

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA,)
)
v.) Crim. No. 00-58-P-C
)
DANIEL A. BOGGS,)
)
Defendant)

RECOMMENDED DECISION

On January 31, 2001, Daniel Boggs filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. (Docket No. 32.) He has also filed a motion to extend time to respond to the United States' motion to dismiss filed in response to his initial pleading. (Docket No. 41.) The United States has filed a motion to dismiss the § 2255 petition. (Docket No. 40). I now recommend that the Court **GRANT** the United States' motion to dismiss in light of Boggs's pending appeal. I further recommend that the Court **DENY** Boggs's requests for relief contained within his motion for extension of time to respond (Docket No. 41) and that the Court **DENY** Defendant's other pending motions in this file. (Docket Nos. 30, 31, 38, & 39). I further recommend that the Court **GRANT** the Government's motion to dismiss Defendant's motion relating to approval of vocational training. (Docket No. 42).

Background

Daniel A. Boggs pleaded guilty on June 21, 2000, to a two-count information charging violations of 18 U.S.C. § 1341 and § 1029(a)(2). On October 27, 2000, he was sentenced. He subsequently filed at least three notices of appeal with the First Circuit Court of Appeals. His appeals remain pending. In the meantime he has filed various

pleadings in this Court, beginning with a motion to reconsider the sentencing, modify the sentence, or, in the alternative, vacate the sentence, filed January 11, 2001, and denied by the sentencing judge.

Following that denial Boggs filed three separate documents with this Court labeled as motions pursuant to § 2255. (Docket Nos. 30, 31, & 32.) After I directed the United States to file a response on the limited issue of the propriety of proceeding with these matters while the direct appeal was pending, Boggs filed two additional motions (Docket Nos. 38 & 39) seeking Court approval of vocational training and further amendment of the sentence imposed in this case. Finally after the Government filed its response to the § 2255 motion, Boggs filed a request to add an additional issue to his § 2255 motion seeking modification of the conditions of his supervised release. (Docket No. 41.)

Discussion

Boggs's § 2255 petition (Docket No. 32) lists fourteen separate grounds, including a claim of ineffective assistance of counsel. The settled rule in this circuit is that the district court should decline to hear claims for relief based on allegedly ineffective assistance of counsel until the direct appeal is decided, unless "extraordinary circumstances" are demonstrated. United States v. Diaz-Martinez, 71 F.3d 946, 953 (1st Cir. 1995). Nothing in Boggs's petition demonstrates the existence of extraordinary circumstances. The grounds relating to ineffective assistance of counsel should be dismissed without prejudice pending the resolution of Boggs's direct appeal.

Other grounds raised by this petition concern matters that appear to be related to Boggs's direct appeal. Except for certain limited circumstances, entry of a notice of

appeal divests the district court of jurisdiction to adjudicate any matters related to the appeal. United States v. Distasio, 820 F.2d 20, 23 (1st Cir. 1987) (determining that district court was without jurisdiction to entertain Rule 35(b) motion for reduction of sentence while direct appeal was pending). This case presents a classic example of why the “‘orderly administration of criminal justice’ precludes a district court from considering a § 2255 motion while review of the direct appeal is pending.” United States v. Gordon, 634 F.2d 638, 638-639 (1st Cir. 1980)(citations omitted). Boggs indicates in his response to the United States’ motion to dismiss that some of the issues raised in his § 2255 motion have not been raised on direct appeal and can only be addressed by collateral attack. At this juncture, before the dust settles on the direct appeal, it would hardly promote the orderly administration of criminal justice for this court to try to hazard a guess as to which issues might or might not be determined on direct appeal.

Although Docket No. 32 represents the form § 2255 motion filed in this case, three other documents appear in the file, purportedly seeking relief pursuant to § 2255. (Docket Nos. 30, 31, & 39.) To the extent those filings request relief pursuant to § 2255 they should be dismissed as well pursuant to the United States’ motion. To the extent those filings are general complaints about prison conditions and lack of treatment options within the designated facility, this proceeding does not provide any avenue for relief.

Additionally, Boggs has filed a motion for approval of vocational training. (Docket No. 38). The United States has moved to dismiss this motion (Docket No. 42) as the statutory provision cited by Boggs has been amended to delete the reference to a court approved rehabilitation program pursuant to which Boggs seeks relief. Compare 42

U.S.C.A. § 402(x)(1) (West 1991) with 42 U.S.C.A. § 402(x)(1) (West Supp. 2000).

Accordingly, I recommend that the Court grant the United States' motion to dismiss Boggs' motion for approval of a vocational training program.

Finally Boggs filed a motion, which he calls a "traverse," seeking an additional twenty days to respond to the Government's motion to dismiss his § 2255 motion. In that motion Defendant also asserts an additional claimed ground under § 2255. For the reasons previously discussed I recommend that the Court deny Defendant's motion.

Conclusion

Based upon the foregoing, I recommend that the Court **GRANT** the United States' motion to dismiss as to Docket Nos. 30, 31, 32, and 39. Those motions, brought pursuant to § 2255, are dismissed without prejudice pending resolution of defendant's direct appeal. I also recommend that the Court **GRANT** the United States' motion to dismiss Boggs' motion for approval of vocational training as there is no longer any statutory basis for this motion (Docket No. 42) and **DISMISS** Defendant's motion for approval of vocational training. (Docket No. 38). I further recommend that the Court **DENY** Defendant's motion to extend time to respond. (Docket No. 41).

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Margaret J. Kravchuk
U.S. Magistrate Judge

Dated March 21, 2001.

U.S. District Court

District of Maine (Portland)

CRIMINAL DOCKET FOR CASE #: 00-CR-58-ALL

USA v. BOGGS

Filed: 06/21/00

Dkt# in other court: None

Case Assigned to: JUDGE GENE CARTER

DANIEL A BOGGS, JR (1) JOHN S. WEBB, ESQ.

defendant [term 10/27/00]

[term 10/27/00] [COR LD NTC cja]

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Pending Counts:

Disposition

18:1341.F FRAUDS AND SWINDLES; Imprisoned for a period of

Mail Fraud, 18 U.S.C. 1341 seven months on counts one and

(1) two be served concurrently with each other. Supervised

Release for a period of THREE years. Special Assessment of \$200 and Restitution of \$173.35.

(1)

18:1029A.F PRODUCES/TRAFFICS Imprisoned for a period of
IN COUNTERFEIT DEVICE; Access seven months on counts one and
device fraud, 18 U.S.C. two be served concurrently with
1029(a)(2) each other. Supervised

(2) Release for a period of THREE years. Special Assessment of \$200 and Restitution of \$173.35.

(2)

2:00cr58-ALL USA v. BOGGS

CJACNS

CLOSED

Offense Level (opening): 4

Terminated Counts:

NONE

Complaints:

NONE

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