

DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal No. 2013-31
	)	
JOELVIS ACOSTA LIZ, ISA NOEL,	)	
KIRSTEN ALEXANDER, EDISSON	)	
PEGUERO ORTIZ,	)	
	)	
Defendant.	)	
	)	

ATTORNEYS:

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For the United States of America,

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For Joelvis Acosta Liz,

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For Isa Noel,

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For Kirsten Alexander,

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For Edison Peguero Ortiz.

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ORDER

GÓMEZ, J.

Before the Court is the motion of Isa Noel ("Noel") for relief pursuant to 28 U.S.C. § 2255.

On June 19, 2013, the Grand Jury returned an indictment charging Noel with one count of Conspiracy to Possess with Intent to Distribute Cocaine in violation of 21 U.S.C. §§ 841 and 846; and two counts of Possession with Intent to Distribute Cocaine in violation of 21 U.S.C. § 841. On August 20, 2013, the Grand Jury returned a superseding indictment charging Noel with the same offenses.

In November, 2013, Noel was tried and convicted of each count with which he was charged. Noel was subsequently sentenced to 151 months imprisonment.

After he was sentenced, Noel--through counsel--filed a notice of appeal. He also filed a pro se motion for relief pursuant to 28 U.S.C. § 2255 (the "2255 petition"). Thereafter, Noel--through counsel--filed a motion in this Court for a new trial under Federal Rule of Civil Procedure 33. Noel subsequently filed a motion in the Third Circuit to remand his case to this Court for consideration of Noel's motion for a new trial. In an order dated April 25, 2016, the Third Circuit

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granted the motion to remand. The Third Circuit indicated that "[i]f the District Court denies the motion for a new trial [Noel] may file a motion to reopen this appeal." ECF No. 198, Exh. 1.

On August 5, 2016, the United States filed an opposition to Noel's motion for a new trial. On May 16, 2017, Noel filed his reply.

On July 28, 2017, the Court denied Noel's motion for a new trial. Noel has since reopened his appeal, which is currently pending at Docket Number 13-2042 in the Third Circuit.

With a pending appeal, Noel's judgment of conviction is not final under 28 U.S.C. § 2255. *See, e.g., Kapral v. United States*, 166 F.3d 565, 570 (3d Cir. 1999) ("[I]t is clear that 'final,' as used in § 2255, refers to the decision on direct review that 'precludes further controversy on the questions passed upon,' the one 'from which no appeal or writ of error can be taken.' We are persuaded that Congress intended this concept of finality to control petitions filed under § 2255's one-year limitations period."). Thus, the 2255 petition is premature and Noel must wait until the Third Circuit disposes of his direct appeal before pursuing any other available avenues for relief. *See, e.g., Reynolds v. Martinez*, 351 Fed. App'x 585, 586 (3d

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Cir. 2009) (finding that because petitioner was in the process of challenging the legality of his detention via direct appeal, and those claims were not yet resolved, his challenge to his conviction and sentence was premature); *United States v. Walker*, 330 Fed. App'x 335, 336 n.1 (3d Cir. 2009) (noting that the filing of a § 2255 motion would be premature while the direct appeal remains pending); *Norman v. Levi*, 305 Fed. App'x 820, 821 (3d Cir. 2009) (noting that a motion under § 2255 would be subject to dismissal as premature because it was filed prior to sentencing and direct appeal).

The premises considered, it is hereby

ORDERED that the 2255 petition docketed at ECF Number 176 is **DENIED**; and it is further

ORDERED that the Clerk of Court shall **CLOSE** Civil Case No. 3:14-94, the civil case associated with the 2255 petition.

s_____
Curtis V. Gómez
District Judge