

Appendix A

*AMENDED ALD-194

June 19, 2010

May 23, 2019

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **19-1572**

UNITED STATES OF AMERICA

VS.

MARCOS SANTIAGO, Appellant

(E.D. Pa. Crim. No. 2:03-cr-00157-001)

Present: MCKEE, SHWARTZ and BIBAS, Circuit Judges

Submitted are:

- (1) Appellant's motion for bail pursuant to Third Circuit L.A.R. 9.1;
- (2) Appellant's pro se brief (for informational purposes only);
- (3) Government's motion to be excused from filing a brief pursuant to Third Circuit L.A.R. 31.2, motion for summary action pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6, and opposition to Appellant's bail motion;
- (4) Appellant's response to Government's motion;
- (5) Appellant's amended response to Government's motion;
- (6) Appellant's motion to have his case reassigned to a District Judge sitting in the United States District Court for the Eastern District of Pennsylvania; and
- (7) ***Appellant's motion to expedite disposition of his bail motion**

in the above-captioned case.

Respectfully,

Clerk

ORDER

Appellant's motion to have the proceedings below reassigned to a District Judge sitting in the United States District Court for the Eastern District of Pennsylvania is denied, as he has failed to provide an adequate basis for such reassignment. Cf. Liteky v. United States, 510 U.S. 540, 555 (1994) (observing that "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion"). Appellant's motion for bail, made pursuant to 3d Cir. L.A.R. 9.1(b), is denied. The remedy of bail pending disposition of post-conviction claims should be granted only when the petitioner has raised "substantial constitutional claims upon which he has a high probability of success, and . . . when extraordinary or exceptional circumstances exist which make the grant of bail necessary to make the habeas remedy effective." Landano v. Rafferty, 970 F.2d 1230, 1239 (3d Cir. 1992) (citation omitted). We have previously observed that "[v]ery few cases have presented [such] extraordinary circumstances." Id.; see also Lucas v. Hadden, 790 F.2d 365, 367 (3d Cir. 1986). Appellant fails to satisfy the standard for bail. His "motion to answer Appellant's motion for bail without further delay," which is fairly construed as a motion to expedite consideration of the bail motion and which relies on an inapposite litigation position of the Government in an unrelated case, is thus denied as moot. Furthermore, the Government's motion for summary action is granted. We summarily affirm the order of the District Court entered January 24, 2019, because this appeal does not present a substantial question. See 3d Cir. L.A.R. 27.4 (2011); 3d Cir. I.O.P. 10.6 (2018). Appellant raises no colorable argument that the District Court erred in its analysis of the First Step Act of 2018, Pub. L. No. 115-391, December 21, 2018, 132 Stat. 5194, particularly as that analysis pertains to the explicit non-retroactivity language in § 403(b) applicable to inmates in Appellant's position. Finally, in light of our disposition, the Government's motion to be excused from filing a brief is granted.

By the Court,

s/Patty Shwartz
Circuit Judge

Dated: August 1, 2019
CJG/cc: David J. Ignall, Esq.
 Marcos Santiago

Appendix B

[Dkt. No. 324]

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARCOS F. SANTIAGO,

Defendant.

Case No. 03-cr-0157 (RMB)

ORDER

BUMB, United States District Judge:

Defendant Marcos Santiago has filed a motion under 18 U.S.C. § 3582(c)(1)(B) seeking a reduction in his sentence under Pub. L. No. 115-391, 132 Stat. 5194 (2018), enacted on December 21, 2018, ("First Step Act"). Because this Act does not provide the defendant any grounds for relief, the Court denies the motion.

On January 13, 2004, a grand jury in the Eastern District of Pennsylvania returned a second superseding indictment of Marcos Santiago ("Santiago" or "defendant"), charging him with one count of conspiracy to interfere with interstate commerce by robbery, in violation of 18 U.S.C. § 1951(a), three counts of interference with interstate commerce by robbery, in violation of 18 U.S.C. § 1951(a), three counts of possession of a firearm

in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(c), one count of carjacking, in violation of 18 U.S.C. § 2119, and two counts of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). After a jury trial, the defendant was convicted of all three counts of interference with interstate commerce by robbery, two counts of possessing a firearm in furtherance of a crime of violence, and two counts of being a felon in possession of a firearm. The jury acquitted defendant of one count of possessing a firearm in furtherance of a crime of violence and the single carjacking count. The District Court *sua sponte* dismissed, pursuant to Fed. R. Crim. P. 29, the charge of conspiracy to interfere with interstate commerce by robbery.

On February 16, 2005, the District Court imposed a sentence of 402 months imprisonment, which included a mandatory consecutive 25-year sentence for the second violation of section 924(c). The Court entered a final judgment on February 25, 2005. Defendant now seeks application of that portion of the First Step Act which provides that the mandatory consecutive 25-year penalty for a second or successive violation of 18 U.S.C. § 924(c) applies only where that violation "occurs after a prior conviction under this subsection has become final." First Step Act, § 403(a). Previously, the 25-year penalty for each successive 924(c) offense could be imposed in the same case as

the first offense, *Deal v. United States*, 508 U.S. 129 (1993), as occurred in this case.

Section 403(a) of the First Step Act, however, does not apply retroactively in this case. Retroactivity presents a question of Congressional intent. *See generally Dorsey v. United States*, 567 U.S. 260 (2012). In the ordinary course, it is presumed that a change to criminal penalties does not apply retroactively, unless Congress provides otherwise. *Id.* at 272. With respect to the change to Section 924(c), Congress stated its intent explicitly in Section 403(b): "This section, and the amendments made by this section, shall apply to any offense that was committed before the date of enactment of this Act, if a sentence for the offense has not been imposed as of such date of enactment." First Step Act, § 403(b). Given that the defendant was sentenced before December 21, 2018, the Act does not apply in this case and defendant is not entitled to the relief he seeks.

Accordingly,

IT IS ON THIS 24th day of January 2019 ORDERED that Defendant's motion is **DENIED**.

s/Renée Marie Bumb
RENÉE MARIE BUMB
UNITED STATES DISTRICT JUDGE