013)—have no bearing on his case. Both *Carachuri-Rosendo* and *Moncrieffe* involved the question whether a drug possession conviction constituted an aggravated felony under 8 U.S.C. § 1101(a)(43), which precludes noncitizens from seeking relief from deportation through asylum or discretionary cancellation of removal. Whether a drug possession charge is an aggravated felony in the immigration law context has no bearing on defendant’s sentence. The Court previously addressed *pro se* defendant’s claim that he is entitled to relief under *Burgess* and *Descamps* and concluded that these cases also have no bearing on his sentence. *See* Order, Document No. 518, Feb. 21, 2017; *U.S. v. Swint*, 94-CV-276, 2008 WL 3399852, at *6 (E.D. Pa. Aug. 11, 2008).

As this Court has stated before, *pro se* defendant’s sentence was enhanced based on the Information under 21 U.S.C. § 851(a) filed by the Government which charged two prior felony drug convictions. According to 21 U.S.C. § 841(b)(1)(A), any person who violates subsection (a) of this section shall be sentenced as follows:

If any person commits a violation of this subparagraph . . . after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release.

21 U.S.C. § 851(e) provides:

no person who stands convicted of an offense under this part may challenge the validity of any prior conviction alleged under this section which occurred more than five years before the date of the information alleging such prior conviction.

Both felony drug convictions listed in the Information filed by the Government – a conviction on August 24, 1972, and a conviction on March 5, 1985 – were more than five years

old at the time the Information was filed, January 6, 1995. Thus, under 21 U.S.C. § 851(e), they could not have been challenged at sentencing, and they cannot be challenged at this time. This Court has previously concluded—and does so again today—that *pro se* defendant was properly sentenced under those statutes and 21 U.S.C. §§ 841(a)(1) and 846 to a term of life imprisonment. Accordingly, defendant’s request for relief is denied.

10. *Pro se* defendant also requests relief from the \$100 sanction imposed by the Court’s October 17, 2017, Order. He contends that he was not aware that, by sending motions to the Clerk of Court, rather than to this Court’s chambers, the motions would be docketed. The Court rejects this argument. In seeking leave of the Court, *pro se* defendant must certify that (1) the claims he wishes to present are new claims never before raised and disposed of on the merits by any federal court; (2) he believes the facts alleged in his motion to be true; and, (3) he knows of no reason to believe his claims are foreclosed by controlling law. It is insufficient to simply certify compliance without complying with the applicable orders. The Court warned *pro se* defendant repeatedly prior to issuing the October 17, 2017 Order imposing sanctions, and he continued to raise claims that this Court has previously disposed of and that are foreclosed by controlling law. Accordingly, *pro se* defendant’s request for relief from the \$100 sanction is denied.

BY THE COURT:

/s/ Hon. Jan E. DuBois

DuBOIS, JAN E., J.