

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

UNITED STATES OF AMERICA :
 :
 v. : CR. NO. 97-615
 : C.A. NO. 00-4277
 :
 ARMANDO EUGENE MINES :

MEMORANDUM

ROBERT F. KELLY, Sr. J.

MAY 16, 2002

Presently before the Court is Armando Eugene Mines' Petition for Writ of Coram Nobis pursuant to 28 U.S.C. §1651.^{1 2}

BACKGROUND

In 1988, Mines was charged in the Federal District Court for the District of Maryland with one count of possession with intent to distribute cocaine in violation of 21 U.S.C. §841(a)(1), four Counts of using a false identification document in the acquisition of a firearm in violation of 18 U.S.C. § 922(a)(6), seven counts of receipt of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1) and one count of carrying and using a firearm in relation to a

¹ A great deal of confusion has resulted from the fact that the Petition was filed to Cr. No. 97-615 and the Government's Opposition to the Petition was filed to Cr. No. 97-478.

² Coram nobis is unnecessary, and will not lie, if the defendant has a remedy available under § 2255. Since the Supreme Court has been construing much less strictly the requirement of custody as a prerequisite for habeas corpus, and these decisions are surely equally applicable to the custody requirement of § 2255, the broadened availability of § 2255 relief will lessen the need to resort to coram nobis. The courts should not be concerned, however, whether the papers are captioned as for coram nobis or for relief under § 2255. Wright, Federal Practice and Procedure: Criminal 2d § 592 at 433 (footnotes omitted).

drug trafficking crime in violation of 18 U.S.C. § 924(c). On March 23, 1989, Mines plead guilty to all of the charges against him, and on June 21, 1989, he was sentenced to a total of 157 months imprisonment and a four-year term of supervised release.

In 1996 Mines filed a Petition in the U. S. District Court for the Federal District of Maryland under 28 U.S.C. § 2255 in which he sought to have his 18 U.S.C. § 924(c) conviction vacated. The Government conceded the issue and on July 29, 1996 the United States District Court for the District of Maryland vacated and set aside Mines' Section 924(c) conviction and sentence. The Court further ordered that Mines be immediately released from custody after having already served the non-§ 924(c) custodial portion of his sentence (i.e., 97 months minus good time and other set offs). Other than vacating the five-year consecutive Section 924(c) custodial portion of Mines' sentence, the Court left the remainder of Mines' sentence undisturbed. When he was released from custody, Mines was subject to a four-year term of supervised release because of his 21 U.S.C. § 841(a)(1) conviction. By Order dated October 30, 1997, the Federal District Court of Maryland transferred supervision of Mines to the Eastern District of Pennsylvania.

On May 10, 1997, Mines was arrested and charged in a criminal complaint with possession with intent to distribute PCP, in violation of 21 U.S.C. § 841(a)(1). On October 1, 1997, Mines entered a plea of guilty to the Information. On November 5, 1999, Mines was sentenced to 33 months imprisonment and a three- year term of supervised release. On November 29, 1999, as a result of his criminal conviction in the Eastern District of Pennsylvania, this Court revoked the supervised release that Mines was serving as a result of the District of Maryland conviction and sentenced Mines to 24 months imprisonment to run consecutively to

Mines' 33 month sentence for the Pennsylvania conviction.

Mines' primary contention appears to be that this Court improperly sentenced him for violating his District of Maryland imposed term of supervised release. He bases this on the fact that the underlying District of Maryland conviction for violating § 924(c) had previously been vacated and that he was never re-sentenced on the remaining counts of conviction. He is incorrect in this assertion because the record indicates that 12 of his 13 counts of conviction in the District of Maryland were never vacated. Therefore, the terms of supervised release for those 12 remaining convictions were still intact. Aside from the fact that there is no factual basis for his allegations, any attack on the underlying conviction should be brought in the Federal District Court for the District of Maryland. See 28 U.S.C. § 2255. It appears that the Petitioner has already attempted to obtain the relief that he is seeking in the present petition in the District Court of Maryland. See the attached Order from that Court dated November 2, 2000.

For these reasons, we enter the following Order.

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ORDER

AND NOW, this 16th day of MAY, 2002, it is hereby ORDERED:

1. The Memorandum and Order is to be filed under Criminal No. 97-615 and Civil Action No. 00-4277.
2. The Petition is DENIED.
3. There is no probable cause to issue a Certificate of Appealability.
4. This case is to be marked CLOSED.

BY THE COURT:

ROBERT F. KELLY, Sr. J.