

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF SAINT CROIX AT KINGSHILL

HENRY SAMPSON,	)	
	)	
Petitioner,	)	CRIMINAL NO. 465/1995
	)	
	)	
v.	)	PETITION FOR WRIT
	)	OF HABEAS CORPUS
IVER STRIDIRON, ATTORNEY GENERAL	)	
OF THE VIRGIN ISLANDS, HORACE	)	
MAGRAS, DIRECTOR OF THE BUREAU OF	)	
CORRECTIONS, and IVAN OLIVER,	)	
WARDEN, GOLDEN GROVE	)	
CORRECTIONAL FACILITY,	)	
	)	NOT FOR PUBLICATION
Respondents.	)	

MEMORANDUM OPINION

(Filed: May 30, 2001)

THIS MATTER is before the Court on Henry Curtis Sampson's ("Sampson") Amended Petition for Writ of Habeas Corpus and Motion to Vacate, Set Aside, or Correct Sentence, Respondents' Motion to Dismiss, and Petitioner's opposition. For the reasons that follow, Sampson's Petition will be denied.

FINDINGS OF FACT

On May 7, 2001, the Court held a hearing on this matter. Based on all the information presented, this Court finds the following facts:

1. Petitioner Sampson was convicted in Territorial Court of murder in the first degree, in violation of V.I. Code Ann. tit. 14, §§ 921 and 922(a)(1), and possession of a deadly weapon during a crime of violence, in violation of V.I. Code Ann. tit. 14, § 2251(a)(2)(B). (*See* Judgment and Commitment, July 5, 1996).

2. A Judgment of conviction was entered on July 5, 1996, *nunc pro tunc*, to May 24, 1996. (*See id.*)
3. Sampson was sentenced to life imprisonment without the possibility of parole for the murder in the first degree conviction, and five years imprisonment for the possession of a deadly weapon during a crime of violence conviction, with said sentences to run concurrently. (*See id.*)
4. Sampson was, and still is, incarcerated at the Golden Grove Correctional Facility in St. Croix, serving his sentence for these convictions. (*See id.*; Bureau of Corrections, Behavior and Adjustment Report).
5. A timely notice of appeal was filed on May 30, 1996. (*See Notice of Appeal*).
6. On June 21, 1996, Sampson filed a Petition for Writ of Habeas Corpus, which this Court treated as a motion for a new trial on the basis of newly discovered evidence pursuant to Terr. Ct. Rule 135. *See Government of the V.I. v. Sampson*, 36 V.I. 31, 32 (Terr. Ct. 1997).
7. On December 4, 1996, the Appellate Division of the District Court granted a motion by the parties for a stay of the appeal, to give this Court the opportunity to hear appellant's motion for a new trial. *See Government of the V.I. v. Sampson*, D.C. Crim. App. No. 1996/050 at 6 (D.V.I. App. Div. Apr. 5, 2000).
8. On March 10, 1997, this Court denied Sampson's motion for a new trial. *See Government of the V.I. v. Sampson*, 36 V.I. at 41-42.

9. The Appellate Division considered Sampson's appeal on August 26, 1998, and affirmed the rulings of this Court on April 5, 2000. *See Government of the V.I. v. Sampson*, D.C. Crim. App. No. 1996/050 at 28.
10. Sampson's counsel at the time, Attorney Jean-Robert Alfred, did not appeal the decision of the Appellate Division to the Third Circuit. (Am. Pet. for Writ of Habeas Corpus at 3).
11. On June 28, 2000, Sampson filed, *pro se*, a Renewed Motion for Substitution of Counsel on Appeal in the Appellate Division. (*See id.*).
12. In Sampson's motion, he explained his counsel's failure to file a timely appeal to the Third Circuit, and requested that new counsel be appointed to represent him. (*See id.*).
13. On July 13, 2000, the Appellate Division issued an Order granting Sampson's Renewed Motion for Substitution of Counsel on Appeal, and appointed Attorney John K. Dema as counsel for Sampson. (*See id.* at 3-4).
14. On November 2, 2000, Sampson filed a Petition for Writ of Habeas Corpus and a Motion to Vacate, Set Aside or Correct Sentence. Thereafter, on November 28, 2000, Sampson filed an amended petition.

CONCLUSIONS OF LAW

In his Petition, Sampson argues that his previous counsel's failure to file a timely appeal to the Third Circuit constituted ineffective assistance of counsel. To remedy this, Sampson asks that this Court grant his petition for habeas corpus, and either re-sentence him or vacate the judgment and re-enter the judgment of conviction. According to Sampson, the relief he requests would provide him with a new final judgment in the underlying criminal action and a new opportunity to appeal his convictions to the Third Circuit. Respondents argue that the petition

should be dismissed because of an identical proceeding, on this same matter, that is currently pending in the District Court. Sampson responds that this Court has jurisdiction to hear this case, and the Court should rule on the merits of his claim.

This Court has jurisdiction to hear all habeas petitions brought pursuant to V.I. Code Ann. tit. 5, § 1301. *See Parrott v. Government of the V.I.*, 230 F.3d 615, 619-21 (3d Cir. 2000); *see also Callwood v. Enos*, 230 F.3d 627, 632 (3d Cir. 2000); *Walker v. Government of the V.I.*, 230 F.3d 82, 85 (3d Cir. 2000). Section 1301 provides that “every person unlawfully imprisoned or restrained of his liberty, under any pretense whatsoever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint.” V.I. Code Ann. tit. 5, § 1301. Petitioner has the burden of proving the facts or establishing the grounds which entitle him to relief. *See Hickock v. Hand*, 373 P.2d 206, 214 (Kan. 1962); *see also Goins v. Brierly*, 464 F.2d 947, 949 & n.4 (3d Cir. 1972).

Here, Sampson has failed to show that he is entitled to habeas relief. Sampson’s arguments rely on cases involving two federal habeas corpus provisions, 28 U.S.C. § 2255 and 28 U.S.C. § 2254, neither of which is applicable to this case. First, none of the cases that Sampson has cited to this Court, decided pursuant to Section 2255, apply to this proceeding. *See Am. Pet. for Writ of Habeas Corpus* at 4; *United States v. Davis*, 112 F.3d 118 (3d Cir. 1997) (involving re-sentencing in district court, under § 2255, where defendant successfully challenged one of the counts on the grounds that it was inconsistent with a Supreme Court decision); *United States v. Pearce*, 992 F.2d 1021 (9th Cir. 1993) (involving § 2255 motion where defendant challenged guilty plea, and stating that vacating and re-entering judgment provided defendant effective remedy for § 2255 claim without requiring the district court to act outside its authority);

United States v. Moore, 83 F.3d 1231 (10th Cir. 1996) (involving § 2255 re-sentencing in district court where defendant sought to expand scope of re-sentencing, but judge denied request). As Sampson himself points out, only a person in *federal* custody, because of *federal* laws, may file a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. *See* 28 U.S.C. § 2255. In Sampson's case, he was tried and convicted in Territorial Court, for violations of territorial law, and is not in federal custody, but is at the Golden Grove Correctional Facility on St. Croix.

Nevertheless, Sampson relies primarily on *Pearce* and *Moore*, in arguing that he should be re-sentenced because of ineffective assistance of counsel in perfecting an appeal to the Third Circuit. However, Sampson's reliance on *Pearce* and *Moore* is misplaced. *Pearce* and *Moore* were not only decided pursuant to Section 2255, but they also involved cases where the lawyer failed to perfect a direct appeal from the district court to the circuit court. *See Pearce*, 992 F.2d at 1022 (arguing defendant denied effective assistance of counsel when attorney failed to file direct appeal to circuit court from denial of motion to withdraw guilty plea); *Moore*, 83 F.3d at 1232-33 (arguing defendant denied effective assistance of counsel when attorney failed to file direct appeal to circuit court of sentencing, errors in enhancement of base offense level and constitutionality of the sentencing guidelines).

Furthermore, while *Moore* stated that re-sentencing under § 2255 is the proper remedy for a criminal defendant who has had ineffective assistance of counsel in failing to perfect a direct appeal, the Court also noted that the purpose of re-sentencing is to put the defendant "back into the position he would have been had counsel perfected a timely notice of appeal." *Moore*, 83 F.3d at 1233 (citation omitted). If this Court were to grant Sampson's request, and either re-

sentence him or re-enter the judgment of conviction, he would be put in a far better position than he would have been had his attorney filed a timely notice of appeal to the Third Circuit. If this Court were to grant Sampson's request, he would first have his appeal considered by the Appellate Division again, and then, assuming his counsel filed a timely notice of appeal this time, he would get to appeal his case to the Third Circuit. This is not why the defendant in *Moore* was re-sentenced. *See id.* In fact, at least one court in another jurisdiction, considering an issue similar to the one before this Court, found the appropriate remedy was to vacate and re-enter the judgment of the appellate court, to allow the defendant to perfect an appeal to the state's supreme court. *See Hutchins v. State*, 504 S.W.2d 758, 762 (Tenn. 1974).

Instead Sampson, however, realizing that § 2255 is not directly applicable to his case, argues that precedents under § 2255 and state habeas corpus petitions may be used interchangeably, and as such, this Court should apply § 2255 precedents in this case and grant Sampson's requested relief. In support of this argument, Sampson cites *United States v. Nahodil*, 36 F.3d 323 (3d Cir. 1994) and *United States v. Vancol*, 916 F. Supp. 372 (D.Del. 1996). However, Sampson's reliance on *Nahodil* and *Vancol*, is also misplaced. Both *Nahodil* and *Vancol* state "a § 2255 motion is the federal equivalent of a state habeas petition filed pursuant to 28 U.S.C. § 2254." *See Nahodil*, 36 F.3d at 327; *Vancol*, 916 F. Supp. at 377 n.3. Section 2254 applies to federal habeas petitions brought in federal courts by prisoners in custody pursuant to state judgments. *See* 28 U.S.C. § 2254. Section 2254 explicitly states that the writ of habeas corpus shall not be granted unless the applicant has exhausted all remedies available in state courts, there is an absence of available State corrective process, or circumstances exist that render such State process ineffective to protect the rights of the applicant. 28 U.S.C. § 2254.

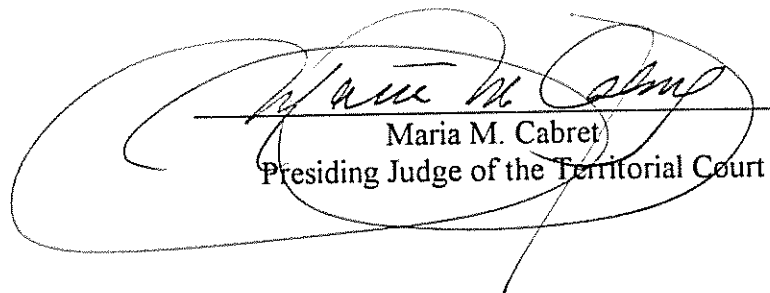
Sampson's petition is currently before the Territorial Court, not the District Court. Thus, although Sampson argues that § 2255 should be applied to this case because the precedents of § 2255 and § 2254 are interchangeable, not even precedents decided under § 2254 would apply in this proceeding.

Assuming, *arguendo*, that Sampson may have been denied ineffective assistance of counsel, *see Castellanos v. United States*, 26 F.3d 717, 720 (7th Cir. 1994) (stating if defendant asked lawyer to appeal, and lawyer failed to do so, court should enter order granting defendant access to appellate proceeding), Sampson has failed to state a claim upon which relief may be granted. Sampson has cited no legal authority that would allow this Court to re-sentence him so that he can undertake a new appeal to the Appellate Division, and ultimately to the Third Circuit. As Sampson has failed to state a claim upon which relief may be granted, Sampson's petition must be denied.

CONCLUSION

For all the foregoing reasons, Sampson's Amended Petition for Habeas Corpus and Motion to Vacate, Set Aside, or Correct Sentence, will be denied. An appropriate Order follows.

DATED: This 30th day of May, 2001.


Maria M. Cabret
Presiding Judge of the Territorial Court