

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

MASON YOSHIO HAUKI

v.

UNITED STATES OF AMERICA

CIVIL ACTION
NO. 98-4885

CRIMINAL ACTION
NO. 97-296-2

M E M O R A N D U M

Broderick, J.

October 28, 1998

Plaintiff Mason Hauki pled guilty on October 15, 1997 in criminal action 97-296-2 in the United States District Court for the Eastern District of Pennsylvania to two counts of extortion under the Hobbs Act in violation of 18 U.S.C. § 1951 and engaging in interstate travel to commit extortion in violation of 18 U.S.C. § 1952(a)(3). This Court sentenced Plaintiff on June 12, 1998 to a term of 24 months imprisonment on all counts. Plaintiff is currently serving this sentence at FCI La Tuna in New Mexico.

Plaintiff, through his trial counsel, Leigh M. Skipper, appealed his judgement of sentence and commitment on June 22, 1998. A check of the docket of the above-referenced criminal action reveals that the record was complete for purposes of appeal on August 10, 1998. To date, this Court has received no further notice concerning the status of Plaintiff's appeal.

Without waiting for the appeal of his criminal sentence to

be decided by the United States Court of Appeals for the Third Circuit, Plaintiff filed, pro se, a Motion to Vacate, Set Aside of Correct Sentence Pursuant to 28 U.S.C. § 2255 on September 14, 1998. On October 13, 1998 Plaintiff filed an Addendum to his Memorandum of Law in support of his Section 2255 motion. These motions are now pending before the Court.

Mr. Hauki's § 2255 motion raises several issues. Mr. Hauki raises an ineffective assistance of counsel claim, alleging that his Sixth Amendment rights were violated. Mr. Hauki also claims that the United States breached the plea agreement by not making the sentencing Court aware of all the facts which the Court should have considered as grounds for a downward departure from the guidelines. Mr. Hauki further claims that his sentence should be reduced because he played only a minor role in the offense, which would be grounds for a decrease in his offense level under § 3B1.2 of the United States Sentencing Guidelines. Mr. Hauki also claims that the Court should have considered his immigration status and the severe consequences his conviction will have in this regard. Mr. Hauki also makes an allegation that the Court did not consider the full extent of his substantial and consistent assistance to the government on the subject of counter-intelligence. Finally, Mr. Hauki alleges that the Court did not consider the extreme hardship that the sentence imposed would have on Mr. Hauki's family in accordance with §

5H1.6 of the Sentencing Guidelines as grounds for a downward departure.

For the reasons stated below, this Court will deny Plaintiff's motion without prejudice to Plaintiff's right to file another such action once his pending appeal has been decided by the United States Court of Appeals for the Third Circuit.

Although not required by the express provisions of 28 U.S.C. § 2255 itself, in the absence of exceptional circumstances, a movant must complete his direct appeal prior to filing a § 2255 motion. See United States v. Gordon, 634 F.2d 638, 638-9 (1st Cir. 1980); United States v. Pena, No. Crim. A. 92-00248-21, 1994 WL 283682 at *2 (E.D.Pa. June 27, 1994). Ordinarily, a defendant's exhaustion of his avenues of appeal is a prerequisite to obtaining relief under § 2255. See Fassler v. United States, 858 F.2d 1016, 1019 (5th Cir. 1988), cert. denied, 490 U.S. 1099 (1989) (criminal defendant may not collaterally attack conviction until affirmed on direct appeal); Feldman v. Henman, 815 F.2d 1318, 1321 (9th Cir.), cert. denied, 479 U.S. 1067 (1987); United States v. Wigerman, Crim. No. 91-0425-11, Civ. A. No. 92-6962, 1993 WL 410070 at *4 n.2 (E.D.Pa. September 27, 1993); United States v. Anaya, Crim. No. 89-455, 1992 WL 189449 (E.D.Pa. July 29, 1992), aff'd, 983 F.2d 1052 (3d Cir. 1992).

It is well established that, absent the existence of "extraordinary circumstances," a district court should abstain

from determining a § 2255 motion during the pendency of a direct appeal to the Court of Appeals. See Capaldi v. Ponesso, 135 F.3d 1122, 1124 (6th Cir. 1998); United States v. Cook, 997 F.2d 1312, 1318 (10th Cir. 1993); Feldman, 815 F.2d at 1320; Gordon, 634 F.2d at 638-9; United States v. Davis, 604 F.2d 474, 484 (7th Cir. 1979); Jack v. United States, 435 F.2d 317, 318 (9th Cir. 1970), cert. denied, 402 U.S. 933 (1971); Welsh v. United States, 404 F.2d 333 (5th Cir. 1968); Womack v. United States, 395 F.2d 630, 631 (D.C. Cir. 1968); Masters v. Eide, 353 F.2d 517, 518 (8th Cir. 1965). The rule is designed to ensure the orderly administration of justice and preserve judicial economy. See Federal Rules Governing § 2255 Proceedings Rule 5 advisory committee's note. See also 3 Charles A. Wright, Federal Practice and Procedure, Criminal 2d § 597, at 483 (motion under § 2255 "is not proper while an appeal from the conviction is pending since disposition of the appeal may make the motion unnecessary"). Thus, in determining whether a prisoner's § 2255 motion should be entertained during the pendency of a direct appeal, the district court should balance the "need for speedy relief against the need for conservation of judicial resources." Davis, 604 F.2d at 483.

This Court has determined, in the exercise of its sound discretion, after balancing the need for speedy relief against the dual needs of an orderly administration of judicial resources, that no extraordinary circumstances are present in

this case which would require the Court to determine the issues presented in Mr. Hauki's § 2255 motion during the pendency of his direct appeal to the Third Circuit. Therefore, this Court will dismiss Mr. Hauki's motion.

An appropriate Order follows.

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ORDER

AND NOW, this 28th day of October, 1998; for the reasons stated in this Court's Memorandum of October 28, 1998; the Court having found that no extraordinary circumstances exist warranting the consideration of a § 2255 motion while a direct appeal is pending;

IT IS ORDERED that plaintiff Mason Hauki's Motion to Vacate, Set Aside, or Correct Sentence is DISMISSED WITHOUT PREJUDICE.

RAYMOND J. BRODERICK, J.