

Appendix

United States Court of Appeals For the First Circuit

No. 18-1445

UNITED STATES,

Appellee,

v.

MANUEL RODRIGUEZ-SANTANA,

Defendant, Appellant.

Before

Torruella, Lynch and Kayatta,
Circuit Judges.

JUDGMENT

Entered: June 24, 2019

Assuming but not deciding that the district court had jurisdiction to issue its order, entered on April 16, 2018, denying appellant's motion to dismiss the indictment, we grant the government's motion for summary disposition and affirm the district court order.

Affirmed.

By the Court:

Maria R. Hamilton, Clerk

cc:

Manuel Rodriguez-Santana
Timothy R. Henwood
Mariana E. Bauza Almonte
David Christian Bornstein

Appendix A4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

Crim. No. 95-236 (11) (DRD)

MANUEL RODRIGUEZ-SANTANA [11],

Defendants.

OMNIBUS OPINION & ORDER

INTRODUCTION

On January 24, 2018, Defendant Manuel Rodriguez-Santana ("Defendant") filed a *Motion to Dismiss for Lack of Jurisdiction Pursuant to Violation of the U.S. Constitution, Lack of Jurisdiction Art. II and III, Violation to the 4th Amendment and Rules 3-4 (F.R.C.P.), Violation to 5th Amendment Due Process, Six Amendment, so also as Equal Protection.* (Docket No. 728). Therein, Defendant avers that the Judgment (Docket No. 436) entered by this Court on March 25, 1999, violated various articles of the Constitution or laws of the United States, and for this reason, the District Court lacked federal subject matter jurisdiction to attend this matter. (Docket No. 728) The Defendant asserts the following: (i) the constitutional requirement of standing was not established, (ii) the Defendant's custody and indictment were achieved in violation of the "Take Care Clause" of U.S. Const. art. II, §3, (iii) the claim was unripe, (iv) there was no probable cause to arrest, (v) the Defendant's 5th amendment rights were violated, and (vi) there was no "case or controversy" as required by U.S. Const. art. III, §2. Essentially, the Defendant attempts to set forth various unrelated arguments alleging violations of the Constitution or laws of the U.S. to ultimately conclude that the Court in this case lacked federal subject matter jurisdiction and the judgment should be vacated accordingly.

Subsequently, on March 26, 2018, the Defendant filed another motion titled *Motion to Dismiss for lack of Jurisdiction and its Violation to the Constitution: Violation the Art. II Art II, 4th Amendment, 5th Amendment, Six*

Amendment. (Docket No. 731). This motion was filed two months after the motion previously described, and mimics almost the same arguments. In the second motion filed, the Defendant further avers that the record against the Defendant shows that the Drug Enforcement Administration did not comply with the standard of probable cause, and for this reason, the accusation must be dismissed for lack of jurisdiction. (Docket No. 731 at 3).

For the reasons set forth below, Defendant's motions at Docket Nos. 728 and 731 are **DENIED**.

ANALYSIS

The Defendant argues through his motions that all the alleged constitutional violations that occurred in this case deprived the Court of subject matter jurisdiction, and thus the Judgment in this case should be vacated accordingly. (Docket Nos. 728 and 731) The Court takes issues with the Defendant's arguments as 18 U.S.C.A. §3231 vests this District Court of the United States with jurisdiction of all offenses against the laws of the United States, such that no possible constitutional violation alleged by the Defendant would have the effect of depriving this Court of subject matter jurisdiction in the case at bar.

Subject matter jurisdiction refers to a court's power, whether constitutional or statutory, to adjudicate a case. United States v. Cotton, 535 U.S. 625, 630 (2002). Expressively, Congress has conferred the district courts of the United States with “[o]riginal jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.” 18 U.S.C.A. §3231. Accordingly, “[i]f an indictment or information alleges the violation of a crime set out ‘in Title 18 or in one of the other statutes defining federal crimes,’ that is the end of the jurisdictional inquiry.” (**emphasis ours**) U.S. v. George, 676 F.3d 246, 259 (1st Cir. 2012)(*citing U.S. v. González*, 311 F.3d 440, 442 (1st Cir. 2002)). Therefore, it can only be argued that a district court “lacks jurisdiction to enter a judgment of conviction when the indictment charges no offense under federal law.” United States v. Rosa-Ortiz, 348 UF.3d 33, 36 (1st Cir. 2003).

In the case at bar, the indictment charged the following offenses against the Defendant: (i) attempt and conspiracy to commit any offense, 21 U.S.C.A. §846, and (ii) importation of controlled substances, 21 U.S.C.A. §952. (Docket No. 22) Hence, the indictment in this case charged two different offenses set out in Title 21 of the United

States Code. Therefore, pursuant to 18 U.S.C.A. §3231, this District Court had subject matter jurisdiction to attend the Defendant's case.

In support of his request to nullify the Judgment, the Defendant argued that certain constitutional violations occurred. Even though the Defendant is a *pro se* litigant, and as such, the Court afforded his pleadings special consideration when evaluating his request, this Court cannot accurately determine by reading his motions how certain articles of the Constitution were allegedly violated or even how certain constitutional articles referred to by the Defendant are relevant in this case. See Haines v. Kerner, 404 U.S. 519, 520, (1972)(*pro se* complaint are "[held] to less stringent standards than formal pleadings drafted by lawyers.") Most importantly, the Defendant's motions lack facts to support the legal arguments he attempts to set forth. See Docket Nos. 728 and 731. To illustrate, both motions simply include excepts from books citing constitutional provisions without explaining the facts of the case that caused these alleged constitutional violations to occur. Id. Therefore, the Court finds that it is not in a position to entertain the Defendant's allegations because further factual development was necessary to support the Defendant's legal arguments. Nonetheless, the Court emphasizes that no possible constitutional violation would have deprived the Court in this case of subject matter jurisdiction because, as previously explained, the Court was vested with jurisdiction through 18 U.S.C.A. §3231.

Furthermore, the Court stresses that all of the Defendant's post-trial remedies available to vacate the Court's judgment are time-bared. First, the Defendant is unable to request the Court to vacate the Judgment and grant a new trial pursuant to Rule 33 of the Fed. R. Crim. P. because the rule provides that a motion for new trial based on newly discovered evidence must be filed within 3 years after the finding of guilty, or if the motion is based on any other reason, it must be filed within 14 days of finding of guilty. See F. R. Crim. P. 33. In the present case, the Court entered Judgment of guilty against Defendant on March 25, 1999. Docket No. 436. As such, both the 14 day term and the 3 year term to file a motion requesting the Court to vacate the judgment pursuant to Rule 33 of the Fed. R. Crim. P. have expired. Second, Rule 34 of the Fed. R. Crim. P. provides that upon the defendant's motion or on its own, the court must arrest judgement if the court does not have jurisdiction over the charged offense. This rule requires a

defendant to file a motion for arrest of judgment within 14 days after finding of guilty. Therefore, in the present case, the time limit for filing a motion to arrest judgment has also expired.

In sum, the Defendant argues through his motions to dismiss that the Court should void the Judgment for lack of subject matter jurisdiction because the Judgment violates the Constitution of the United States. See Docket Nos. 728 and 731. The Court determines that it has original subject matter jurisdiction of the two offenses charged against the Defendant pursuant to 18 U.S.C.A. §3231 because the Defendant was charged for offenses found under Title 21 of the United States Code. Moreover, even if the Defendant would have provided further factual assertions in his motions to support his legal conclusions that certain articles of the Constitution were allegedly violated, this would not change the Court's conclusion that there was subject matter jurisdiction over this case. Lastly, the Court finds that the Defendant is deprived from asserting any post-conviction requests to this Court to vacate the Judgement because all available remedies are time-bared.

CONCLUSION

For the reasons set forth above, the Court **DENIES** Defendant's *Motion to Dismiss for Lack of Jurisdiction Pursuant to Violation of the U.S. Constitution, Lack of Jurisdiction Art. II and III, Violation to the 4th Amendment and Rules 3-4 (F.R.C.P.), Violation to 5th Amendment Due Process, Six Amendment, so also as Equal Protection.* (Docket No. 728), and *Motion to Dismiss for lack of Jurisdiction and its Violation to the Constitution: Violation the Art. II Art II, 4th Amendment, 5th Amendment, Six Amendment.* (Docket No. 731).

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 16th day of April, 2018.

/s/ Daniel R. Dominguez
DANIEL R. DOMINGUEZ
U.S. DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MANUEL RODRIGUEZ-SANTANA,

Petitioner,

v.

Civil No. 16-2465 (DRD)

UNITED STATES OF AMERICA,

Respondent.

JUDGMENT

Pursuant to the Court's Order (Docket No. 5) granting the United States of America's Motion to Dismiss (Docket No. 4), the Court hereby enters a final judgment **DISMISSING THE INSTANT CASE WITHOUT PREJUDICE.**

THIS CASE IS NOW CLOSED FOR ALL ADMINISTRATIVE AND STATISTICAL PURPOSES.

IT IS SO ORDERED, ADJUDGED AND DECREED.

In San Juan, Puerto Rico this 3rd day of October, 2016.

/s/ *Daniel R. Dominguez*
Senior U.S. District Judge

UNITED STATES DISTRICT COURT

for the

District of Puerto Rico

United States of America

v.

MANUEL RODRIGUEZ-SANTANA

) 3:95-CR-236-011 (DRD)
) Case No: _____
) USM No: 01026-069
)
 Date of Original Judgment: 03/25/1999)
 Date of Previous Amended Judgment: _____)
 (Use Date of Last Amended Judgment if Any))
)
) Hector Ramos-Vega, AFPD
) Defendant's Attorney

**ORDER REGARDING MOTION FOR SENTENCE REDUCTION
PURSUANT TO 18 U.S.C. § 3582(c)(2)**

Upon motion of the defendant the Director of the Bureau of Prisons the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion, and taking into account the policy statement set forth at USSG §1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable,

IT IS ORDERED that the motion is:

DENIED. GRANTED and the defendant's previously imposed sentence of imprisonment (as reflected in the last judgment issued) of 360 months is reduced to 324 months

As to Count 1 & 3 to run concurrent with each other. The sentence imposed in CR-95-236 (DRD) is to run consecutively with term imposed in case 97-161 (JAF).

(Complete Parts I and II of Page 2 when motion is granted)

Except as otherwise provided, all provisions of the judgment dated 03/25/1999 shall remain in effect.

IT IS SO ORDERED.

Order Date: 10/05/2015

S/ Daniel R. Domínguez

Judge's signature

Effective Date: 11/01/2015
(if different from order date)

Daniel R. Domínguez, U.S. Senior District Judge

Printed name and title

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff

v.

MANUEL RODRIGUEZ-SANTANA (11)

Defendant

CRIMINAL NO. 95-236 (DRD)

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
RE: AMENDMENT 782

This is an initial determination as to eligibility for the drug reduction amendment promulgated by the United States Sentencing Commission under Amendment 782 to Policy Statement § 1B1.10(d).

After careful review of the defendant's presentence report, charging document(s), plea agreement (if any), judgment and statement of reasons, I recommend as follows:

[] The defendant is not eligible for a sentence reduction based on the following factor(s):

[] A. The guidelines range that applied in this case was not determined under one of the guidelines affected by the amendment (2D1.1, 2D1.2, 2D1.5, 2D1.6, 2D1.8, 2D1.10, 2D1.11, and 2D1.14), or the drug guideline was initially used but a cross reference to other guideline was

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3 triggered, resulting in a total offense level determined
4 based on the cross referenced guideline.

5 [] B. The defendant was sentenced to a statutory
6 mandated minimum imprisonment term. The defendant
7 did not comply with the safety valve provisions and did
8 not receive a reduction of his or her imprisonment term
9 based on a departure for substantial assistance or a Rule
35 motion subsequent to the original sentence.

10 [] C. The defendant's final and total base offense level
11 was derived from the career offender or the career criminal
12 guideline.

13 [] D. The base offense level was 43 or 38 based on
14 2D1.1(a)(1) or (2) as the defendant was convicted of a drug
15 violation and the offense of conviction established that death or
16 serious bodily injury resulted from the use of the substance and
17 the defendant committed the offense after one or more prior
convictions for a similar crime.

18 [] E. The base offense level was 12 or lower and the case
19 involved heroin, cocaine, cocaine base, PCP,
methamphetamine, amphetamine, LSD or fentanyl.

20 [] F. The base offense level was 8 or lower and the offense
21 involved flunitrazepam.

22 [] G. The base offense level was 6 or lower and the offense
23 involved marijuana, hashish, ketamine, Schedule I or II
24 Depressants, Schedule III Hydrocodone, Schedule III Substances
25 (other than Ketamine and Hydrocodone), Schedule IV Substances
(except flunitrazepam), or Schedule V Substances.

26 [] H. The Court determined the base offense level by using either
27 of the quantity tables at U.S.S.G. § 2D1.11 and the base offense level
28 was 12 or lower.

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4 Since a determination of ineligibility has been made, the matter is formally
5 submitted to the Presiding District Court Judge. The Federal Public Defender or
6 Defense Counsel has 10 days to object to the initial assessment of ineligibility.
7 After the 10-day period, and in the absence of an objection by defense counsel, the
8 Presiding District Court Judge may rule on the motion for reduction of sentence and
may adopt the recommendation of the Magistrate Judge.

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9 [X] The defendant may be eligible for a sentence reduction and therefore
10 the matter is referred to a United States District Judge. (The Presiding Judicial
11 Officer shall wait for the Parties' stipulation within 14 days, and if no stipulation is
12 reached within this term, to await for the United States Probation Office, the
Federal Public Defender and the Government's memoranda within 14 days
thereafter).

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14 Reasons for initial determination: A review of the record reveals that the
defendant does not fall under any of the above categories, paragraphs A through
15 H, and may be eligible for sentence reduction under the revised offense levels
16 found in the Drug Quantity Table in U.S.S.G. § 2D1.1.

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18 I therefore recommend that the motion for reduction of sentence (Docket
No. 714) be considered by the Court since the defendant may be eligible for
19 sentence reduction.

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21 At San Juan, Puerto Rico, this 9th day of September, 2015.

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S/JUSTO ARENAS
United States Magistrate Judge

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