

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

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
	:	
v.	:	NO. 88-74-01
	:	
	:	
	:	
MICHAEL VAUGHN FIGUEROA	:	

**MEMORANDUM-ORDER**

Presently before the Court is defendant's pro se "Notice of Appeal and Motion for a Stay/Extension for Filing Notice of Appeal," which, based on the content of the document, the Court also construes as both a Motion for the appointment of appellant counsel, as well as a Motion for Arrest of Judgment of Sentence pursuant to Fed.R.Crim.P. 34.

A factual synopsis is as follows. On April 5, 1989 this Court sentenced the defendant to term of imprisonment of six years to be followed by a term of six years of supervised release. After his release from prison, while serving his term of supervised release, the defendant was charged with committing new offenses. Following his arrest for these new offenses, the defendant expressed an interest in cooperating with the government. Although the probation officer was concerned that the defendant would commit additional offenses, at the request of the government, the probation office recommended that the defendant be permitted to cooperate with the government in

certain other, unrelated investigations. The probation office recommended, however, that the Court modify the supervised release to include home confinement with electronic monitoring. As of August 9, 1995, no petition for revocation of supervised release had been filed, and the defendant had not been convicted of any of the new charges arising after his release from prison. On August 9, 1995, with the agreement of the defendant, the Court approved the probation officer's petition to modify the terms of the defendant's supervised release to include home confinement.

The period of home confinement ran from August 31, 1995, to May 29, 1996. In February, 1996, while on home confinement, and cooperating with the government, the defendant was alleged to have committed yet another new felony. Since then, the defendant has been convicted of six of the seven offenses of which he was charged while on supervised release, including the offense committed while on home confinement. Defendant was sentenced by Judge Waldman in the Eastern District of Pennsylvania pursuant to one or more of those convictions and is currently serving a term of imprisonment. On September 12, 1997, the first violation of supervised release petition based on the six new convictions was filed. On February 19, 1998, the defendant was sentenced by this Court to a term of four months for violation of supervised release. The sentence is to be served consecutive to his present term of imprisonment.

In his present Motion to Arrest Judgment of Sentence, defendant now argues that, because a warrant was issued for violation of his supervised release prior to the August, 1995 imposition of home confinement, the Court erred in merely modifying his existing supervised release rather than revoking it. Defendant cites to 18 U.S.C. §

3583(e)(4), which he argues, “clearly gives the sentencing Judge the right to impose home confinement as a punishment for violating supervised release.” (Def.’s Mot. at 2.)

However, defendant ignores the fact that the modification of his supervised release was not done to punish the defendant for violating supervised release. The August, 1995 modification of his supervised release was done with the defendant’s consent and for his benefit so that he could cooperate with the government and attempt to earn a downward departure in regard to the new charges pending against him. Thus, the imposition of home confinement was not a punishment, but, rather, an opportunity provided to the defendant to continue cooperating with the government. Accordingly, the Court rejects defendant’s first argument.

Next defendant argues that, while he remains in prison, he is in imminent danger of bodily harm at the hands of people imprisoned as a direct result of his cooperation with the government.<sup>1</sup> However, a petition or motion for relief from a sentence is properly brought before the sentencing judge. See 28 U.S.C. § 2255 (stating that “a prisoner in custody under sentence of a court . . . may move the court which imposed the sentence to vacate, set aside or correct the sentence”); Fed.R.Crim.P. 34 & 35 (describing procedure for seeking either arrest of judgment or correction or reduction of sentence from the sentencing court).

In this case, defendant is currently serving a sentence of imprisonment imposed by Judge Waldman upon his conviction of the substantive offenses committed while on

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<sup>1</sup> The defendant cites to Koon v. United States, 518 U.S. 18, 116 S. Ct. 2035 (1996) for the proposition that it is within a District Court’s discretion to consider the susceptibility to abuse in prison as grounds for a downward departure on a sentence. However, this Court was fully aware of its discretion to depart downward for this reason at the time that the defendant was sentenced to a four-month consecutive sentence for violation of supervised release.

supervised release. The sentence imposed by this Court for violation of supervised release does not begin to run until his current sentence is completed. Accordingly, this Court has no authority to consider the defendant's second argument as it relates to his current term of incarceration. Thus the defendant's motion for relief on this ground is properly dismissed without prejudice since this Court is unable to consider this argument.

Finally, there is no need to consider the defendant's Motion for a Stay/Extension for Filing Notice of Appeal. Pursuant to Rule of Appellate Procedure 4(b), the defendant now has ten (10) days from the date of the order which accompanies this memorandum in which to file a timely Notice of Appeal with the Court of Appeals. As defendant has enclosed a document captioned "Notice of Appeal" with the instant motion, the Court will now direct the Clerk to accept that document and file it as a timely Notice of Appeal. Lastly, as previously appointed counsel was permitted to withdraw at the conclusion of the defendant's sentencing for violation of supervised release, the defendant may petition the Court of Appeals for the Third Circuit for the appointment of counsel to represent him on appeal. See Judicial Council of the Third Circuit, CJA Plan Chapt. 2 & 3.

An appropriate order follows.