

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

VINCENT ZAPPOLA : CIVIL ACTION
v. :
R. M. REISCH, et al. : NO. 97-5866

MEMORANDUM AND FINAL JUDGMENT

HUTTON, J.

April 16, 1998

Presently before the Court is the Petitioner Vincent Zappola's Renewal of Motion For Reconsideration of Nature of Filing. For the reasons that follow, the Motion is denied and the case is dismissed for lack of jurisdiction.

I. BACKGROUND

On October 26, 1991, after trial in the United States District Court for the Eastern District of New York, a jury convicted Petitioner Vincent Zappola on counts of RICO and RICO conspiracy, theft of goods from interstate shipment, interstate transportation of stolen property, bank burglary, and conspiracy to transport stolen property in interstate commerce.

On September 16, 1992, the Honorable I. Leo Glasser sentenced Zappola to a term of 162 months of incarceration. However, upon Zappola's appeal, the Second Circuit vacated a portion of the sentence and remanded the matter to Judge Glasser for resentencing. The issue was whether Judge Glasser meant the sentence to run concurrently or consecutively with a prior

sentence. On June 1, 1995, Judge Glasser clarified and reimposed the sentence. The Second Circuit explained:

At the initial sentencing, the district court indicated its intention that Zappola's sentence be served concurrently with a prior sentence, on which the court was advised that Zappola had some 21 months left to serve; at resentencing following remand from this Court, the district court clarified what was implicit in its original pronouncement of sentence, i.e., that it intended the present sentence to be served concurrently with the prior sentence only to the extent that the prior sentence remained to be served. Since in fact Zappola's prior sentence had expired entirely before sentence was imposed on the present charges, there was no prior sentence with which the present sentence could be concurrent, and the court's clarification was proper.

United States v. Zappola, No. 95-1374 at 3 (2d Cir. June 4, 1996).

As Judge Glasser explained at the resentencing, it was meaningless to describe such a sentence as "concurrent" or "consecutive" when no other sentence existed at the time of its imposition. Therefore, the Second Circuit upheld Zappola's sentence in under Judge Glasser's resentencing.

On September 18, 1997, Zappola filed his Application For A Writ of Habeas Corpus with this Court. Although Zappola styled his petition as one under 28 U.S.C. § 2241, the Court construed it as one under 28 U.S.C. § 2255, because § 2255 is the proper means by which a federal prisoner may test the validity of a judgment or sentence. See Bradshaw v. Story, 86 F.3d 164, 166 (10th Cir. 1996) (noting that § 2241 may be available only where § 2255 is "inadequate or ineffective"); United States v. Dukes, 727 F.2d 34,

40 n.4 (2d Cir. 1984); 3 Charles Alan Wright, Federal Practice and Procedure § 591 (2d ed. 1982) ("If relief is possible under § 2255, it is the exclusive remedy and habeas corpus is barred for a federal prisoner."). In his petition, Zappola raises some of the same issues that Judge Glasser and the Second Circuit addressed in the post-trial proceedings, and challenges the Bureau of Prison's subsequent sentencing computations.

II. DISCUSSION

28 U.S.C. § 2255 states, in pertinent part:

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

As the text of § 2255 makes clear, a federal prisoner must file his § 2255 motion with the sentencing court. See Bradshaw, 86 F.3d at 166; Papadakis v. Warden of Metro. Correctional Ctr., 822 F.2d 240, 245 (2d Cir. 1987) (noting that there is no requirement that the motion be filed with precise sentencing judge). In drafting § 2255, Congress specifically rejected the pre-existing scheme in which habeas petitioners filed their petitions in the district of incarceration. See 3 Wright § 589. Under the old approach, prisoners filed habeas petitions in courts that bore no relation to the original proceedings, and the

resulting work load fell disproportionately on districts in which federal prisons were located. In place of that scheme, Congress instituted the present system, in which the prisoner must file a § 2255 motion in the district where he was tried and sentenced. See id. This jurisdictional allocation has been upheld on countless occasions. See , e.g., United States v. Hernandez, 94 F.3d 606, 612-13 (10th Cir. 1996); United States v. Pollard, 959 F.2d 1011, 1022 (D.C. Cir. 1992); Short v. United States, 504 F.2d 63, 65 (6th Cir. 1974); Dellorfao v. Lansing, 1996 WL 278804, *1 (E.D.Pa. May 16, 1996); United States v. Friedland, 879 F. Supp. 421, 429 (D.N.J. 1995).

Given the above, it is clear that Zappola has sought relief in the wrong court. Section 2255 allocates jurisdiction to the sentencing court, in this case the Eastern District of New York. Under the § 2255 scheme, this Court lacks jurisdiction to entertain Zappola's present claims. Therefore, the Petitioner's § 2255 motion is denied and dismissed.

An appropriate Order follows.

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

VINCENT ZAPPOLA : CIVIL ACTION
 :
 v. :
 :
 R. M. REISCH, et al. : NO. 97-5866

FINAL JUDGMENT

AND NOW, this 16th day of April, 1998, upon consideration of the Petitioner Vincent Zappola's Renewal of Motion For Reconsideration of Nature of Filing, IT IS HEREBY ORDERED that the Motion is **DENIED**.

IT IS FURTHER ORDERED that this case is **DISMISSED** for lack of jurisdiction.

BY THE COURT:

HERBERT J. HUTTON, J.