

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>v.</b>	)	<b>Criminal No. 95-29-B-C</b>
	)	<b>(Civil No. 97-60-B-C)</b>
<b>THOMAS A. DUNROE,</b>	)	
	)	
<b>Defendant</b>	)	

**RECOMMENDED DECISION ON DEFENDANT’S MOTION  
FOR COLLATERAL RELIEF UNDER 28 U.S.C. § 2255**

Thomas A. Dunroe moves this court to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. Dunroe was convicted on his guilty plea to two counts of conspiracy with intent to distribute marijuana, in violation of 18 U.S.C. §§ 841(a)(1) and 846, one count of interstate transportation of marijuana, in violation of 18 U.S.C. § 1952(a)(3), and one count of possession with intent to distribute marijuana, in violation of 21 U.S.C. § 841(a)(1). He was sentenced to a term of 60 months imprisonment on each count, the terms to run concurrently, to be followed by terms of supervised release of three years on two of the counts and four years on two of the counts, all to run concurrently. He contends that wrongful acts of the United States Parole Commission in connection with an earlier conviction and sentence are reflected in his sentencing for these convictions and are therefore reviewable by this court at this time.

A section 2255 motion may be dismissed without an evidentiary hearing if the “allegations, accepted as true, would not entitle the petitioner to relief, or if the allegations cannot be accepted as true because ‘they are contradicted by the record, inherently incredible, or conclusions rather than

statements of fact.”” *Dziurgot v. Luther*, 897 F.2d 1222, 1225 (1st Cir. 1990) (citation omitted). In this instance, I find that Dunroe’s allegations, accepted as true, do not entitle him to relief, and accordingly I recommend that his motion be denied without an evidentiary hearing.

## **I. Background**

Dunroe took no appeal from his conviction and sentencing in this matter.

On January 27, 1989 Dunroe was sentenced in this court to a term of imprisonment of four years after his guilty plea on 15 counts, including conspiracy and possession with intent to distribute marijuana. Presentence Investigation Report (“PSR”), *United States v. Dunroe*, Docket No. CR-95-29-B, at 9. He was released on parole on May 24, 1990. *Id.* at 10. This parole was revoked on two occasions, and Dunroe was incarcerated for several months after each revocation. *Id.* He was again on parole when the instant offense was committed. *Id.*

## **II. Analysis**

Dunroe’s motion states the following grounds for relief: “[1] whether the Parole Commission lacks jurisdiction to amend the conditions of release; [2] the effective date and savings provisions of the Sentencing Reform Act of 1994 was violated; [3] failure to convert petitioner’s time of special parole to supervised release violates petitioner’s civil rights & due process; [4] petitioner’s rights to due process have been violated by the Parole Commission.” Motion (Docket No. 44) at 5-6. Each of these grounds for relief is addressed to the actions of the U.S. Parole Commission in relation to the sentence on the 1989 offense. Dunroe’s central argument is that only the district court now has the authority to revoke parole or otherwise amend the conditions of a prisoner’s release, when that

prisoner was sentenced before the effective date of the Sentencing Reform Act, as was Dunroe, due to the specific terms of that Act. The government responds that all of Dunroe's arguments are addressed to the execution of the sentence he received in the 1989 prosecution, a matter over which this court lacks jurisdiction, citing *Bennett v. Soto*, 850 F.2d 161 (1st Cir. 1988), and *United States v. DiRusso*, 535 F.2d 673, 674-76 (1st Cir. 1976).

To the extent that Dunroe's claims may be construed as attacking the sentence entered on his 1989 conviction, this court lacks jurisdiction to consider them in a proceeding brought in the current action. In addition, this court lacks jurisdiction to consider claims arising out of parole revocation under section 2255. *Bennett v. Soto*, 850 F.2d at 162-63. Jurisdiction over such claims is provided by 28 U.S.C. § 2241. The appropriate forum for such claims is the federal district court in which the parole revocation sentence is being or will be served. *Braden v. 30th Judicial Circuit Court*, 410 U.S. 484, 495 (1973) (court issuing writ under § 2241 must have jurisdiction over custodian). Dunroe's motion lists his place of incarceration as L.S.C.I. Allenwood, in White Deer, Pennsylvania. Motion at 2.<sup>1</sup>

Finally, Dunroe's argument that the Parole Commission was without authority to revoke his parole, as it has done, is incorrect. The authority of the Parole Commission to revoke parole is established by 18 U.S.C. § 4214(d). This statute, along with others creating the Parole Commission and defining its powers, was repealed by Pub.L. 98-473, Title II, § 218(a)(5), 98 Stat. 2027, in 1984 with a postponed effective date. For individuals who committed offenses before November 1, 1987, like Dunroe, the statutes have been continued in effect until November 1, 1997. Pub.L. 101-650, §

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<sup>1</sup> The court has recently received an undated letter from Gloria Dunroe Parker, stating that she is Dunroe's mother and that he has been moved to a prison in Fort Dix, New Jersey.

316, 104 Stat. 5115. Thus, the Parole Commission still has the legal authority to act on Dunroe's parole violations arising out of the 1989 conviction.

Dunroe argues in his Response Brief to Government's Rebuttal (Docket No. 51) that he has attacked the sentence on his current conviction because it was affected by the fact that he was on parole at the time of the offenses that resulted in the current conviction. The memorandum of law accompanying his initial motion does suggest that Dunroe was sentenced to an additional 6 to 12 months as a result of the fact that he was on probation at the time he committed these offenses. Motion at [30]-[32]. However, there is no sense in which Dunroe is being punished twice merely because his current sentence may have been affected by the fact that he committed the current crimes while on parole from a sentence imposed on a previous conviction. Nor was the activity which violated Dunroe's parole, resulting in revocation of his parole and an increased period of incarceration on the previous conviction, the same activity for which Dunroe was sentenced in the current action. Most important is the fact that Dunroe's argument on this point does not raise a constitutional claim. Moreover, it raises a claim that could have been raised on direct appeal of his sentence. "A nonconstitutional claim that could have been, but was not, raised on appeal, may not be asserted by collateral attack under § 2255 absent exceptional circumstances." *Knight v. United States*, 37 F.3d 769, 772 (1st Cir. 1994). No exceptional circumstances are present here. This argument is foreclosed by Dunroe's failure to appeal.

### **III. Conclusion**

For the foregoing reasons, I recommend that Dunroe's motion to vacate, set aside or correct

his sentence be **DENIED** without an evidentiary hearing.

**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 after 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.*

*Dated this 10th day of September, 1997.*

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*David M. Cohen  
United States Magistrate Judge*