

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

RASHAUN M. JONES,)
)
 Movant,)
)
 v.) Civil No. 09-202-P-S
) Crim. No. 05-84-P-S
 UNITED STATES OF AMERICA,)
)
 Respondent)

ORDER STAYING 28 U.S.C. § 2255 PROCEEDING

Rashaun Jones has filed a 28 U.S.C. § 2255 motion seeking relief from his conviction on drug distribution charges. He presses two § 2255 grounds. First he asserts that his trial attorney was ineffective within the meaning of the Sixth Amendment because she did not contest the validity of a taped phone conversation; Jones insists that that voice on the tape was not his voice. Second, Jones contends that his trial and appellate counsel were ineffective because they did not challenge the fact that the search of the hotel room in which he was situated went beyond what was in plain view. With respect to this ground Jones maintains that a search warrant was necessary.

The United States has filed a response to the § 2255 motion insisting that this court lacks jurisdiction “to entertain” Jones’s § 2255 motion because there is an appeal pending apropos this court’s rejection of Jones’s motion to reduce his sentence, a motion premised on the amendments to the crack cocaine United States Sentencing Guidelines. (See Crim. No. 05-84-P-S, Doc. Nos.

130, 135, 144.) The United States does not suggest a disposition for the pending § 2255 motion beyond its assertion that this motion “cannot progress.” The United States has not responded to the substance of Jones’s § 2255 grounds.

The First Circuit Court of Appeals entered its decision on Jones’s first direct appeal on April 11, 2008. United States v. Jones, 523 F.3d 31 (1st Cir. 2008). The United States Supreme Court denied certiorari review on October 6, 2008. Jones v. United States, 129 S. Ct. 228 (Oct. 8, 2008). Jones filed this 28 U.S.C. § 2255 motion on May 21, 2009. In his reply to the United States’ response to his motion Jones clearly indicates that he is concerned that his statute of limitation for proceeding with a 28 U.S.C. § 2255 motion is implicated and that he is worried that his grounds will be adjudged time-barred if his motion is dismissed (assuming that such a dismissal would be without prejudice¹).

With respect to its lack-of-jurisdiction argument, the United States relies on United States v. Diaz-Martinez in which the First Circuit explained: “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.” 71 F.3d 946, 953 (1st Cir. 1995). (citing United States v. Buckley, 847 F.2d 991, 993 n. 1 (1st Cir.1988) and United States v. Gordon, 634 F.2d 638, 638-39 (1st Cir.1980)). In Diaz-Martinez the government conceded that the petition could be refiled in the district court upon resolution of the appeal. Id.

This case is not on all fours with Diaz-Martinez. Jones has already taken his direct appeal of his conviction which challenged the denial of his motion to suppress and two

¹ Jones does not address the consequence of a disposition that would result in a later motion being construed as a second and successive.

sentencing determinations. The pending appeal of the denial of the motion to reduce sentence is entirely unrelated to Jones's conviction and the ineffective assistance grounds raised in the § 2255 motion. However, given the United States' insistence that this court currently cannot take any action on this § 2255 motion until the disposition of the pending direct appeal and the equivocal nature of the United States' proposed disposition, I believe that the interest of justice is best served by staying this proceeding until the resolution of Jones's direct appeal. See Washington v. United States, Civ. No. 08- 293, 2009 WL 112363, 1 -2 (D. Me. Jan. 15, 2009). Once the First Circuit rules on his direct appeal of the denial of sentencing reduction motion, Jones must notify the court as to whether he wishes to proceed with this § 2255 motion. In addition, I direct the United States to file a status report with this court within six months of today's date if Jones has not contacted the court as directed in the interim. Jones is hereby on notice that his 28 U.S.C. § 2255 grounds will be limited to the two grounds contained in this motion.² Once the court has been notified that the pending direct appeal is final I will order the United States to file a substantive answer to the § 2255 motion and Jones will be given an opportunity to reply to that response.

² Jones's 28 U.S.C. § 2255 motion really only articulates a theory of relief with respect to his first ground relating to the failure to challenge the prosecution's use of a tape recording which Jones insists was not of his voice. He does not explain his "plain view" ineffective assistance of trial and appellate counsel ground. The First Circuit's opinion on direct appeal reveals that trial and appellate counsel did in fact attempt to persuade the courts that the scope of the officers' search was impermissible, but the trial court and the First Circuit concluded that there was sufficient evidence that Jones had consented to a search of the entire hotel suite. See United States v. Jones, 523 F.3d 31, 35-40 (1st Cir. 2008); United States v. Jones, Crim. No. 05-84-P-S, 2006 WL 763124 (D. Me. Mar. 24, 2006) (recommended decision), adopted, 2006 WL 1071893. It appears obvious to me that Jones cannot reargue this ground in a § 2255 proceeding.

CERTIFICATE

Any objections to this Order shall be filed in accordance with Federal Rule of Civil Procedure 72.

So Ordered.

August 18, 2009

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

JONES v. USA

Assigned to: JUDGE GEORGE Z. SINGAL

Referred to: MAGISTRATE JUDGE MARGARET J.

KRAVCHUK

related Case: [2:05-cr-00084-GZS-2](#)

Cause: 28:2255 Motion to Vacate / Correct Illegal
Sentenc

Date Filed: 05/21/2009

Jury Demand: None

Nature of Suit: 510 Prisoner: Vacate
Sentence

Jurisdiction: U.S. Government
Defendant

Petitioner

RASHAUN JONES

represented by **RASHAUN JONES**

04740-036

FORT DIX

FEDERAL CORRECTIONAL
INSTITUTION

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