

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

UNITED STATES OF AMERICA, )  
)  
)  
v. ) Criminal No. 98-26-B-S  
) Civil No. 01-191-B-S  
STEPHEN LEROY HUGHES, )  
)  
Defendant )

**RECOMMENDED DECISION ON HABEAS CORPUS PETITION**

Petitioner Stephen Leroy Hughes has filed a pro se petition pursuant to 28 U.S.C. § 1651, the “All Writs Act” that I have treated as a petition lodged under 28 U.S.C. § 2255. (Docket Nos. 12 & 15.) Finding Hughes’ petition time-barred, I now recommend that the court summarily **DISMISS** the petition.

**Background**

On December 30, 1998, Stephen Hughes was sentenced in this court to a term of imprisonment of 208 months followed by four years of supervised release under 18 U.S.C. § 922 (g) (1) and § 924 (e) for being a felon in possession of a firearm and an armed career criminal. On September 20, 2001, more than two and one-half years after judgment entered, Hughes filed a petition in this court seeking relief under the All Writs Act. Indicating that I intended to treat the filing as a petition pursuant to § 2255 (see Docket No. 13), I gave Hughes the opportunity to amend or clarify his petition.

Hughes filed an amended motion to vacate alleging two grounds: (1) ineffective assistance of counsel; and (2) a due process violation arising under the Fifth Amendment arguing that his prior Massachusetts’ convictions had been improperly used to sentence

him as an armed career criminal because his civil rights were restored in Massachusetts without an express notice that he was barred from possessing a firearm. However, he continued to assert in his amended pleading that the All Writs Act provided him an avenue of relief or that alternatively this court could grant relief pursuant to 28 U.S.C. § 2241. The Government answered by moving for the summary dismissal of the case.

**Discussion:**

Pursuant to 28 U.S.C. § 2255 a motion to vacate must be filed within one year of the following:

- (1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review;
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2255 ¶ 6.

Hughes does not argue that he falls within any of the four enumerated categories. Instead he attempts to fashion an argument under Bousley v. United States, 523 U.S. 614 (1998) that he is “actually innocent” of the charge. Unfortunately for Hughes his argument is not that he is “actually innocent” of the criminal charge for which he stands convicted, possession of a firearm by a felon. He is not arguing that a subsequent change in the law has ruled that the acts for which he stands convicted no longer constitute criminal conduct. Id. at 54. His Armed Career Criminal status is not an issue of factual

guilt or innocence, but instead it pertains to the length of the sentence imposed as a result of an unassailable finding of actual guilt.<sup>1</sup>

The cases upon which Hughes relies in attempting to state a claim under 28 U.S.C. § 2241 assist a prisoner who ““can prove his actual innocence on the existing record”” and ““could not have effectively raised his claim of innocence at an earlier time.”” United States v. Barrett, 178 F.3d 34, 52 (1<sup>st</sup> Cir. 1999)(quoting Triestman v. United States, 124 F.3d 361, 363, 377–78 (2d Cir. 1997)). As indicated above, Hughes’s claim is not one of actual innocence. Nor was he barred from raising this claim at an earlier time since the case upon which he relies to challenge the use of his Massachusetts convictions, Caron v. United States, 524 U.S. 308 (1998), was decided in June 1998, before Hughes’s plea and conviction in this case. Whether Hughes’ petition is characterized as filed pursuant to the All Writs Act or as arising under 28 U.S.C. § 2241, he cannot avoid the fact that the relief he seeks and the arguments he makes are nothing more than a garden-variety § 2255 complaint. See Barrett, 178 F.3d at 53 (“[W]here a prisoner had an opportunity to present his claim properly in his first § 2255 petition, but failed to do so, any “ineffectiveness” of his current § 2255 petition is due to him and not to § 2255.”) He cannot avoid the inevitable conclusion that this petition is time-barred.

However, with respect to his second ground, Hughes should not be too disappointed that his § 2255 is time-barred because even if the court reached the merits of his claim it does not appear that Hughes would have success. This is so because the First Circuit in addressing 18 U.S.C. § 921(a)(20) and 18 U.S.C. § 924(e) has noted that notwithstanding the restoration of some civil rights after the passage of time,

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<sup>1</sup> Indeed, Hughes does frame his claim as being that he is actually innocent of the sentencing enhancement.

Massachusetts materially restricts an ex-felon's right to carry and traffic in firearms. United States v. Alston, 112 F.2d 32, 37 (1<sup>st</sup> Cir. 1997); United States v. Estrella, 104 F.3d 3, 8 (1<sup>st</sup> Cir. 1997). Therefore the provision in 18 U.S.C. § 921(a)(20) excepting prior convictions when civil rights have been restored is not applicable. Buoyed by the opinion of the dissenters in Caron, Hughes here attempts to build an argument centered upon a claimed lack of a notice provision under Massachusetts law informing him or other ex-felons of the prohibition of carrying handguns outside his home or business. However, with Estrella amply pre-dating Hughes' plea, he would not even be entitled to relief under the rule of lenity that the Caron dissenters unsuccessfully argued should be afforded Caron. 524 U.S. at 2013-14. Since the case law indicates that the sentencing enhancement was appropriately applied to Hughes his ineffective assistance claim would also likely flounder on its merits.

### **Conclusion**

Based upon the foregoing, I recommend that the petitions filed by Hughes (Docket Nos. 12 & 15) be summarily **DISMISSED**.

### **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.

December 20, 2001

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Margaret J. Kravchuk  
U.S. Magistrate Judge

CJACNS CLOSED

U.S. District Court

District of Maine (Bangor)

CRIMINAL DOCKET FOR CASE #: 98-CR-26-ALL

USA v. HUGHES

Filed: 07/07/98

Dkt# in other court: None

Case Assigned to: Judge GEORGE Z. SINGAL

STEPHEN LEROY HUGHES (1) CHARLES W. HODSDON, II

defendant [term 12/30/98]

[term 12/30/98] [COR LD NTC cja]

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STEPHEN LEROY HUGHES

[COR LD NTC] [PRO SE]

#10263-036

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Pending Counts: Disposition

18:922G.F FELON IN POSSESSION OF FIREARM: Imprisonment of 208 months; Supervised release of 48 months; \$100 Special Assessment; Deft remanded to custody of US Marshal (1)

Offense Level (opening): 4

Terminated Counts: NONE

Complaints: NONE

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