

ELD-009

December 5, 2019

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. **19-2974**

UNITED STATES OF AMERICA

v.

PAUL N. LITTLES, Appellant

(M.D. Pa. Crim. No. 1-98-cr-00056-001)

Present: AMBRO, GREENAWAY, JR., and PORTER, Circuit Judges

Submitted is appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1) in the above-captioned case.

Respectfully,

Clerk

ORDER

Appellant's request for a certificate of appealability is denied because jurists of reason would not debate the District Court's denial of his motion under 28 U.S.C. § 2255. See 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 484 (2000). In particular, jurists of reason would not debate the District Court's ruling that appellant's § 2255 motion is untimely under United States v. Green, 898 F.3d 315 (3d Cir. 2018), cert. denied, 139 S. Ct. 1590 (2019).

By the Court,

s/Thomas L. Ambro,

Circuit Judge

Dated: January 6, 2020
MB/cc: Eric Pfisterer, Esq.
Quin M. Sorenson, Esq.



A True Copy:

Patricia A. Dodszeit

Patricia S. Dodszeit, Clerk
Certified Order Issued in Lieu of Mandate

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

UNITED STATES OF AMERICA	:	Crim. No. 1:98-cr-056
	:	
	:	
v.	:	
	:	
	:	
PAUL N. LITTLES	:	Judge Sylvia H. Rambo

ORDER

AND NOW, this 3rd day of September, 2019, upon remand by the Third Circuit Court of Appeals to determine whether a certificate of appealability shall issue (Doc. 181), **IT IS HEREBY ORDERED** that a certificate of appealability shall not issue as the defendant has failed to demonstrate “a substantial showing of the denial of a constitutional right,” 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003).

s/Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

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

UNITED STATES OF AMERICA	:	Crim. No. 1:98-cr-056
	:	
	:	
v.	:	
	:	
	:	
PAUL N. LITTLES	:	Judge Sylvia H. Rambo

ORDER

Before the court is Paul N. Littles' motion to vacate pursuant to 28 U.S.C. § 2255 in which Littles seeks to file a successive motion challenging his designation as a career offender under the guidelines based on the United States Supreme Court holding in *Johnson* that the residual clause in the Armed Career Criminal Act is unconstitutionally vague. (Doc. 163.) In its opposition to the motion, the Government argues that this court must dismiss Littles' motion because the Third Circuit recently held that a motion raising a *Johnson* challenge to a sentence imposed under the mandatory guidelines is untimely. *United States v. Green*, 898 F.3d 315 (3d Cir. 2018), cert. denied, 139 S. Ct. 1590 (2019). Littles has filed a reply stating that he agrees this court is bound by the decision in *Green* with respect to his motion. (Doc. 177.) Accordingly, **IT IS HEREBY ORDERED** that the motion is **DENIED**.

s/Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: June 27, 2019

IN THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

IN RE:	:	
MOTION OF PAUL LITTLES	:	No.
UNDER 28 U.S.C. § 2244 FOR	:	
PERMISSION TO FILE A SECOND	:	
OR SUCCESSIVE APPLICATION	:	
FOR RELIEF UNDER 28 U.S.C. § 2255	:	

**MOTION UNDER 28 U.S.C. § 2244 FOR ORDER
AUTHORIZING DISTRICT COURT TO CONSIDER SECOND
OR SUCCESSIVE APPLICATION FOR RELIEF UNDER
28 U.S.C. § 2255 AND *JOHNSON v. UNITED STATES*, 135 S. Ct. 2251 (2015)**

Paul Littles, through undersigned counsel, moves under 28 U.S.C. § 2244(b)(3) and L.A.R. 22.5 for permission to file the proposed second or successive application for relief, which is attached as Exhibit 1, based on *Johnson v. United States*, 135 S. Ct. 2251 (2015), and in support states the following:

RELEVANT PROCEDURAL HISTORY

1. On July 21, 1998, a jury sitting in the Middle District of Pennsylvania found Mr. Littles guilty of in violation of conspiracy to distribute and possess with intent to distribute heroin, in violation of 21 U.S.C. § 846, and of distribution and possession with intent to distribute heroin, in violation of 21 U.S.C. § 841(a). *See* Docket 1:98-CR-0056, Middle District of Pennsylvania, attached as Exhibit 2.

2. A Presentence Report was prepared and, although the predicate offenses were not identified, the Probation Office determined that Mr. Littles was a career offender.

3. Mr. Littles had two prior adult convictions for robbery in Philadelphia County and a prior conviction for a controlled substance offense that received criminal history points.

4. Mr. Littles' guideline range was set at 360 months to life.

5. On January 15, 1999, the District Court adopted the Presentence Report and sentenced Mr. Littles, as a career offender, to 360 months.

6. Mr. Littles is currently incarcerated at the Federal Correctional Institution at Schuylkill.

7. On January 19, 1999, Mr. Littles filed a direct appeal to this Honorable Court, which was docketed at 99-7044.

8. On April 5, 2000, this Honorable Court affirmed the District Court. *See United States v. Littles*, 208 F.3d 207 (3d Cir. 2000) (Table).

9. On September 4, 2001, Mr. Littles filed his first motion pursuant to 28 U.S.C. § 2255. *See* Exhibit 2, Docket Entry 90.¹

¹ Local Appellate Rule 22.5(a)(2) requires copies of all prior petitions under 28 U.S.C. § 2255 to accompany this application; however, this particular document has not been scanned or imaged for access by the Clerk's Office for the United States District Court for the Middle District of Pennsylvania and may only be located in archives.

10. On November 7, 2001, the District Court dismissed Mr. Littles' motion and declined to issue a certificate of appealability. *See* Exhibit 3.

11. On January 2, 2002, Mr. Littles filed an appeal to this Honorable Court, which was docketed at 02-1170.

12. On May 29, 2003, this Court issued an order denying his request for a certificate of appealability.

13. On November 3, 2003, the United States Supreme Court denied Mr. Littles' petition for writ of *certiorari*.

14. On January 20, 2006, Mr. Littles filed his second motion pursuant to 28 U.S.C. § 2255. *See* Exhibit 4.

15. On January 24, 2006, the District Court denied Mr. Littles' second motion and declined to issue a certificate of appealability. *See* Exhibit 5.

16. On November 15, 2007, Mr. Littles filed his third motion pursuant to 28 U.S.C. § 2255. *See* Exhibit 6.

17. On November 20, 2007, the District Court directed the clerk to forward Mr. Littles' *pro se* motion to the Court of Appeals. *See* Exhibit 7.

18. Mr. Littles' successive motion was docketed at 07-4340.

19. By Order of June 19, 2008, this Court denied Mr. Littles' application for leave to file a second or successive motion under 18 U.S.C. § 2255.

20. On September 17, 2008, Mr. Littles filed a *pro se* motion styled “Motion to Dismiss for Lack of Territorial and Subject Matter Jurisdiction” with the District Court. *See* Exhibit 8.

21. On September 18, 2008, the District Court issued a Memorandum and Order treating Mr. Littles’ *pro se* filing as one filed pursuant to 28 U.S.C. § 2255, dismissing the motion and declining to issue a certificate of appealability. *See* Exhibit 9.

22. On January 20, 2015, Mr. Littles filed a *pro se* document styled “28 U.S.C. § 2255(F)(3)(4)(1) Substantial Change of Law Alternative Petition for Writ of Coram Nobis; and Alternative Petition for a Writ of Audita Querela Alternative Petition for Relief Under 28 U.S.C. 2241.” *See* Exhibit 10.

23. By Memorandum and Order filed January 23, 2015, the District Court dismissed the *pro se* motion for lack of jurisdiction and declined to issue a certificate of appealability. *See* Exhibits 11 & 12.

24. On March 30, 2016, Mr. Littles filed a *pro se* document regarding *Johnson*. *See* Exhibit 13.

25. On March 30, 2016, the Federal Public Defender’s Office was appointed to represent Mr. Littles and, on March 31, 2016, counsel moved to hold his *pro se* filing in abeyance.

26. By Order of April 4, 2016, the District Court granted such motion. *See* Exhibit 14.

27. Because Mr. Littles previously filed a motion pursuant to Section 2255, Mr. Littles seeks permission from this Court to file a second or successive motion pursuant to 28 U.S.C. § 2255(h).

28. Mr. Littles seeks to challenge his designation as a career offender based on the United States Supreme Court's holding in *Johnson* that the residual clause in the Armed Career Criminal Act (ACCA) is unconstitutionally vague.

29. Following *Johnson*, as explained more fully in the attached proposed 28 U.S.C. § 2255 Motion, the predicate convictions are no longer crimes of violence. *See* Exhibit 1.

ARGUMENT

I. Movant meets the standard for filing a successive motion

30. This Court should authorize a second or successive motion where the movant makes a *prima facie* showing that it “contain[s] . . . a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court that was previously unavailable.” 28 U.S.C. § 2255(h)(2).

31. A *prima facie* showing “in this context merely means a sufficient showing of possible merit to warrant a fuller exploration by the district court.” *In*

re Pendleton, 732 F.3d 280, 282 (3d Cir. 2013)(internal quotation and citations omitted).

32. Mr. Littles need not definitively prove in this application that he is entitled to relief under *Johnson*. Rather, he need only show that *Johnson* created “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.” *Pendleton*, 732 F.3d at 282.

33. Mr. Littles makes a *prima facie* showing that he meets the gatekeeping requirements of Section 2255(h)(2) because: (1) *Johnson* is a new rule of constitutional law that was previously unavailable; (2) the rule is substantive and thus retroactive to cases on collateral review; and (3) the rule is substantive and the Supreme Court has “made” it retroactive.

34. On June 26, 2015, the United States Supreme Court issued its decision in *Johnson v. United States*, 135 S. Ct. 2251 (2015), holding that the residual clause in the Armed Career Criminal Act is unconstitutionally vague and increasing a defendant’s sentence under the residual clause violates due process of law. *Id.* at 2557.

35. The Court held the residual clause “vague in all its applications” and overruled its contrary decisions in *James v. United States*, 550 U.S. 192 (2007) and *Sykes v. United States*, 131 S. Ct. 2267 (2011). *See Johnson*, 135 S. Ct. at 2561-63.

36. The residual clause in the ACCA is identical to the residual clause in the career offender provision of the United States Sentencing Guidelines. U.S.S.G. § 4B1.2(a)(2).

37. This Court has consistently relied on cases interpreting the ACCA's residual clause to inform decisions relating to the identically worded residual clause in the guidelines. *See United States v. Marrero*, 743 F.3d 389, 394 n.2 (3d Cir. 2014)(citing *Hopkins v. United States*, 555 U.S. 1132 (2009)).

38. Indeed, after *Johnson*, the Supreme Court granted *certiorari*, vacated and remanded the sentences of several career offenders who were sentenced under the residual clause of the sentencing guidelines. *See, e.g., Jones v. United States*, 135 S. Ct. 2944 (June 30, 2015)(remanded to this Court for further consideration in light of *Johnson*).

39. The rule announced in *Johnson* is a “new” rule that is “substantive.” *Schriro v. Summerlin*, 542 U.S. 348, 351 (2004); *Teague v. Lane*, 489 U.S. 288 (1988); *In re Watkins*, 810 F.3d 375 (6th Cir. 2015).

40. No pre-*Johnson* precedent dictated that the residual clause was unconstitutionally vague.

41. To the contrary, pre-*Johnson* the Supreme Court expressly rejected the argument that the residual clause was unconstitutionally vague. *James*, 550 U.S. at 210 n.6; *Sykes*, 131 S. Ct. at 2277.

42. In *Johnson*, the Supreme Court explicitly overruled its prior decisions in *James* and *Sykes*. *Johnson*, 135 S. Ct. at 2563.

43. “The explicit overruling of an earlier holding no doubt creates a new rule.” *Whorton v. Bockting*, 549 U.S. 406, 416 (2007)(quoting *Saffle v. Parks*, 494 U.S. 484, 488 (1990)).

44. The rule in *Johnson* is one of constitutional law because it rests on the notice requirement of the Due Process Clause. *See Johnson*, 135 S. Ct. at 2563 (“imposing an increased sentence under the residual clause of the [ACCA] violates the Constitution’s guarantee of due process.”).

45. Several circuit Courts of Appeal agree that *Johnson* is a new rule of constitutional law. *In re Watkins*, 810 F.3d 375, 379 (6th Cir. 2015); *In re Williams*, 806 F.3d 322, 324 & n.6 (5th Cir. 2015); *Pakala v. United States*, 804 F.3d 139, 139-40 (1st Cir. 2015); *In re Gieswein*, 802 F.3d 1143, 1146 (10th Cir. 2015); *In re Rivero*, 797 F.3d 986, 989 (11th Cir. 2015); *Price v. United States*, 795 F.3d 731, 732-33 (7th Cir. 2015).

46. The rule in *Johnson* was “previously unavailable” because it was issued after Mr. Little was sentenced on January 15, 1999, and after he pursued his first motion to vacate in 2001. *See In re Turner*, 267 F.3d 225, 228 (3d Cir. 2001)(new rule was “previously unavailable” because it was announced more than a year after first § 2255 motion was decided).

47. Pre-*Johnson* any successive collateral attack on this basis would have been futile. *See, e.g., United States v. Blair*, 734 F.3d 218, 223 (3d Cir. 2013)(rejecting argument that residual clause is unconstitutionally vague as foreclosed by binding Supreme Court and Circuit precedent); *United States v. Gibbs*, 656 F.3d 180, 188-89 (3d Cir. 2011)(rejecting “fair notice” argument and holding that the residual clause is not unconstitutionally vague); *see also Price*, 795 F.3d at 733 (“Until *Johnson* was decided, any successive collateral attack would have been futile.”).

48. This Court must give retroactive effect to new substantive rules of constitutional law. *Teague v. Lane*, 489 U.S. 288 (1989); *Montgomery v. Louisiana*, 136 S. Ct. 718, 729-30 (2016).

49. The rule announced in *Johnson* is substantive because it forbids criminal punishment of certain primary conduct or prohibits a certain category of punishment for a class of defendants because of their status or offense. *Montgomery*, 136 S. Ct. at 732.

50. The Supreme Court has “made” *Johnson* retroactive “through multiple holdings that logically dictate the retroactivity of the new rule.” *Tyler v. Cain*, 533 U.S. 656, 668 (2001)(O’Connor, J., concurring).

51. Nevertheless, the circuits are divided on the question of retroactivity and the Supreme Court granted *certiorari* in *Welch v. United States*, No. 15-6418, a first 28 U.S.C. § 2255 case, to address whether *Johnson* is retroactive.

II. Movant's Motion is Timely

52. Section 2255(f)(3) of Title 28 of the United States Code, 28 U.S.C. § 2255(f)(3), establishes a one-year statute of limitations for a motion to vacate, set aside or correct the sentence based upon a “right [that] has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review” with such period commencing upon “the date on which the right asserted was initially recognized by the Supreme Court.”

53. Because *Johnson* was decided on June 26, 2015, this Motion is timely.

54. Mr. Littles recognizes that a decision from the Supreme Court with regard to the retroactivity of *Johnson* is pending, *Welch v. United States*, No. 15-6418; however, because Mr. Littles' motion is based on *Johnson*, to meet the statute of limitations in Section 2255(f)(3), Mr. Littles is required to file his motion prior to June 26, 2016. *See Dodd v. United States*, 545 U.S. 353, 357 (2005)(finding that the one-year limitation period runs from the date on which the Supreme Court initially recognized the right asserted, not from the date on which the right asserted was made retroactively applicable to cases on collateral review).

III. Conclusion

55. Pursuant to Section 2244(b)(3)(C), Mr. Littles has made a timely *prima facie* showing that his application satisfies the requirements set forth in Section 2255(h)(2) and he has made a “sufficient showing of possible merit to warrant a fuller exploration by the district court.”

56. His proposed motion to vacate, demonstrating that he is entitled to relief, is attached in accordance with Local Appellate Rule 22.5. *See* Exhibit 1.

WHEREFORE, the Movant requests that this Court grant him permission to file the attached successive motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255 in the District Court in the Middle District of Pennsylvania.

Respectfully Submitted,

/s/ Frederick W. Ulrich

FREDERICK W. ULRICH, ESQ.

Asst. Federal Public Defender

100 Chestnut Street, Suite 306

Harrisburg, PA 17101

717-782-2237

Attorney for Movant,

Paul Littles

Date: April 7, 2016

CERTIFICATE OF SERVICE

I, Frederick W. Ulrich, Esquire, of the Federal Public Defender's Office, certify that I caused to be served on this date a hard copy of the attached Motion under 28 U.S.C. § 2244 For Order Authorizing District Court to Consider Second or Successive Application for Relief Under 28 U.S.C. § 2255 and *Johnson v. United States*, 135 S. Ct. 2251 (2015) via Electronic Case Filing, and/or by placing a copy in the United States mail, first class in Harrisburg, Pennsylvania, and/or by hand delivery, addressed to the following:

ERIC PFISTERER, ESQUIRE
Assistant United States Attorney
228 Walnut Street, Room 220
Harrisburg, PA 17101

MR. PAUL LITTLES

/s/ Frederick W. Ulrich
FREDERICK W. ULRICH, ESQ.
Asst. Federal Public Defender

Date: April 7, 2016

IN THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

IN RE:	:	
MOTION OF PAUL LITTLES	:	No.
UNDER 28 U.S.C. § 2244 FOR	:	
PERMISSION TO FILE A SECOND	:	
OR SUCCESSIVE APPLICATION	:	
FOR RELIEF UNDER 28 U.S.C. § 2255	:	

LIST OF EXHIBITS

1. Proposed Motion to Vacate or Correct Sentence Pursuant to 28 U.S.C. § 2255.
2. *United States v. Paul Littles*, Docket for Case No. 1:98-CR-0056, U.S. District Court for the Middle District of Pennsylvania.
3. Memorandum and Order dated November 7, 2001, by U.S. District Judge Sylvia Rambo dismissing *pro se* motion under 28 U.S.C. § 2255.
4. *Pro se* Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by Person in Federal Custody filed January 20, 2006.
5. Memorandum and Order dated January 24, 2006, by U.S. District Judge Sylvia Rambo denying *pro se* motion under 28 U.S.C. § 2255.
6. *Pro se* Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by Person in Federal Custody filed November 15, 2007.
7. Order dated November 20, 2007, by U.S. District Judge Sylvia Rambo directing Clerk to forward *pro se* motion to Court of Appeals.
8. *Pro se* Motion to Dismiss for Lack of Territorial and Subject Matter Jurisdiction filed September 27, 2008.

9. Memorandum and Order dated September 18, 2008, by U.S. District Judge Sylvia Rambo treating the *pro se* motion filed September 27, 2008, as a motion under 28 U.S.C. § 2255 and denying the motion.
10. *Pro se* Motion “28 U.S.C. § 2255(F)(3)(4)(1) Substantial Change of Law Alternative Petition for Writ of Coram Nobis; and Alternative Petition for a Writ of Audita Querela Alternative Petition for Relief Under 28 U.S.C. 2241” filed January 20, 2015.
11. Memorandum dated January 23, 2015, by U.S. District Judge Sylvia Rambo dismissing the *pro se* motion filed January 20, 2015.
12. Order dated January 23, 2015, by U.S. District Judge Sylvia Rambo dismissing the *pro se* motion filed January 20, 2015
13. *Pro se* document regarding *Johnson* filed March 30, 2016.
14. Order dated April 4, 2016, by U.S. District Judge Rambo granting the motion to hold the *pro se* filing in abeyance.

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

UNITED STATES OF AMERICA	:	1:98-CR-0056
	:	
v.	:	(Judge Rambo)
	:	
PAUL LITTLES	:	(Electronically Filed)

MOTION TO CORRECT SENTENCE
UNDER 28 U.S.C. § 2255

Petitioner, Paul Littles, through undersigned counsel, Melinda C. Ghilardi, Esquire, First Assistant Federal Public Defender, respectfully files this motion to vacate and correct his sentence pursuant to 28 U.S.C. § 2255 in light of *Johnson v. United States*, 135 S. Ct. 2551 (June 26, 2015).¹

Procedural and Factual Background

On July 21, 1998, a jury sitting in the Middle District of Pennsylvania found Mr. Littles guilty of conspiracy to distribute and possess with intent to distribute heroin in violation of 21 U.S.C. § 846 and distribution and possession with intent to distribute heroin in violation of 21 U.S.C. § 841(a). A Presentence Report was

¹ On November 6, 2015, Chief Judge Christopher C. Conner issued Standing Order 15-06 to appoint the Federal Public Defender's Office to represent all criminal defendants who were previously sentenced in the Middle District of Pennsylvania who may be eligible to seek a reduced sentence based upon the application of *Johnson* and to seek any sentencing relief for such persons by filing for federal habeas relief under 28 U.S.C. § 2255 or 28 U.S.C. § 2241 in light of *Johnson* and by presenting any petitions, motions or applications relating thereto to the Court for disposition.

prepared. Mr. Littles was determined to be a career offender. (PSR ¶ 28).

Although the particular predicate offenses were not identified in the Presentence Report, Mr. Littles had two prior adult convictions for robbery in Philadelphia County and a prior conviction of a controlled substance offense which received criminal history points. (PSR ¶¶ 32, 33 & 38). Within the Presentence Report, Mr. Littles' sentencing guideline range was determined to be 360 months to life based on a total offense level of 37 and a criminal history category of VI. (PSR ¶ 74). Without the career offender enhancement and following Amendment 782 to the United States Sentencing Commission Guidelines Manual, it is estimated that Mr. Littles' sentencing guideline range would be reduced to 262 to 327 months based on an offense level of 34 and a criminal history category of VI.

On January 15, 1999, this Court adopted the Presentence Report and sentenced Mr. Littles, as a career offender, to 360 months. Mr. Littles is now serving his sentence at the Federal Correctional Institution at Schuylkill.

On January 19, 1999, Mr. Littles filed a direct appeal. (Doc. 60). On March 31, 2000, the United States Court of Appeals for the Third Circuit affirmed the judgment. (Doc. 81).

Mr. Littles argues that in light of *Johnson* he is not a career offender, he was prejudiced by the career offender status due to his longer sentence and his sentence

violates due process of law. He respectfully requests that this Court grant this motion, vacate his sentence, and resentence him without reference to the career offender provision.²

Basis for 28 U.S.C. § 2255 Relief

I. The Supreme Court’s Decision in *Johnson* is Applicable to Mr. Littles Who Was Determined to Be a Career Offender Based on the Residual Clause of the Definition of Crime of Violence Within the Sentencing Guidelines.

On June 26, 2015, the Supreme Court declared that the residual clause of the Armed Career Criminal Act (ACCA), which defines “violent felony” as including an offense that “otherwise involves conduct that presents a serious potential risk of physical injury to another,” is “unconstitutionally vague.” *Johnson*, 135 S. Ct. at 2557. The Court reasoned that the “indeterminacy of the wide-ranging inquiry required by the residual clause both denies fair notice to defendants and invites arbitrary enforcement by judges.” *Id.* Thus, “[i]ncreasing a defendant’s sentence under the [residual] clause denies due process of law.” *Id.* The Court held the residual clause “vague in all its applications” and overruled its contrary decisions

² Because Mr. Littles has previously sought relief under 28 U.S.C. § 2255, he has filed in the Court of Appeals for the Third Circuit an Application to File a Successive Motion to raise the within *Johnson* claim. *See* 28 U.S.C. § 2255(h); 28 U.S.C. § 2244(b)(3)(C). This Motion has been attached as Exhibit 1 to that Application.

in *James v. United States*, 550 U.S. 192 (2007) and *Sykes v. United States*, 131 S. Ct. 2267 (2011). 135 S. Ct. at 2561-63.

The career offender provision in the United States Sentencing Guidelines currently includes a residual clause identical to the residual clause in the ACCA. U.S.S.G. § 4B1.2(a)(2). To qualify as a career offender under the sentencing guidelines, a defendant must, *inter alia*, have two prior felony convictions of either a crime of violence or a controlled substance offense. U.S.S.G. § 4B1.1(a). A crime of violence is defined as:

any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that—

- (1) has an element the use, attempted use, or threatened use of physical force against the person of another, or
- (2) is burglary of a dwelling, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.

U.S.S.G. § 4B1.2(a).

Although *Johnson* addressed the residual clause in the ACCA, the decision also applies to the definition of crime of violence set forth in the sentencing guidelines. The United States Court of Appeals for the Third Circuit has consistently relied on cases interpreting the ACCA's residual clause to inform decisions relating to the identically worded residual clause in the guidelines. *See United States v. Marrero*, 743 F.3d 389, 394 n.2 (3d Cir. 2014)(citing *Hopkins v.*

United States, 555 U.S. 1132 (2009)). Recently, in a case involving the direct appeal of a career offender, the Third Circuit vacated the sentence and remanded for resentencing in light of *Johnson* noting, in an unpublished opinion, that authority interpreting the residual clause in the ACCA is generally applied to the identical language in the career offender enhancement. *United States v. Townsend*, ___ F. App'x ___, 2015 WL 9311394, *4 (3d Cir. 2015).³

Further, the United States Sentencing Commission proposed amendments to the career offender guideline which were informed by *Johnson*. On January 8, 2016, the Sentencing Commission released a proposed amendment to the definition of “crime of violence” within U.S.S.G. § 4B1.2(a) and if no action is taken by Congress, it will become effective on August 1, 2016.⁴ The amendment deletes the residual clause and revises the list of enumerated offenses.⁵

³ The Court further noted that the defendant’s prior Pennsylvania conviction for attempting to elude a police officer is not a crime of violence following *Johnson* and sentencing the defendant under the career offender provision was error. In addition, the government conceded that the defendant should be resentenced.

⁴ The Sentencing Reform Act requires the Sentencing Commission to “submit to Congress amendments to the guidelines” at least six months before their effective date, and provides that Congress may modify or disapprove such amendments before their effective date. 28 U.S.C. § 994(p).

⁵ With respect to the enumerated offenses, the proposed amendment eliminates burglary of a dwelling and adds murder, voluntary manslaughter, kidnapping,

II. In Light of *Johnson*, Mr. Littles’ Prior Pennsylvania Convictions for Robbery Are No Longer Crimes of Violence.

Following *Johnson*, the residual clause may not serve as a legal basis for finding that Mr. Littles has been convicted of a crime of violence. To qualify as a crime of violence, the crime must either have as an element the use, attempted use, or threatened use of physical force against the person of another or the elements of the crime must match the generic enumerated crimes of burglary of a dwelling, arson, extortion or crimes involving explosives. U.S.S.G. § 4B1.2(a).⁶

With regard to the force clause, the United States Supreme Court defined “physical force” under the identical ACCA force clause to mean “*violent* force—that is, force capable of causing physical pain or injury to another person.”

Johnson v. United States, 559 U.S. 133, 140 (2010)(emphasis in original). The Court noted that the word “violent” connotes a substantial degree of force and

aggravated assault, a forcible sex offense, robbery and use or unlawful possession of a firearm described in 26 U.S.C. § 5845(a) or explosive material as defined in 18 U.S.C. § 841(c). See www.ussc.gov.

⁶ The additional offenses listed in Application Note 1 to Section 4B1.2 do not survive *Johnson*. See *United States v. Stinson*, 508 U.S. 36, 43-45 (1993) (recognizing that commentary that does not interpret or explain any existing text of a guideline is invalid and commentary that is inconsistent with or a plainly erroneous reading of the existing text must be disregarded in favor of the text).

using the adjective “violent” to modify the word “felony,” clearly suggested “strong physical force.” *Id.*

Mr. Littles was identified as a career offender within his Presentence Report based on two prior convictions for robbery in Pennsylvania and a controlled substance offense.⁷ (PSR ¶¶ 32, 33 & 38). In 1976 and 1992, he was convicted of robbery in Philadelphia County. At the time of his offense, the applicable Pennsylvania statute provided:

- (1) A person is guilty of robbery if, in the course of committing a theft, he:
 - (i) inflicts serious bodily injury upon another;
 - (ii) threatens another with or intentionally puts him in fear of immediate serious bodily injury;
 - (iii) commits or threatens immediately to commit any felony of the first or second degree;
 - (iv) inflicts bodily injury upon another or threatens another with or intentionally puts him in fear of immediate bodily injury; or
 - (v) physically takes or removes property from the person of another by force however slight.

18 Pa. C.S. § 3701(a)(1) (effective June 6, 1973 to May 16, 2010).⁸ The grading subsection provided that “[r]obbery under subsection (a)(1)(iv) is a felony of the

⁷ Mr. Littles’ conviction of a controlled substance offense, (PSR ¶ 38), is not at issue here.

⁸ Today this particular portion of the statute remains the same. A subsection has been added regarding removing money from a financial institution and the grading has been amended to include robbery of a controlled substance or designer drug. 18 Pa. C.S. § 2701 (effective February 21, 2014).

second degree; robbery under subsection (a)(1)(v) is a felony of the third degree; otherwise, it is a felony of the first degree.” 18 Pa. C.S. § 3701(b).

At the time that Mr. Littles was sentenced in 1999, Third Circuit precedent directed that “any conviction for robbery under the Pennsylvania robbery statute, regardless of the degree, has as an element the use of force against the person of another.” *United States v. Cornish*, 103 F.3d 302, 309 (3d Cir. 1997)(finding specifically that subsection (a)(1)(v) proscribing robbery by force however slight qualified as a violent felony). Long after Mr. Littles was sentenced and after the Supreme Court’s *Johnson* decision in 2010, the Third Circuit, in an unpublished opinion, realized that every subsection of the robbery statute did not necessarily satisfy the force clause. *See United States v. Hollins*, 514 F. App’x 264, 267 (3d Cir. 2013)(finding that robbery by force however slight under subsection (a)(1)(v) fails to qualify as a crime of violence under the force clause but does qualify under the residual clause).

In another case involving the Pennsylvania robbery statute, the Third Circuit concluded that the statute is “obviously” a divisible statute, meaning that the statute sets forth alternative elements, permitting application of the modified categorical approach to determine which set of elements formed the basis of the conviction. *United States v. Blair*, 734 F.3d 218, 225 (3d Cir. 2013)(citing

Descamps v. United States, 133 S. Ct. 2276 (2013)). When a statute is divisible, a court is permitted to apply the modified categorical approach to determine which subsection formed the basis of the conviction. *Descamps*, 133 S. Ct. at 2285.

In this case, no records were presented to show which subsection of the robbery statute formed the basis of Mr. Littles' conviction. Therefore, the conviction would only qualify as a predicate offense if the least of the acts in the statute satisfied the force clause. *Johnson*, 559 U.S. at 137; *Moncrieffe v. Holder*, 133 S. Ct. 1678, 1684 (2013). In this case, the Third Circuit has held that robbery involving force however slight as set forth in subsection (a)(1)(v) does not satisfy the force clause. *Hollins*, 514 F. App'x at 267. Moreover, subsection (a)(1)(iii) which involves the commission or threat immediately to commit any felony of the first or second degree does not satisfy the force clause, because not all first or second degree felonies in Pennsylvania have force as an element. Consequently, Mr. Littles' prior convictions for robbery under Pennsylvania law cannot be used as predicate offenses following *Johnson*.⁹

⁹ Even if the government is permitted at resentencing to produce approved documents pursuant to *Shepard v. United States*, 544 U.S. 13 (2005) to show the particular subsection of the robbery statute to which Mr. Littles was convicted, Mr. Littles reserves the right to supplement his argument with regard to the particular subsection and to raise any applicable argument following the decision of the United States Supreme Court in *Mathis v. United States*, No. 15-6092 (cert.

III. Mr. Littles Is Entitled to Resentencing Pursuant to 28 U.S.C. § 2255.

A. Mr. Littles' Erroneous Career Offender Sentence Was Imposed "In Violation of the Constitution or Laws of the United States" and Violates Due Process, Warranting Relief Under 28 U.S.C. § 2255.

A federal prisoner may move to “vacate, set aside or correct” his sentence if it “was imposed in violation of the Constitution or laws of the United States.” 28 U.S.C. § 2255(a). In *Johnson*, the United States Supreme Court held that “[i]ncreasing a defendant’s sentence under the [residual] clause denies due process of law.” 135 S. Ct. at 2557. As set forth above, *Johnson*’s constitutional holding regarding the ACCA’s residual clause applies equally to the identically worded residual clause in the career offender provision of the sentencing guidelines. *See Marrero*, 743 F.3d at 394 n.2 (noting that cases analyzing the sentencing enhancements under the ACCA “bind” the analysis under similar sections of the sentencing guidelines).

granted Jan. 19, 2016, argument scheduled for April 26, 2016). In *Mathis*, the Court is expected to decide whether the modified categorical approach may be used whenever there is an “or” between the methods of committing the offense or whether it may be used only when those methods are actually elements.

At the time of his sentencing Mr. Littles was determined to be a career offender based on prior convictions which no longer qualify as “crimes of violence.” Thus, his career offender sentence is now in violation of the Constitution of the United States and violates due process pursuant to *Johnson*. Mr. Littles is prejudiced by the longer sentence than he would have received absent application of the career offender provision. His claim for relief is cognizable under the plain language of 18 U.S.C. § 2255(a). *See United States v. Doe*, 810 F.3d 132 (3d Cir. 2015)(finding a claim under *Begay v. United States*, 535 U.S. 137 (2008) involving the mandatory sentencing guidelines is cognizable in a motion to vacate sentence under 28 U.S.C. § 2255); *see also United States v. Maurer*, 639 F.3d 72 (3d Cir. 2011)(permitting a vagueness challenge to the sentencing guidelines pre-*Johnson*).

B. The Rule Announced in *Johnson* Applies Retroactively on Collateral Review.

A Supreme Court decision applies retroactively to cases on collateral review if it announces a “new” rule that is “substantive.” *Schriro v. Summerlin*, 542 U.S. 348, 351 (2004); *Teague v. Lane*, 489 U.S. 288 (1989). The rule announced in *Johnson* satisfies both requirements. *See In re Watkins*, 810 F.3d 375 (6th Cir. 2015).

The rule announced in *Johnson* is “new” because the Court explicitly overruled its prior decisions in *James v. United States*, 550 U.S. 192 (2007) and *Sykes v. United States*, 131 S. Ct. 2267 (2011), in which it had affirmed sentences imposed under the residual clause and declined to find the clause unconstitutionally vague. *See Johnson*, 135 S. Ct. at 2563 (“Our contrary holdings in *James* and *Sykes* are overruled.”); *Watkins*, 810 F.3d at 380. “The explicit overruling of an earlier holding no doubt creates a new rule.” *Whorton v. Bockting*, 549 U.S. 406, 416 (2007)(quoting *Saffle v. Parks*, 494 U.S. 484, 488 (1990)).

The rule announced in *Johnson* is “substantive” because it “narrow[s] the scope of a criminal statute by interpreting its terms.” *Schriro*, 524 U.S. at 353 (citing *Bousley v. United States*, 523 U.S. 614, 620-21 (1998)). Further, it “alters the range of conduct or the class of persons that the law punishes.” *Schriro*, 514 U.S. at 353 (citing *Bousley*, 523 at 620-21, and *Saffle*, 494 U.S. at 495). “A substantive rule. . . , forbids ‘criminal punishment of certain primary conduct’ or prohibits ‘a certain category of punishment for a class of defendants because of their status or offense.’” *Montgomery v. Louisiana*, 136 S. Ct. 718, 732 (2016) (citations omitted). The *Johnson* rule is substantive because it “decides the meaning of a criminal statute enacted by Congress,” *Bousley*, 523 U.S. at 620, and

it “prohibit[s] a certain category of punishment for a class of defendants because of their status or offense.” *Saffle*, 494 U.S. at 494. *See also Watkins*, 810 F.3d at 383 (finding that there is no escaping the logical conclusion that the Supreme Court itself made *Johnson* categorically retroactive to cases on collateral review and quoting *Price v. United States*, 795 F.3d 731, 734 (7th Cir. 2015)).¹⁰

C. Mr. Littles’ Claim is Timely.

A motion to vacate, set aside or correct a sentence is subject to a one-year limitations period. 28 U.S.C. § 2255(f)(1). A federal prisoner must file his motion within one year from the date on which (1) the judgment became final; (2) the government created impediment to filing the motion was removed; (3) the United States Supreme Court initially recognized the right asserted and made it retroactively applicable to cases on collateral review; or (4) the petitioner could have discovered, through due diligence the factual predicate for the motion. The United States Supreme Court decided *Johnson* on June 26, 2015, recognizing a

¹⁰ The United States Supreme Court recently granted *certiorari* in an ACCA case to address the retroactivity of *Johnson*. *Welch v. United States*, ___ U.S. ___, No. 15-6418, 2016 WL 90594 (Jan. 8, 2016)(argued March 30, 2016).

new rule that is substantive and that is retroactive to cases on collateral review.

Mr. Littles is filing his motion within one year of that date.¹¹

Conclusion

Mr. Littles is entitled to relief under Section 2255 because, in light of *Johnson*, his sentence violates due process of law. This Court should vacate his erroneous career offender sentence and re-sentence him without application of the career offender provision of U.S.S.G. § 4B1.1.

Respectfully submitted,

Date: _____

s/Melinda C. Ghilardi

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Attorney for Paul Littles

¹¹ In April, 2016, Mr. Littles submitted to the Third Circuit Court of Appeals his application to file a successive motion under 28 U.S.C. § 2255 to raise the within Johnson claim. See 28 U.S.C. § 2255(h); 28 U.S.C. § 2244(b)(3)(C).

CERTIFICATE OF SERVICE

I, Melinda C. Ghilardi, First Assistant Federal Public Defender, do hereby certify that the **Motion to Correct Sentence Under 28 U.S.C. § 2255**, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing:

Eric Pfisterer, Esquire
Assistant United States Attorney

and by placing the same in the United States Mail, first class in Scranton, Pennsylvania, addressed to the following:

Mr. Paul Littles

Date: _____

s/Melinda C. Ghilardi

Melinda C. Ghilardi, Esquire
First Assistant Federal Public Defender

CLOSED,JOHNSON

**United States District Court
Middle District of Pennsylvania (Harrisburg)
CRIMINAL DOCKET FOR CASE #: 1:98-cr-00056-SHR-1**

Case title: USA v. Littles
Related Case: [1:07-cv-02087-SHR](#)

Date Filed: 03/17/1998
Date Terminated: 01/15/1999

Assigned to: Honorable Sylvia H.
Rambo

Appeals court case numbers: 00-3039,
11-1840 Third Circuit, 11-4220 Third
Circuit, 12-2192 Third Circuit, 12-2461
Third Circuit, 99-7044

Defendant (1)

Paul N. Littles
TERMINATED: 01/15/1999

represented by **Paul N. Littles**
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TERMINATED: 01/15/1999
LEAD ATTORNEY
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Designation: Public Defender or
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Pending Counts

21:846 CONSPIRACY TO
 DISTRIBUTE CONTROLLED
 SUBSTANCE (HEROIN)
 (1)

21:841(a) and 18:2 CONTROLLED
 SUBSTANCE - SELL, DISTRIBUTE,
 OR DISPENSE; AID AND ABET
 (2)

Disposition

Imprisonment 360 months on each of
 Cts. 1 & 2 to run concurrently w/each
 other & consecutively to revocation
 sentence from Dauphin Co. # 2951-92;
 Supervised release 10 years; Special
 assessment \$100 each count total \$200;
 Fine \$12 00 each count total \$2400.

Imprisonment 360 months on each of
 Cts. 1 & 2 to run concurrently w/each
 other & consecutively to revocation
 sentence from Dauphin Co. # 2951-92;
 Supervised release 10 years; Special
 assessment \$100 each count total \$200;
 Fine \$12 00 each count total \$2400.

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Disposition

Highest Offense Level (Terminated)

None

Complaints

None

Disposition

Plaintiff

USA

represented by **Eric Pfisterer**
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 Harrisburg, PA 17108
 717-221-4482
 Email: Eric.Pfisterer@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/17/1998	1	INDICTMENT by USA Eric Pfisterer. Counts filed against Paul N. Littles (1) count(s) 1, 2 (cc: dft, USA, counsel, USM, USP, Crt) (pr) (Entered: 03/18/1998)
03/17/1998	2	ORDER by Judge Sylvia H. Rambo sealing as to Paul N. Littles (cc: dft, USA, counsel, USM, USP, Court) (pr) (Entered: 03/18/1998)
03/18/1998		REMARK - copy dkt to Judge Rambo. (pr) (Entered: 03/18/1998)
03/18/1998	3	MOTION for pretrial detention by USA as to Paul N. Littles. (c/s) (seal) (Entered: 03/19/1998)
03/19/1998	4	PETITION for Writ of Habeus Corpus by USA- to produce deft on 4/14/98 from SCI Coal Twp. AND (seal) (Entered: 03/20/1998)
03/19/1998	5	WRIT ISSUED by Mag. Judge J. A. Smyser: directing deft to be transported by the USM on 4/14/98 from SCI Coal Twp. (3 cert. copies to USM; Prob; PFD/Standby cnsl.) (seal) (Entered: 03/20/1998)
04/14/1998	6	MINUTE SHEET: before Mag. Judge J. A. Smyser first appearance of Paul N. Littles; Attorney Thomas A. Thornton present; dft arraigned; not guilty plea entered; dft does not oppose detn but reserves right to review when released from state custody 8/98. CTR: M.Zamiska (seal) (Entered: 04/17/1998)
04/14/1998	7	CJA Form 23 (Financial Affidavit) as to Paul N. Littles (seal) (Entered: 04/17/1998)
04/14/1998	8	ORDER by Mag. Judge J. A. Smyser appointing Federal Public Defender for defendant Paul N. Littles (cc: dft, FPD) (seal) (Entered: 04/17/1998)
04/14/1998	9	PLEA of not guilty by defendant Paul N. Littles. (seal) (Entered: 04/17/1998)
04/14/1998	10	ORDER by Mag. Judge J. A. Smyser granting motion for pretrial detention [3-1] (cc: dft, USA, counsel, USM, USP, Court) (seal) (Entered: 04/17/1998)
04/14/1998	11	ORDER by Mag. Judge J. A. Smyser j/s & trial set 6/22/98, 9:30; add'l scheduling order will be entered by District Ct. (cc: dft, USA, counsel, Ct.Rptr, Ct.Dpty, USM, USP, Court) (seal) (Entered: 04/17/1998)
04/14/1998	12	PRETRIAL ORDER by Judge Sylvia H. Rambo pretrial motions due 5/4/98 jury selection and jury trial set 6/22/98, 9:30 as to Paul N. Littles (cc: dft, USA, counsel, Court) (seal) (Entered: 04/17/1998)
04/17/1998	13	WRIT returned executed on dft 4/14/98. (seal) (Entered: 04/21/1998)
04/24/1998	14	MOTION to extend time until 5/11/98 to file pretrial motions by defendant Paul N. Littles (seal) (Entered: 04/28/1998)
04/27/1998	15	ORDER by Judge Sylvia H. Rambo granting motion to extend time until 5/11/98 to file pretrial motions [14-1] pretrial motions due 5/11/98 as to Paul N. Littles (cc: dft, USA, counsel, Court) (seal) (Entered: 04/29/1998)
04/29/1998	16	

		ENVELOPE RETURNED as addressed to deft Littles sent to Dauphin Co. Prison containing docus. [12-2], [11-1], [10-1], [9-1], [8-1] returned marked, "Return to Sender". Documents re-mailed to SCI Coal Twp. (Inmate #CB-0663) on 5/1. (seal) Modified on 05/01/1998 (Entered: 05/01/1998)
05/01/1998	17	ENVELOPE returned [15-2] addressed to dft @ DCP marked addressee unknown. (seal) (Entered: 05/04/1998)
05/11/1998	18	MOTION to compel govt to confirm or deny existence of evidence... by defendant Paul N. Littles (seal) (Entered: 05/12/1998)
05/11/1998	19	BRIEF/MEMORANDUM by defendant Paul N. Littles in support of motion to compel govt to confirm or deny existence of evidence... [18-1] (seal) (Entered: 05/12/1998)
05/13/1998	20	ORDER by Judge Sylvia H. Rambo granting motion to compel govt to confirm or deny existence of evidence...w/in 10 days of the date of this order. [18-1] (cc: dft, USA, counsel, Court) (seal) (Entered: 05/18/1998)
05/28/1998	21	MOTION to continue j/s & trial until 7/98. by defendant Paul N. Littles (seal) (Entered: 05/29/1998)
05/28/1998	22	ORDER by Judge Sylvia H. Rambo granting motion to continue j/s & trial until 7/98 [21-1] and finding ends of justice are served by granting continuance as to Paul N. Littles , jury selection and jury trial cont'd to 7/13/98, 9:00. (cc: dft, USA, Ct.Rptr, Ct.dpty, counsel, USM, USP, Court) (seal) (Entered: 05/29/1998)
06/26/1998	23	MOTION to continue j/s & trial until 7/20/98 by defendant Paul N. Littles (seal) (Entered: 06/26/1998)
06/29/1998	24	ORDER by Judge Sylvia H. Rambo granting motion to continue j/s & trial until 7/20/98 [23-1] and finding ends of justice are served by granting continuance as to Paul N. Littles , jury selection and jury trial cont'd to 7/20/98, 9:00 as to Paul N. Littles (cc: dft, Ct.Rptr, Ct.dpty, USA, counsel, USM, USP, Court) (seal) (Entered: 06/29/1998)
07/01/1998	25	PETITION for Writ of Habeas Corpus by USA (seal) (Entered: 07/02/1998)
07/02/1998	25	WRIT issued by Judge Sylvia H. Rambo directing warden, SCI-Coal Twp. to produce dft 7/20/98, 9:00 for trial. (cc: USA. 3 cert. copies to USM) (seal) Modified on 07/02/1998 (Entered: 07/02/1998)
07/10/1998	26	ORDER by Judge Sylvia H. Rambo unsealing as to Paul N. Littles (cc: dft, USA, counsel, USM, USP, Court) (seal) Modified on 07/10/1998 (Entered: 07/10/1998)
07/14/1998	27	REQUEST for specific Voir Dire questions by defendant Paul N. Littles (pr) (Entered: 07/14/1998)
07/14/1998	28	PETITION for Writ of Habeas Corpus by USA as to J.Reitz. (pr) (Entered: 07/15/1998)
07/14/1998	28	

		WRIT issued by Judge Sylvia H. Rambo directing warden, DCP to produce J.Reitz 7/20/98, 9:00 to testify o/b/o govt. (cc: USA, 3 cert. copies to USM) (pr) (Entered: 07/15/1998)
07/17/1998	29	INFORMATION CHARGING PRIOR OFFENSES filed by USA (pr) (Entered: 07/21/1998)
07/20/1998	30	MINUTE SHEET: J/S & trial before Judge Sylvia H. Rambo Dft Paul Littles present w/cnsl; prosp. jurors sworn; 31 called; 16 peremptory challenges; 1 excused for cause; 12 jurors & 2 alternates selected and sworn. Opening statements made; govt calls witnesses. Ct. adjourned until 9:30 7/21/98. CTR: V.Fox (pr) (Entered: 07/22/1998)
07/20/1998	31	JURY List (pr) (Entered: 07/22/1998)
07/20/1998	32	PROPOSED Jury Instructions by plaintiff USA (pr) (Entered: 07/22/1998)
07/21/1998	33	PROPOSED Jury Instructions by defendant Paul N. Littles (pr) (Entered: 07/22/1998)
07/21/1998	34	MINUTE SHEET: 2nd day of trial before Judge Sylvia H. Rambo Govt witnesses continue; govt rests. Dft calls witness & rests. Cnsl close. Jury charged & retires to deliberate @ 2:45; verdict of guilty on both counts ret'd @ 3:20 p.m. Dft advised of motions deadline & appeal rights. Dft moves for judgment of acquittal which is denied. CTR: V.Fox as to Paul N. Littles (pr) (Entered: 07/22/1998)
07/21/1998	35	VERDICT of jury as to Paul N. Littles finding defendant(s) guilty on Counts 1 and 2. (pr) (Entered: 07/22/1998)
07/21/1998	36	EXHIBIT list by plaintiff USA. (pr) (Entered: 07/22/1998)
07/21/1998	37	Acknowledgement by AUSA Pfisterer of receipt of govt exhibits from trial. (pr) (Entered: 07/22/1998)
07/21/1998	38	EXHIBIT list by defendant Paul N. Littles, w/attachment. (pr) (Entered: 07/22/1998)
07/29/1998	39	WRIT returned executed on dft 7/20-21/98; ret'd to SCI-Camp Hill. (pr) (Entered: 07/31/1998)
07/29/1998	40	WRIT returned executed on J.Reitz 7/20/98 & ret'd to DCP. (pr) (Entered: 07/31/1998)
09/28/1998	41	MOTION for leave to file post-trial motions nunc pro tunc by defendant Paul N. Littles (pr) (Entered: 09/29/1998)
09/29/1998	42	NOTICE of non-waiver to presentence report by defendant Paul N. Littles (pr) (Entered: 09/29/1998)
09/29/1998	43	ORDER by Judge Sylvia H. Rambo denying dft's motion for leave to file post-trial motions nunc pro tunc [41-1] (cc: dft, USA, counsel, Court) (pr) (Entered: 09/30/1998)
10/28/1998	44	MOTION to compel govt to produce witnesses and evidence at sentencing by defendant Paul N. Littles. (DOCUMENT STRICKEN PER ORDER DATED

		11/4/98- RETURNED TO DEFT THAT DATE) (pr) Modified on 11/17/1998 (Entered: 10/29/1998)
11/02/1998	45	MOTION for return of seized property by defendant Paul N. Littles(This document STRICKEN per order dated 11/4/98- docu. returned to deft on 11/4/98) (pr) Modified on 11/17/1998 (Entered: 11/02/1998)
11/02/1998	46	MOTION to proceed in forma pauperis by defendant Paul N. Littles- this document stricken by order dated 11/4/98 & returned to deft on that date. (pr) Modified on 11/17/1998 (Entered: 11/02/1998)
11/04/1998	47	ORDER -by Judge Sylvia H. Rambo: Deft's motions filed pro se are hereby stricken & the clerk is directed to return them to deft: 1)striking motion to proceed in forma pauperis [46-1]; 2) striking motion for return of seized property [45-1]; 3) striking motion to compel govt to produce witnesses and evidence at sentencing [44-1]- See order. (cc: Ct;USA; Deft w/ docus. 45, 46 & 44; AFD) dft, USA, counsel, USM, USP, Court) (js) (Entered: 11/08/1998)
11/16/1998	48	MOTION for subpoenas for witnesses to attend sentencing by defendant Paul N. Littles (pr) (Entered: 11/16/1998)
11/20/1998	49	RESPONSE by plaintiff USA to [48-1] dft's motion for subpoenas for witness to attend sentencing. (pr) (Entered: 11/20/1998)
12/01/1998	50	REPLY by defendant Paul N. Littles re [48-1] (pr) (Entered: 12/01/1998)
12/03/1998	51	ORDER by Judge Sylvia H. Rambo granting motion for subpoenas for witnesses to attend sentencing [48-1] sentencing set 1/15/99, 9:30 as to Paul N. Littles (cc: Ct.Rptr, Ct.Dpty, dft, USA, counsel, USM, USP, Court) (pr) (Entered: 12/04/1998)
01/07/1999	52	PETITION for Writ of Habeas Corpus by USA (pr) (Entered: 01/11/1999)
01/07/1999	52	WRIT issued by Judge Sylvia H. Rambo directing warden, SCI-Coal to produce dft 1/15/99, 9:30 for sentencing. (cc: USA, 3 cert. copies to USM) (pr) Modified on 01/11/1999 (Entered: 01/11/1999)
01/07/1999	53	PETITION for Writ of Habeas Corpus by USA (pr) (Entered: 01/11/1999)
01/07/1999	53	WRIT issued by Judge Sylvia H. Rambo directing warden, DCP to produce H.Reyes 1/15/99, 9:30 to testify o/b/o govt. (cc: USA, 3 cert. copies to USM) (pr) (Entered: 01/11/1999)
01/07/1999	54	PETITION for Writ of Habeas Corpus by USA (pr) (Entered: 01/11/1999)
01/07/1999	54	WRIT issued by Judge Sylvia H. Rambo directing warden, SCI-Muncy to produce J.Reitz 1/15/99, 9:30 to testify o/b/o govt. (cc: USA, 3 cert. copies to USM) (pr) (Entered: 01/11/1999)
01/15/1999	55	MOTION acquittal; arrest of judgment , and/or motion re: ineffective assistance of cnsl by defendant Paul N. Littles (pr) (Entered: 01/19/1999)
01/15/1999	56	ORDER by Judge Sylvia H. Rambo striking motion acquittal; [55-1] striking motion arrest of judgment [55-2] striking motion motion re: ineffective

		assistance of cnsl [55-3] (cc: dft, USA, counsel, USM, USP, Court) (pr) (Entered: 01/19/1999)
01/15/1999	57	JUDGMENT and Commitment by Judge Sylvia H. Rambo sentencing Paul N. Littles (1) count(s) 1, 2 . Imprisonment 360 months on each of Cts. 1 & 2 to run concurrently w/each other & consecutively to revocation sentence from Dauphin Co. # 2951-92; Supervised release 10 years; Special assessment \$100 each count total \$200; Fine \$1200 each count total \$2400. Case terminated; terminated party Paul N. Littles. (cc: dft, USA, counsel, USM (3), USP, BFP, Terruso, Financial, Security, Court) (pr) (Entered: 01/19/1999)
01/15/1999	58	MINUTE SHEET: sentencing and hearing held before Judge Sylvia H. Rambo. Dft present w/cnsl. Witnesses called. Sentence imposed. See J&C. CTR: V.Fox as to Paul N. Littles (pr) (Entered: 01/22/1999)
01/15/1999	59	EXHIBIT list by plaintiff USA w/attachments. (pr) Modified on 02/12/1999 (Entered: 01/22/1999)
01/19/1999	60	NOTICE of Appeal by defendant Paul N. Littles to USCA of judgment imposaed 1/15/99. [57-3] (cc: dft, USA, counsel, Ct.rptr, Ct, USP, USCA - w/cc of dkt, jgmt, and 1st trans ltr (pr) (Entered: 01/22/1999)
01/22/1999		REMARK - case file moved to Hbg criminal appeal section. (pr) Modified on 01/26/1999 (Entered: 01/22/1999)
01/28/1999	61	WRIT returned executed on dft; ret'd to SCI-CH 1/15/99. (pr) (Entered: 01/28/1999)
01/28/1999	62	WRIT returned executed as to H.Reyes; ret'd to DCI 1/15/99. (pr) (Entered: 01/28/1999)
02/01/1999	63	NOTIFICATION by Circuit Court of Appellate Docket Number and of dkting dft's 1/19/99 appeal on 1/28/99 @ USCA Number: 99-7044 (pr) (Entered: 02/02/1999)
02/05/1999	64	PETITION for Writ of Habeas Corpus by USA (pr) (Entered: 02/05/1999)
02/08/1999	65	TRANSCRIPT Purchase Order for dates: 7/20/98, 7/21/98, 1/15/99 by defendant Paul N. Littles (pr) (Entered: 02/09/1999)
02/11/1999	66	TRANSCRIPT of Sentencing held on 1/15/99, for defendant Paul N. Littles CTR: V. Fox (pc) (Entered: 02/12/1999)
02/11/1999	67	TRANSCRIPT of Jury Selection and Openings held on July 20, 1998, for defendant Paul N. Littles CTR: V. Fox (pc) (Entered: 02/12/1999)
02/11/1999	68	TRANSCRIPT of Proceedings of Jury Trial held on July 20, 1998, vol. 1, for defendant Paul N. Littles CTR: V. Fox (pc) Modified on 02/12/1999 (Entered: 02/12/1999)
02/11/1999	69	TRANSCRIPT of Proceedings of Jury Trial held on July 21, 1998, vol. 2, for defendant Paul N. Littles CTR: V. Fox (pc) Modified on 02/12/1999 (Entered: 02/12/1999)
03/19/1999	70	

		STENO NOTES - of defendant Paul N. Littles's 7/20-7/21/98 jury sel. & jury trial. CTR: Fox (NOTES PLACED IN BOX HN-101) (COMPLETELY TRANSCRIBED) (am) Modified on 03/19/1999 (Entered: 03/19/1999)
04/16/1999	71	JUDGMENT and Commitment returned executed 4/8/99 w/delivery of dft to FCI-Ray Brook. (pr) (Entered: 04/21/1999)
08/16/1999		DISTRICT COURT RECORD COMPLETE FOR PURPOSES OF APPEAL. Cert. list in lieu of record sent to USCA w/cert copy of dkt sht, 2nd trans. ltr & ackn. copy. (pr) (Entered: 08/16/1999)
08/23/1999	72	ACKNOWLEDGEMENT - by USCA of receipt of cert. list in lieu of reocrd on 8/20/99. (pr) (Entered: 08/25/1999)
11/15/1999	73	MOTION for return of property by defendant Paul N. Littles. C/S. (pc) Modified on 12/02/1999 (Entered: 11/15/1999)
12/02/1999	74	ORDER by Judge Sylvia H. Rambo directing Dft to submit a brief in support of motion to return property on or before 12/16/99 or motion will be deemed withdrawn. (cc: dft, USA, Court) (pc) (Entered: 12/02/1999)
12/16/1999	75	BRIEF/MEMORANDUM by defendant Paul N. Littles in support of motion for return of property [73-1]. C/S. (pc) (Entered: 12/16/1999)
12/22/1999	76	RESPONSE by plaintiff USA to Little's motion for return of property [73-1] (pc) (Entered: 12/22/1999)
12/23/1999	77	ORDER by Judge Sylvia H. Rambo denying motion for return of property [73-1] (cc: dft, USA, counsel, USM, USP, Court) (pr) (Entered: 12/23/1999)
01/10/2000	78	NOTICE of Appeal by defendant Paul N. Littles of order dated 12/23/99 [77-1] (cc: dft, USA, counsel, USM, USP, Ct, Vicki, USCA- w/cc of dkt, order, and 1st trans ltr (pc) (Entered: 01/10/2000)
01/25/2000	79	NOTIFICATION by Circuit Court of of docketing of Little's 1/10/00 Appeal on 1/19/00; USCA Number: 00-3039 (pc) (Entered: 01/26/2000)
03/13/2000		Record on appeal transmitted to Circuit w/trans ltr. and 1 cert copy of dkt and 1 uncert copy. (pc) (Entered: 03/13/2000)
03/16/2000	80	Acknowledgement Received from USCA of receipt of actual record on 3/14/00. (seal) (Entered: 03/17/2000)
04/05/2000	81	ORDER from USCA affirming the decision of the District Court [60-1] as to Littles' appeal USCA #99-7704. (cc: Ct) (pc) (Entered: 04/06/2000)
06/20/2000	82	ORDER from USCA granting IFP and NOT dismissing appeal for lack of jurisdiction. (cc: Ct) (pc) (Entered: 06/20/2000)
07/07/2000	83	STENO NOTES/TAPE - of defendant Paul N. Littles's 4/14/98 arraign. & 1/15/99 sentencing hrg. (transcribed) CTR: Zamiska/Fox (NOTES PLACED IN BOX HN-120) (am) (Entered: 07/07/2000)
07/14/2000	84	ORDER from USCA directing Littles to pay filing fee in installments to be subtracted by the Warden. (cc: Ct) (pc) (Entered: 07/17/2000)

10/02/2000	85	VOUCHER - showing \$29,86 rec'd from Paul Littles towards his appeal fee, per USCA order dated 7/14/00. (pr) (Entered: 10/25/2000)
01/22/2001	86	RECEIPT Receipt #: 133091 Amount: \$10 From: US Treasury for Paul Littles Purpose: partial appeal fee (pc) (Entered: 01/22/2001)
02/16/2001	87	RECEIPT Receipt #: 133302 Amount: 10.00 From: US Treasury for Paul Littles Purpose: partial appeal fee (pc) (Entered: 02/22/2001)
03/12/2001	88	RECEIPT Receipt #: 133470 Amount: \$10.00 From: Paul Littles Purpose: appeal fee (pc) (Entered: 03/12/2001)
05/18/2001	89	ORDER from USCA affirming the decision of the District Court [78-1] (pc) (Entered: 05/18/2001)
09/04/2001	90	MOTION to vacate sentence pursuant to 2255 by defendant Paul N. Littles (pc) (Entered: 09/20/2001)
09/26/2001	91	ADM ORDER by Judge Sylvia H. Rambo re: 28:2255 motion; dft granted 30 days to inform ct if he wants his motion ruled on as filed or w/draw w/o prej. to file complete motion. (cc: dft, USA, Court) (pr) (Entered: 09/27/2001)
10/09/2001	92	NOTICE of ELECTION to rule on 28:2255 mtn as filed by defendant Paul N. Littles (pr) (Entered: 10/09/2001)
10/10/2001	93	ORDER by Judge Sylvia H. Rambo: 1) Clerk of court shall serve the US with a copy of this order and the petn. 2) Resps shall show cause w/i (20) days of this order why the pet'r should not be granted h/c relief. 3) A determination whether or not the pet'r should be produced for a hearing will be held in abeyance pending the filing of a response. 4) The pet'r shall, file a reply to the response withing (15) days of its filing if he so desires. (cc: dft, USA with petn) (ma) (Entered: 10/12/2001)
10/18/2001	94	BRIEF (entitled "Response") by plaintiff USA in opposition of motion to vacate sentence pursuant to 2255 [90-1]. C/S (pr) Modified on 10/31/2001 (Entered: 10/23/2001)
10/29/2001	95	MOTION for leave to expand the record w/in a petition for writ of habeas corpus by defendant Paul N. Littles; C/S (pm) (Entered: 11/01/2001)
10/29/2001	96	BRIEF/MEMORANDUM by defendant Paul N. Littles in support of motion for leave to expand the record w/in a petition for writ of habeas corpus [95-1] (pm) (Entered: 11/01/2001)
10/29/2001	97	AFFIDAVIT of Paul Littles in support of mtn for leave to expand the record w/in a petition for writ of habeas corpus. [95-1] (pm) (Entered: 11/01/2001)
10/29/2001	98	DOCUMENT-Appendix in support of mtn for writ of habeas corpus and submitted under rule 7(b) governing 2255 proceedings filed by defendant Paul N. Littles (pm) (Entered: 11/01/2001)
11/07/2001	<u>99</u>	MEMORANDUM AND ORDER by Judge Sylvia H. Rambo DENYING Littles's mtn to vacate sent [90-1]; Littles's mtn to expand the record [91-1] is DENIED; court declines to issue a cert. of appeal. Clrk to close civil stat. case (cc: dft, Ct, orig to security in hbg vault) (ma) (Entered: 11/08/2001)

01/02/2002	100	NOTICE of Appeal by defendant Paul N. Littles to USCA of order dated 11/7/01. [99-1] (cc: dft, USA, Ct.Rptr, Ct, USP, e-mailed to USCA w/1st trans ltr.. (pr) Modified on 01/15/2002 (Entered: 01/15/2002)
01/09/2002	101	MOTION for reconsideration of 11/7/01 order by defendant Paul N. Littles. C/s (pr) (Entered: 01/15/2002)
01/09/2002	102	AFFIDAVIT of defendant Paul N. Littles re [101-1], re [99-1] (pr) (Entered: 01/15/2002)
01/09/2002	103	BRIEF/MEMORANDUM by defendant Paul N. Littles in support of motion for reconsideration of 11/7/01 order [101-1] (pr) (Entered: 01/15/2002)
01/09/2002	104	MOTION for leave to stay notice of appeal by defendant Paul N. Littles (pr) (Entered: 01/15/2002)
01/17/2002	105	ORDER by Judge Sylvia H. Rambo: 1) Petr. shall send a copu of the front page of the docket sheet he received in December. 2) A verified stmnt from whom petr. recv'd the mem and order dated 11/7/01 indicating how the mem and order was obtained. (cc: dft, USA, Court) (ma) (Entered: 01/18/2002)
01/17/2002	106	ORDER by Judge Sylvia H. Rambo GRANTING Littles's mtn for lv to stay notice of appeal [104-1] (cc: dft, USA, Court) (ma) (Entered: 01/18/2002)
02/04/2002	107	RESPONSE by defendant Paul N. Littles to cts administrative order dtd. 1/17/02 [105-1] (pm) (Entered: 02/04/2002)
02/07/2002	108	MEMORANDUM AND ORDER by Judge Sylvia H. Rambo DENYING Littles' motion for reconsideration of 11/7/01 order [101-1]; court declines to issue a cert. of appeal. (cc: dft, USA, counsel, USM, USP, Ct) (ma) (Entered: 02/07/2002)
02/08/2002		DISTRICT COURT RECORD COMPLETE FOR PURPOSES OF APPEAL. Actual record forwarded to USCA (per Nicole's request; record is too voluminous to be scanned) w/1 cert & 1 uncert copy of dkt entries, 2nd trans. ltr. (seal) (Entered: 02/08/2002)
02/20/2002	109	Acknowledgement Received by USCA; rec'd actual record on 2/12/02. (pr) (Entered: 02/20/2002)
06/03/2003	110	ORDER of USCA (certified copy) dtd. 5/29/03 as to dft Paul N. Littles- Submitted are appellants request for certificate of appealability;appellants memo of law, appellants documents Leave to Submit a second supplement of appellants application for certificate of appealability. Appellants mtn for leve to supplement application for cert of appealability and for leave to submit a second supplement is granted. Foregoing request for cert of appealability is denied. DC conclusion that appellants claims are meritless is not debatable among jurist of reason. 100 (pm) (Entered: 06/06/2003)
10/01/2003	111	Letter dtd. 9/17/03 from Clerk, Supreme Ct of US Office of the Clerk to Clerk, US Court of Appeals for the 3rd Circuit regarding petition for writ of certiorari in the above case was filed on 9/6/03 and placed on the docket 9/16/03 as No. 03-6400. (pm,) (Entered: 10/02/2003)
10/01/2003	112	

		Letter dtd. 9/17/03 from Clerk, Supreme Ct of the US Office of the Clerk to Clerk, US Ct of Appeals re the application for an extension of time to file petition for writ of certiorari in above casehas been presented to Justice Souter, who on 9/17/03 extnd time to and including 10/26/03. (pm,) (Entered: 10/02/2003)
01/20/2006	113	MOTION to Vacate under 28 U.S.C. 2255 (Civil Action 06-155) by Paul N. Littles. (pm,) (Entered: 01/20/2006)
01/24/2006	114	MEMORANDUM AND ORDER denying Motion to Vacate (2255) 113 as to Paul N. Littles (1). Signed by Judge Sylvia H. Rambo on 01/24/06. (ma,) (Entered: 01/24/2006)
11/15/2007	115	MOTION to Vacate under 28 U.S.C. 2255 by dft Paul N. Littles. (kjn) Civil case 1:07-cv-2087 opened. (Entered: 11/15/2007)
11/15/2007	116	MOTION under 28 USC 2244 for Order Authorizing District Court to Consider Second or Successive Application for Relief Under 28 USC 2255 by dft Paul N. Littles. (kjn) (Entered: 11/15/2007)
11/15/2007	117	MEMORANDUM /BRIEF IN SUPPORT by dft Paul N. Littles re 116 MOTION for Authorization to File a Second or Successive Application. Brief in Opposition due by 12/3/2007. (kjn) (Entered: 11/15/2007)
11/20/2007	118	ORDER - re: successive petition pursuant to 115 28 U.S.C. 2255 filed by Paul N. Littles. This court is without jurisdiction to consider the petition. IT IS HEREBY ORDERED THAT the Clerk of Court shall forward to the Third Circuit Court of Appeals the documents filed by Paul N. Littles on November 15, 2007 and close the matter in this court. Signed by Judge Sylvia H. Rambo on November 20, 2007. (kjn) (Entered: 11/20/2007)
01/11/2008	119	DOCUMENT FILED Titled "Forwarding the Record" (Originals forwarded to Third Circuit Court of Appeals 1/11/08). (Attachments: # 1 Document Titled "Record on Appeal")(kjn) (Entered: 01/11/2008)
01/30/2008	120	MEMORANDUM of Law In Support of Motion Pursuant to 28 U.S.C. 1915 by dft Paul N. Littles. (Attachments: # 1 Exhibit(s) A)(kjn) (Entered: 01/30/2008)
01/30/2008		Transmitted Supplemental Record on Appeal as to Paul N. Littles re 120 Memorandum. Documents and Docket Sheet available through ECF. The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (kjn) (Entered: 01/30/2008)
01/31/2008	121	ORDER as to Paul N. Littles: the clerk of courtshall provide to Defendant copies of documents needed by Plaintiff in support of hismotion to file a second or successive petition presently before the Third CircuitCourt of Appeals.. Signed by Honorable Sylvia H. Rambo on 1/31/08. (ma,) (Additional attachment(s) added on 1/31/2008: # 1 Main Document) (ma,). (Entered: 01/31/2008)
02/11/2008	122	LETTER in case re: dft Paul N. Littles file status. (kjn) (Entered: 02/11/2008)

07/07/2008	123	ORDER of USCA as to Paul N. Littles re 100 Notice of Appeal. Motion to reopen the proceedings is granted. The foregoing application to file a second or successive 2255 motion is denied. (kc,) (Entered: 07/07/2008)
09/10/2008	124	Satisfaction of Judgement (Thiel, G.M.) (Entered: 09/10/2008)
09/17/2008	125	MOTION to Dismiss for Lack of Territorial and Subject Matter Jurisdiction by dft Paul N. Littles. (kjn) (Entered: 09/17/2008)
09/17/2008	126	Application to Proceed without Payment of Fees and Affidavit by dft Paul N. Littles. (kjn) (Entered: 09/17/2008)
09/18/2008	127	BRIEF IN OPPOSITION by USA as to Paul N. Littles re 125 MOTION to Dismiss for Lack of Jurisdiction Reply Brief due by 10/6/2008. (Pfisterer, Eric) (Entered: 09/18/2008)
09/18/2008	128	MEMORANDUM AND ORDER: 1) Petitioner Paul N. Littles is granted leave to proceed in forma pauperis.2) The motion entitled Motion to dismiss for Lack of Territorial andSubject Matter Jurisdiction 125 is deemed to be a motion filed pursuant to 28 U.S.C. § 2255 and the motion is DISMISSED.3) The court declines to issue a certificate of appealability.4) The Clerk of Court shall close the file.. Signed by Honorable Sylvia H. Rambo on 9/18/08. (ma,) (Entered: 09/18/2008)
01/19/2011	129	MOTION For Relief from Void Judgment supporting memorandum of points and authorities by dft Paul N. Littles. (pm,) (Entered: 01/19/2011)
01/27/2011	130	ORDER dismissing dft's Motion for relief from judgment 129 as to Paul N. Littles (1). Signed by Honorable Sylvia H. Rambo on 01/27/11. (ma,) (Entered: 01/27/2011)
02/15/2011	131	MOTION for Reconsideration re 130 Order on Motion for Miscellaneous Relief by dft Paul N. Littles. (pm,) (Entered: 02/16/2011)
02/28/2011	132	ORDER denying dft's Motion for Reconsideration 131 as to Paul N. Littles (1). Signed by Honorable Sylvia H. Rambo on 02/28/11. (ma,) (Entered: 02/28/2011)
03/31/2011	133	NOTICE OF APPEAL by Paul N. Littles re 130 Order on Motion for Miscellaneous Relief Filing Fee and Docket Fee Not paid - The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (pm,) (Entered: 03/31/2011)
03/31/2011	134	MOTION for Leave to Appeal In Forma Pauperis by dft Paul N. Littles. (pm,) (Entered: 03/31/2011)
04/05/2011	135	MEMORANDUM AND ORDER: 1) The application to proceed in forma pauperis 134 is DENIED.2) The Clerk of Court shall not file any future documents submitted byPaul N. Littles without first sending them to the undersigned for review. Any future documents found to be frivolous or amounting to a § 2255 claim, will be returned to Paul N. Littles without filing. Signed by Honorable Sylvia H. Rambo on 04/05/11. (ma,) (Entered: 04/05/2011)

04/06/2011	136	USCA Case Number as to Paul N. Littles 11-1840 for 133 Notice of Appeal, filed by Paul N. Littles. USCA Case Manager Shannon (SLC) (DOCUMENT IS RESTRICTED AND CAN ONLY BE VIEWED BY COURT STAFF.) (Gillie, Caitlyn) (Entered: 04/06/2011)
08/25/2011	137	ORDER of USCA denying request for a certificate of appealability (certified copy) as to Paul N. Littles re 133 Notice of Appeal, (Craven, Shannon) (Entered: 08/25/2011)
11/10/2011	138	MEMORANDUM & ORDER as to Paul N. Littles: 1) The Clerk of Court shall file the document entitled Motion Pursuant to Federal Rule of Civil Procedure 60(b)(6) received November 2, 2011 and said motion is DENIED.2) The Clerk of Court is relieved from fulfilling any requests by Littles for copies of docket entries or documents without full payment of the costs.3) The order of April 5, 2011 is affirmed with regard to future filings. In addition, any future filings filed by Littles concerning issues previously ruled on by the court will be deemed to be harassment and abuse of the court and thus will cause Littles to be subject to appropriate sanctions.. Signed by Honorable Sylvia H. Rambo on 11/10/11. (ma,) (Entered: 11/10/2011)
11/10/2011	139	MOTION Pursuant to FRCP 60(b)(6) by Paul N. Littles. (Attachments: # 1 Exhibit(s) A, # 2 B, # 3 C)(ma,) (Entered: 11/10/2011)
11/17/2011	140	NOTICE OF APPEAL by Paul N. Littles re 138 Memorandum & Order, Filing Fee and Docket Fee Not Paid - The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (Attachments: # 1 Exhibit(s))(pm,) (Entered: 11/18/2011)
11/23/2011	141	USCA Case Number as to Paul N. Littles 11-4220 for 140 Notice of Appeal, filed by Paul N. Littles. USCA Case Manager Pamela (DOCUMENT IS RESTRICTED AND CAN ONLY BE VIEWED BY COURT STAFF.) (Batts, Pam) (Entered: 11/23/2011)
01/19/2012	142	ORDER of USCA Denying Request for Certificate of Appealability(certified copy) as to Paul N. Littles re 140 Notice of Appeal, (Batts, Pam) (Entered: 01/19/2012)
04/16/2012	143	(STRIKEN PER ORDER OF 4/17/12) MOTION pursuant to FRCP 60(b)(6), Challenging the DC jurisdiction, to prosecute by dft Paul N. Littles. (pm,) Modified on 4/17/2012 (ma,). (Entered: 04/16/2012)
04/17/2012	144	ORDER: The motion filed pursuant to FRCP 60(b) 143 is STRICKEN FROM THERECORD. Any future submissions from Defendant covering issues previously litigated shall be stricken without further ruling. As to Paul N. Littles (1). Signed by Honorable Sylvia H. Rambo on 04/17/12. (ma,) (Entered: 04/17/2012)
04/20/2012	145	NOTICE OF APPEAL by Paul N. Littles re 144 Order on Motion for Miscellaneous Relief dtd 4/17/12- Filing Fee and Docket Fee Not Paid - The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (pm,) (Entered: 04/23/2012)

05/01/2012	146	USCA Case Number as to Paul N. Littles 12-2192 for 145 Notice of Appeal, filed by Paul N. Littles. USCA Case Manager James (DOCUMENT IS RESTRICTED AND CAN ONLY BE VIEWED BY COURT STAFF.) (King, James) (Entered: 05/01/2012)
05/14/2012	147	Document filed by dft P. Littles regarding order dtd. 4/17/12 and present petition before the ct.(pm,) (Entered: 05/14/2012)
05/15/2012	148	MOTION Pursuant to FRCP 60(b)(6), with exhibits by Paul N. Littles. (ma,) (Entered: 05/15/2012)
05/15/2012	149	ORDER denying Motion pursuant to FRCP 60(b) 148 as to Paul N. Littles (1). Signed by Honorable Sylvia H. Rambo on 05/15/12. (ma,) (Entered: 05/15/2012)
05/15/2012	150	ORDER: This court is without jurisdiction to address the document 147 filed on May 14, 2012 by Paul N. Littles. Signed by Honorable Sylvia H. Rambo on 05/15/12. (ma,) (Entered: 05/15/2012)
05/21/2012	151	NOTICE OF APPEAL by Paul N. Littles re 150 Order 5/15/12; Filing Fee and Docket Fee Not Paid - The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (pm,) (Entered: 05/21/2012)
05/23/2012	152	USCA Case Number as to Paul N. Littles 12-2461 for 151 Notice of Appeal, filed by Paul N. Littles. USCA Case Manager James (DOCUMENT IS RESTRICTED AND CAN ONLY BE VIEWED BY COURT STAFF.) (King, James) (Entered: 05/23/2012)
08/17/2012	153	ORDER of USCA as to Paul N. Littles re 145 Notice of Appeal, directing the District Court to rule on the merits of the Appellant's motion for reconsideration (King, James) (Entered: 08/17/2012)
08/29/2012	154	MEMORANDUM & ORDER as to Paul N. Littles denying dft's letter-motion for reconsideration 147 . Signed by Honorable Sylvia H. Rambo on 08/29/12. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2) (ma,) (Entered: 08/29/2012)
09/04/2012	156	AMENDED NOTICE OF APPEAL by Paul N. Littles re Order 149 on Motion for Miscellaneous Relief 147 , and Order 150 Filing Fee and Docket Fee NOT PAID - Filing fee \$ 455. The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (ma,) (Entered: 09/11/2012)
09/10/2012	155	USCA LETTER TO DISTRICT COURT CLERK re: forwarding Amended Notice of Appeal on behalf of Paul Littles to District Court. (Attachments: # 1 Supplement)(Acerba, Susan) (Entered: 09/10/2012)
10/16/2012	157	USCA CERTIFIED ORDER IN LIEU OF FORMAL MANDATE as to Paul N. Littles re 145 Notice of Appeal, 156 Notice of Appeal, 151 Notice of Appeal, denying Certificate of Appealability (King, James) (Entered: 10/16/2012)
01/20/2015	158	MOTION to Vacate under 28 U.S.C. 2255 by Paul N. Littles. (aaa) (Entered: 01/21/2015)

01/20/2015	159	Application to Proceed in District Court without Prepaying Fees or Costs filed by Paul Littles. (aaa) (Entered: 01/21/2015)
01/23/2015	160	MEMORANDUM re dft's MOTION to Vacate under 28 U.S.C. 2255 158 filed by Paul N. Littles (Order to follow as separate docket entry). Signed by Honorable Sylvia H. Rambo on 01/23/15. (ma) (Entered: 01/23/2015)
01/23/2015	161	ORDER: In accord with the Memorandum 160 filed this date; Dft's MOTION to Vacate under 28 U.S.C. 2255 158 filed by Paul N. Littles is dismissed for lack of jurisdiction.. Signed by Honorable Sylvia H. Rambo on 01/23/15. (ma) (Entered: 01/23/2015)
10/19/2015	162	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Sentencing Proceedings as to Paul N. Littles held on 01/15/99, before Judge Rambo. Court Reporter Vicki Fox. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Release of Transcript Restriction set for 10/19/2016. (ma) (Entered: 10/19/2015)
03/30/2016	163	MOTION to Vacate under 28 U.S.C. 2255 by Paul N. Littles. (aaa) (Entered: 03/30/2016)
03/30/2016	164	STANDING ORDER 15-6 Appointment of Counsel in Proceedings Relating to the Application of Johnson v. United States 135 S.Ct. 2551 (2015) to represent defendant Paul N. Littles. (aaa) (Entered: 03/30/2016)
03/31/2016	165	MOTION to Hold Pro Se Filing in Abeyance re 163 MOTION to Vacate under 28 U.S.C. 2255 by Paul N. Littles. (Attachments: # 1 Certificate of Concurrence, # 2 Proposed Order)(Ghilardi, Melinda) (Entered: 03/31/2016)
04/04/2016	166	ORDER granting the mtn to Hold Pro Se Filing in Abeyance 165 .. Signed by Honorable Sylvia H. Rambo on 4/4/16. (ma) (Entered: 04/04/2016)

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(99)
11/8/01
mt

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

UNITED STATES OF AMERICA : CRIMINAL NO. 1:CR-98-056

v.

PAUL N. LITTLES

FILED
HARRISBURG, PA

NOV 07 2001

MARY E. D'ANDREA, CLERK
Per Mary E. D'Andrea
Deputy Clerk

MEMORANDUM AND ORDER

I. Background

Before the court is a motion filed pursuant to 28 U.S.C. § 2255 and a motion to expand the record. On July 21, 1998, Petitioner Paul N. Littles was found guilty of conspiracy to distribute and possess with intent to distribute in excess of one kilogram of heroin and distribution and possession with intent to distribute in excess of one kilogram of heroin. The instant petition alleged incompetency of counsel in the trial of said charges.

Specifically, Littles alleges that defense counsel failed to (A) request a bill of particulars; (B) move to dismiss the indictment because one laboratory report found some cocaine mixed in with the heroin; (C) move to dismiss for selective prosecution; (D) cross-examine coconspirator Killinger about a possible unrelated conspiracy; (E) challenge the jury pool due to a perceived lack of minorities in the pool; (F) call the assistant United States attorney prosecuting the case as a defense witness; (G) raise an *Apprendi* issue prior to the jury verdict; (H) object to the government referring to Petitioner as a "snake"; (I) failed to file a motion for acquittal; and (J) to raise miscellaneous issues regarding sentencing.

Certified from the record

Date 11-8-01
Mary E. D'Andrea, Clerk

Per Mary E. D'Andrea
Deputy Clerk

II Discussion

The United States Supreme Court has held that to establish a claim of ineffective assistance, a petitioner must show that his attorney's performance was objectively deficient and such deficient performance prejudiced his defense.

Strickland v. Washington, 466 U.S. 668, 687 (1984). Specifically, the Supreme Court stated:

A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction or . . . sentence has two components. First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction or . . . sentence resulted from a breakdown in the adversary process that renders the result unreliable.

Id. If the claim or claims that counsel failed to raise are devoid of legal merit, a defendant suffers no prejudice and cannot establish a claim of ineffective assistance of counsel. With the above standards in mind, the claims will be examined.

A. Failure to Request a Bill of Particulars

A request or motion to compel the government to confirm or deny the existence of evidenced filed pursuant to Federal Rule of Criminal Procedure 12 was filed by counsel. This had the same effect as a request for a bill of particulars. Furthermore, the assistant United States attorney provided extensive discovery and Jencks material showing the extent of the heroin distribution operation and the persons involved.

B. Failure to Move to Dismiss the Indictment Due to One Lab Report

Littles claims ineffective counsel because counsel failed to move to dismiss the indictment based on one lab report, on one bag of heroin, that showed some cocaine mixed with the heroin. Presumably, Littles is referring to Government Exhibit 9. However, even had such exhibit been excluded, at least four witnesses testified as to their distribution of heroin on behalf of Littles. Thus, he has not been prejudiced by the lab report.

C. Failure to Move to dismiss for Selective Prosecution

Littles claims all his other unindicted coconspirators received short prison terms or probation in state court. He further alleges there was racial profiling in bringing the charges against him.

Littles has a history of violence and prior convictions for heroin related offenses. He targeted women and drug addicts to sell drugs for him; he was the head of an organization that involved five or more persons over a period of a year and one half. It was apparent that his earlier state convictions did not deter him and the government was justified in seeking his prosecution.

D. Failure to Cross-Examine Killinger Concerning an Alleged Other Conspiracy

Littles contends that he was prejudiced because had a showing been made that there were multiple conspiracies instead of a single conspiracy, the government would have had to charge all participants. Littles claims he was unable to defend against the presentation of a single conspiracy. Littles' argument makes no sense. The evidence supported a single conspiracy charge.

E. Jury Pool Not Representative

This issue was partially addressed by the court of appeals in the direct appeal. Little's has failed to supply any statistics that the jury venire, chosen from eleven counties, is not representative of the population.

F. Failure to Call Prosecutor as a Witness

Little's claims that his attorney's failure to call the assistant United States attorney to the stand to question him as to what rule of law the assistant United States attorney applied in determining a statement that "quantity isn't the important thing." Such a procedure would have been improper. Whether the quantity of drugs should have been submitted to the jury is a legal issue to be determined by the court and not the jury. A prosecutor's interpretation of the law is not relevant to a jury's determination of the facts.

G. Failure to Raise *Apprendi* issues

Little's drug charges alleged in "excess of one kilogram of heroin." At trial, testimony was introduced as follows: If Little's made only two trips per week and obtained only 20 bundles of heroin per trip with only 12 bags in each bundle and with each bag weighing approximately .046 grams, then this would result in a total of 1,148.16 grams or 1.15 kilograms. These are conservative figures and only cover one year. Witnesses testified there were as many as three trips per week, sometimes obtained up to 30 bundles where each bag within the bundle weighed 0.06 grams. (Testimony of Keyes, Killinger, Downs and Reitz.) Others took additional trips to Philadelphia to obtain heroin (Killinger). Furthermore, the above calculations covered only one year – not the year and one half covered by the conspiracy.

In *United States v. Vazquez*, No. 99-3845, 2001 U.S. App. LEXIS 21611 (3d Cir. October 9, 2001), the Third Circuit Court of Appeals held that even if an Apprendi violation occurred, where the undisputed evidence of drug quantity is attributable to a defendant and his sentence did not exceed the statutory maximum for the drug amount introduced at trial, there is no plain error and relief is not available. *Id.* at *32-34.

Thus, assuming an *Apprendi* issue was applicable, Littles suffered no prejudice.

H. Failure to Object to Assistant United States Attorney's Reference to Littles as a "Snake"

Perhaps the use of the word "snake" was not prudent, but it did not so infect the proceedings such that a jury could not judge the evidence fairly. Contrary to Littles' assessment of the evidence, it was overwhelming against him. Furthermore, it may have been counsel's strategy to not bring more attention to the remark by objecting and asking for curative instructions.

I. Failure to file a Motion for Acquittal

Littles has failed to show how the failure of counsel to file a motion for acquittal was prejudicial to him and how the issues raised by him would have impacted on the outcome of the trial. The Third Circuit Court of Appeals on direct appeal found that "the evidence adduced at trial, . . . was extremely strong and more than sufficient to uphold the conviction." (Slip op. January 14, 2001(unpublished).)

J. Miscellaneous Issues Regarding Sentencing

The Third Circuit Court of Appeals upheld this court's calculation of the sentence and overruled the same objections on direct appeal as raised in the instant motion. Therefore, these issues will not be addressed.

III

Order

Based on the foregoing, Littles has failed to show that counsel's performance was deficient or that any deficient performance prejudiced the defense.

Accordingly, **IT IS HEREBY ORDERED THAT:**

- 1) The motion filed pursuant to 28 U.S.C. § 2255 is **DISMISSED**.
- 2) The motion to expand the record is **DENIED**.
- 3) This court declines to issue a certificate of appealability.
- 4) The Clerk of Court shall close the file.


SYLVIA H. RAMBO
United States District Judge

Dated: November 7, 2001.

FILED
HARRISBURG, PA

AO 243 (Rev. 5/85)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

JAN 20 2006

United States District Court		District Middle District of Pennsylvania
Name of Movant Paul N. Littles	Prisoner No. 09199-067	Case No. 1:CR-98-056
Place of Confinement F.C.I. Ray Brook, New York 12977		

UNITED STATES OF AMERICA

v. **Paul N. Littles**

(name under which convicted)

MOTION

- Name and location of court which entered the judgment of conviction under attack
United States District Court/Middle District of Pennsylvania
- Date of judgment of conviction **January 15, 1999**
- Length of sentence **360 months with 60 months supervised release**
- Nature of offense involved (all counts) **Count One: 21 U.S.C. §§ 841(a)(1) and 846;
Count Two: 21 U.S.C. § 841(a) and 18 U.S.C. § 2. "... in intent
to distribute in excess of a kilogram of heroin, a Schedule I
controlled substance." id Count One (Exhibit B, page 23)**

5. What was your plea? (Check one)

- (a) Not guilty ☒ **XX**
 (b) Guilty ☐
 (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

- (a) Jury ☒ **XX**
 (b) Judge only ☐

7. Did you testify at the trial?

Yes ☒ **XX** No ☐

8. Did you appeal from the judgment of conviction?

Yes ☒ **XX** No ☐

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9. If you did appeal, answer the following:

(a) Name of court United States Court of Appeals/Third Circuit(b) Result Affirmed(c) Date of result January 14, 200010. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?
Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court United States Supreme Court(2) Nature of proceeding Writ of Certiorari(3) Grounds raised Whether Jones v. United States, 526 U.S. 227 (1999) requires specific drug quantity to be charged in the indictment and proven to a jury beyond a reasonable doubt.(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☒(5) Result Petition denied.(6) Date of result November 29, 2000

(b) As to any second petition, application or motion give the same information:

(1) Name of court No

(2) Nature of proceeding _____

(3) Grounds raised _____

AO 243 (Rev. 5/85)

- (4) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes ☐ No ☐ **not applied.**

(5) Result _____

(6) Date of result _____

- (c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

- (1) First petition, etc. Yes ☐ No ☐ **not applied.**
 (2) Second petition, etc. Yes ☐ No ☐

- (d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

Petitioner filed a Writ of Certiorari challenging the judgement
on direct appeal.

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all ground in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
 (b) Conviction obtained by use of coerced confession.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: VIOLATION OF THE FIFTH, SIXTH, AND FOURTEENTH
AMENDMENTS

Supporting FACTS (state *briefly* without citing cases or law): CLAIM IS PURSUANT
TO UNITED STATES V. BOOKER 543 US --, 125 S.Ct. (2005)

SEE MEMORANDUM IN SUPPORT ATTACHED

B. Ground two: PRESERVATION OF BOOKER ISSUE AS PURSUANT TO
DODD V. UNITED STATES, 545 U.S. --, 125 S.Ct. --

Supporting FACTS (state *briefly* without citing cases or law): _____

SEE MEMORANDUM IN SUPPORT ATTACHED

C. Ground three: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

AO 243 (Rev. 5/85)

D. Ground four: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

The primary issue before this Court is whether ineffective assistance of counsel prejudiced petitioner to such an extent that his Fifth and Sixth Amendments were violated. Within the context of this issue, petitioner is not barred from raising jurisdictional claims.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Thomas A. Thornton, Federal Public Defender
100 Chestnut Street, Harrisburg, PA 17101

(b) At arraignment and plea Thomas A. Thornton, Esq.

(c) At trial Thomas A. Thornton, Esq.

(d) At sentencing Thomas A. Thornton, Esq.

(c) On appeal Daniel I. Siegel, Federal Public Defender
100 Chestnut Street, Harrisburg, PA 17101

(f) In any post-conviction proceeding Daniel I. Siegel, Esq.

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?
 Yes ☒ No ☐


17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
 Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

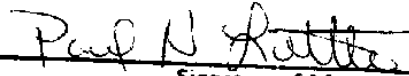
(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
 Yes ☐ No ☒

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.


 Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

1/10/06
 (date)


 Signature of Movant
 Paul N. Littles, pro se
 09199-067-P.O. Box 9002
 Ray Brook, New York 12977

UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

V.

PAUL M. LITTLES

-X

:

:

Case No.

:

:

MEMORANDUM IN SUPPORT
OF MOTION UNDER 28
U.S.C. § 2255(6)(4)

:

:

-X

COMES NOW, Paul M. Littles (Petitioner) and presents his argument/memorandum in support of his pro se motion under § 2255(6)(4).

(1) This petition is brought forth in timely fashion, as to the "mail-box rule" i.e., Houston v. Lack, 487 U.S. 266, 101 L.Ed. 245(1998). This motion was delivered to the hands of a federal Corrections Officer for mailing, by pre-paid U.S. first class mail, on January 12, 2006. See CERTIFICATE OF SERVICE attached.

ARGUMENT

Petitioner's sentence was illegally enhanced in violation of the Fifth, Sixth, and Fourteenth Amendments of the U.S. Constitution as was expressed in United States v. Booker, 543 U.S. ___, 125 S.Ct. ___, (2005) [No. 04-104].

This argument is currently forceclosed by Griffith v. Kentucky's retroactivity analysis, but is respectfully submitted pursuant to the recent U.S. Supreme Court's ruling in Dodd v. United States, 545 U.S. ___, 125 S.Ct. ___, [No. 04-5286] effectively to preserve the

argument for review, as the Supreme Court is currently entertaining a petition which deals with "Substantive error" in lieu of the Booker ruling.

RELIEF SOUGHT

Relief sought is simply to preserve the issue for review, if or when, the Supreme Court makes Booker retroactive.

Respectfully submitted,

Paul M. Little

Paul M. Little # 09199-067
FCI Ray Brook, box 9002
Ray Brook, New York 12977

CERTIFICATE OF FILING AND SERVICE

I, PAUL M. LITTLES DO HEREBY CERTIFY UNDER PAINS AND PENALTY OF PERJURY THAT I PLACED IN THE HANDS OF A FEDERAL CORRECTIONS OFFICER AT FCI RAY BROOK, ADDRESSED SUPRA ONE ORIGINAL AND _____ COPIES OF HIS MOTION UNDER 28 U.S.C. § 2255 TO THE U.S. DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA AT HARRISBURG ON JANUARY 12, 2006. BY HIS SIGNATURE BELOW.

Paul M. Little 1/10/06
PAUL M. LITTLES, SUI JURIS

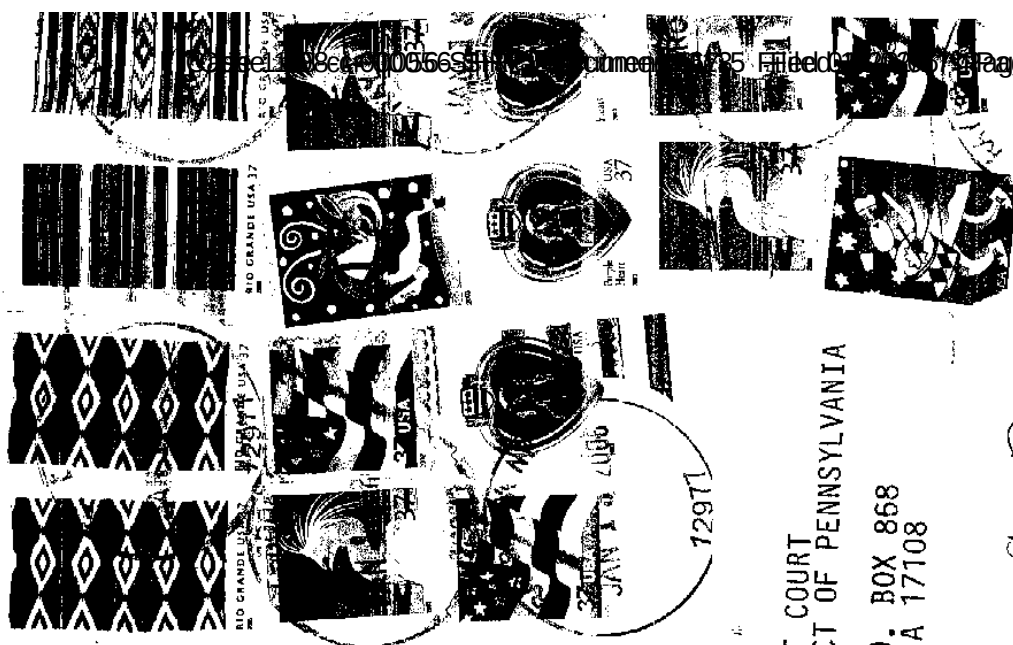
PAUL M. LITTLES # 09199-067
FEDERAL CORRECTIONAL INSTITUTION
RAY BROOK, BOX 9003
RAY BROOK, NEW YORK 12977

CERTIFIED MAIL™



7005 1820 0000 0379 7560

RECORDED



UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
228 WALNUT STREET, P.O. BOX 868
HARRISBURG PENNSYLVANIA 17108

Box 983

JAN 1 20

12977

12977

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

UNITED STATES OF AMERICA : CRIMINAL NO. 1:CR-98-056
:
:
:
v. :
:
:
PAUL N. LITTLES :

MEMORANDUM AND ORDER

Before the court is a motion filed by Paul N. Littles pursuant to 28 U.S.C. § 2255 to vacate, set aside or correct a sentence. Petitioner was sentenced by this court on January 15, 1999. He filed an appeal on January 19, 1999. The decision of this court was affirmed by the court of appeals on April 5, 2000. On September 4, 2001, he filed a motion pursuant to 28 U.S.C. § 2255 which was denied by this court on November 7, 2001. Petitioner's appeal of that decision was denied by the circuit court on June 3, 2002. A petition for a writ of certiorari was denied on October 1, 2003. On January 20, 2006, Petitioner filed the instant petition.

In the present motion, Petitioner alleges violations of his Fifth, Sixth and Fourteenth Amendment rights. He alleges that his claim is filed pursuant to *United States v. Booker*, 543 U.S. ___, 125 S. Ct. 738 (2005) and *Dodd v. United States*, ___ U.S. ___, 125 S. Ct. 2478 (2005). Defendant also alleges a claim of ineffective assistance of counsel.¹

¹The petition does not state how Petitioner's trial and appellate counsel were ineffective. The claim is set forth in conclusory terms. In any event, this claim was raised in his first petition filed
(continued...)

Defendant has two problems with the motion: (1) it is a second or successive motion; and (2) the petition is untimely. Title 28 U.S.C. § 2255 provides, in pertinent part:

A second or successive motion must be certified as provided in 28 U.S.C. § 2244 by a panel of the appropriate court of appeals to contain –

(1) newly discovered evidence that, if proved and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

Petitioner has not sought leave from the court of appeals to file the instant motion.

It appears that Petitioner believes his motion to be valid under subsection 2 quoted above and relies on *Dodd, supra*, to file a petition to preserve his right to raise the *Booker* issue at such time as the Supreme Court makes *Booker* retroactive. Petitioner recognizes that *Booker* has not been made retroactive.

In *Dodd*, the majority of the Court held that the only natural reading of Section 2255 ¶ 6(3) is that one date only is the date from which the one year statute of limitation runs: “The date on which the right asserted was initially recognized by the Supreme Court.” *Id.*, ___ U.S. ___, ___ S.Ct. at 2282.

Petitioner’s one year limitation period to file a § 2255 motion expired on September 30, 2004. He has also not received permission from the court of appeals to file a second or successive petition.

IT IS THEREFORE ORDERED THAT:

¹ (...continued)
pursuant to 28 U.S.C. § 2255 and was found to be meritless.

- 1) The motion filed pursuant to 28 U.S.C. § 2255 is **DENIED**.
- 2) The court declines to issue a certificate of appealability.
- 3) The Clerk of Court shall close the file.

s/Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: January 24, 2006.

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District MIDDLE PENNSYLVANIA	
Name (under which you were convicted): PAUL N. LITTLES		Docket or Case No.: 1:98-CR-056	
Place of Confinement: U.S. P. CANAAN, P.O. BOX 300, Waymart PA		Prisoner No.: 09199-067	
UNITED STATES OF AMERICA		Movant (include name under which you were convicted) v. PAUL N. LITTLES	

FILED
HARRISBURG, PA

NOV 15 2007

MARY E. D'ANDREA, CLERK
Per. Deputy Clerk

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

U.S. DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

HARRISBURG DIVISION

228 Walnut Street, P.O. Box 983, Harrisburg, PA 17108
- (b) Criminal docket or case number (if you know): 1: CR-98-056
2. (a) Date of the judgment of conviction (if you know): July 21, 1998.
- (b) Date of sentencing: January 15, 1999
3. Length of sentence: 360 Months
4. Nature of crime (all counts): 21 U.S.C. Sections 846 (Conspiracy to Distribute and Possess with Intent to Distribute In excess of 1 Kilo of Heroin and Section 841 (Distribution and Poss. with Intent to Distribute.
5. (a) What was your plea? (Check one)

(1) Not guilty ☒ (2) Guilty ☐ (3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?
6. If you went to trial, what kind of trial did you have? (Check one) Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☒ No ☐
8. Did you appeal from the judgment of conviction? Yes ☒ No ☐
9. If you did appeal, answer the following:
- (a) Name of court: U.S. Court of Appeals For Third Circuit
- (b) Docket or case number (if you know): 99-7044
- (c) Result: Affirmed
- (d) Date of result (if you know): January 14, 2000
- (e) Citation to the case (if you know): Unknown
- (f) Grounds raised: That the District Court committed plain error in failing to instruct the jurors that proof of the drug amount charged in the indictment was an element of the offense pursuant to 21 U.S.C. Sections 841 and 846.
- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☒ No ☐
- If "Yes," answer the following:
- (1) Docket or case number (if you know): 99-8992
- (2) Result: Certiorari Denied
- (3) Date of result (if you know): Unknown
- (4) Citation to the case (if you know): Unknown
- (5) Grounds raised: Whether the district court committed plain error by sentencing petitioner to a prison term equal to the maximum term authorized by 21 U.S.C. 841(b)(1)(C) for an offense involving any amount of a Schedule I controlled substance and an offender who previously convicted of a felony drug offense, in the absence of jury findings concerning the quantity of drugs involved in petitioner's offenses.
10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?
- Yes ☒ No ☐
11. If your answer to Question 10 was "Yes," give the following information:
- (a) (1) Name of court: U.S. District Court for the Middle District of Pennsylvania
- (2) Docket or case number (if you know): Civ No. 05-2761
- (3) Date of filing (if you know): Unknown

(4) Nature of the proceeding: 28 U.S.C. Section 2255

(5) Grounds raised: A request for bill of particulars; move to dismiss the indictment because one laboratory report found some cocaine mixed in with heroin; move to dismiss for selective prosecution; cross-examine coconspirator Killinger about a possible unrelated conspiracy; challenge the jury pool due to a perceived lack of minorities in the pool; call the assistant U.S. attorney prosecuting the case as a defense witness; raise an Apprendi issue prior to the jury verdict; object to the government referring to Petitioner's a "snake"; file motion for acquittal.

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

(7) Result: Denied

(8) Date of result (if you know): November 7, 2001

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☒ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: _____

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

WHETHER ADOPTING THE GOVERNMENT'S PROPOSED JURY INSTRUCTION THAT THE MATERIAL INVOLVED WERE "HEROIN" AND THAT THE JURY NEED NOT BE CONCERNED WITH THE QUANTITY UNDER THE CLAUSE OF A CONSPIRACY TO VIOLATE NARCOTICS LAWS NOTWITHSTANDING THE "APPENDI RULE" DRUG QUANTITY IS AN ELEMENT OF THE SUBSTANTIVE CHARGE THE EVIDENCE SUPPORTING PETITIONER'S DRUG QUANTITY WAS ERRONEOUSLY BASED ON CONSERVATIVE CALCULATION

District Court must look into the Memorandum of Law In Support of Petitioner's application under 28 U.S.C. Section 2244(b), Pages 5 (Statement of Issues) and Page 9, for argument in support. Attached herewith.

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

- (2) If you did not raise this issue in your direct appeal, explain why: The factual predicate for the claim could not have been discovered previously through the exercise of due diligence...

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

- (2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Page 6

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: The facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the petitioner guilty of the underlying offense.

WHETHER WHEN THE GOVERNMENT HAS CALLED WITNESSES WHOSE CORROBORATING TESTIMONY IS INSTRUMENTAL TO CONSTRUCTING

GROUND TWO:

THE GOVERNMENT'S CASE AGAINST THE PETITIONER, HE HAS THE RIGHT TO QUESTION THE WITNESS, AND TO ATTEMPT TO IMPEACH HIM/HER ABOUT ASPECT OF SUCH TESTIMONY THAT CONFLICTS WITH THE PETITIONER'S TESTIMONY.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.)

The Honorable Court should look into Petitioner's

Memorandum of Law in Support of His application under section 2244

(ATTACHED HEREWITH) Pages 5 and 9-40.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _____

SEE REASONS ARTICULATED ON GROUND ONE IN THIS APPLICATION.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

Page 8

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

SEE ANSWERS ARTICULATED IN GROUND ONE IN
THIS APPLICATION.

WHETHER THE PETITIONER MAY PROCURE A COLORABLE ATTACK AS TO
AUTHENTICITY AND ACCURACY, AND THE BURDEN ON THOSE "HANDWRIT
GROUND THREE: NOTES" OFFERED AS EVIDENCE RESISTED BY TRIAL COUNSEL WHICH ATTACHES DOU

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

COURT SHOULD LOOK INTO THE MEMORANDUM OF LAW IN SUPPORT OF
THE PETITION UNDER 28 U.S.C. Section 2244(b) for authorization to
proceed in this court pursuant to 28 U.S.C. Section 2255.

ATTACHED HERewith. Pages 5, 9-40

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _____

SEE REASONS ARTICULATED ON GROUND ONE.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

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Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: SEE REASONS ARTICULATED IN GROUNDS ONE.

WHETHER COUNSEL MADE THE TRIAL PROCEEDING PRESUMPTIVELY UN-
REASONABLE ENTIRELY AND THAT A REASONABLE PROBABILITY THAT
GROUND FOUR: OUT-COME WOULD DIFFER BUT FOR COUNSEL'S UNREASONABLE, TACTICAL AND STRA-
TÉGIC DECISION

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):
SEE MEMORANDUM OF LAW IN SUPPORT OF THE APPLICATION

FILED UNDER SECTION 2244(b) and SECTION 2255, in the U.S.
Court of Appeals for the Third Circuit. Attached hereto.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _____

SEE GROUND ONE IN THIS APPLIACTION.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

SEE REASONS ARTICULATED ON GROUND ONE.

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

SEE MEMORANDUM OF LAW.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Thomas A. Thornton
Assist. Federal Public Defender, 100 Chestnut Street, Suite 306

(b) At arraignment and plea: Thomas A. Thornton

(c) At trial: Thomas A. Thornton

(d) At sentencing: Thomas A. thornton

Daniel I. Siegel

(e) On appeal: _____
Assist. Public Defender For the Middle District of Pennsylvania

(f) In any post-conviction proceeding: self representation.

(g) On appeal from any ruling against you in a post-conviction proceeding: _____
self representation.

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

In United States v. Garth, 188 F.3d 99(3d Cir. 1999).
(quoting Bousley v. United States, 523 U.S. 614 (1998),
The second exception to the procedural default bar requires
the defendants to establish that constitutional error in trial
has probably resulted in the conviction of one who is actually
innocent. This requires the petitioner to establish that in
light of all the evidence, it is more likely than not that no
reasonable juror would have convicted him." id. Thus, actual
innocence' means factual innocence, not mere legal insufficiency."
id. Accordingly, petitioner should be excused from any noted
procedural default, based on actual innocence theory for tolling
any applicable federal statutory limitation.

THE COURT SHOULD LOOK INTO THE PETITIONER'S MEMORANDUM
OF LAW IN SUPPORT OF THE PETITION UNDER SECTION 2244(b) and 2255,
allowing this court to review other greater precedent compelling
the court to overlook the procedural bar. Pages 1 Statement of sub:
matter Jurisdiction and page 2 Statement of appellate Court's Juris:
diction.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

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Therefore, movant asks that the Court grant the following relief: Vacate Judgment, set aside or enter a Rule 29(c) Fed.R. Crim.P and Release Petitioner from prison. and with a potential agreement that petitioner would not file a lawsuit.
or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 11/7
07 (month, date, year).

Executed (signed) on Nov 7 2007 (date).

Paul Little
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion. Prepared for movant by: GBEKE M. AWALA
No. 82074-054, See Shaw v. Murphy, (2001, US) 149 L. Ed. 2d 420.
See also Awala v. Waldron, (Case No. 3:07-cv-1630)(Md. Pa. 2007).

IN FORMA PAUPERIS DECLARATION

[Insert appropriate court]

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

UNITED STATES OF AMERICA

:
:
:
:
:
:
:
:
:

CRIMINAL NO. 1:CR-98-056

v.

PAUL N. LITTLES

ORDER

Before the court is a petition for permission to file a second or successive petition pursuant to 28 U.S.C. § 2255 filed by Paul N. Littles. The petition is directed to the Third Circuit Court of Appeals but was mailed to the Clerk of Court for the Middle District of Pennsylvania. This court is without jurisdiction to consider the petition. **IT IS HEREBY ORDERED THAT** the Clerk of Court shall forward to the Third Circuit Court of Appeals the documents filed by Paul N. Littles on November 15, 2007 and close the matter in this court.

s/Sylvia H. Rambo

SYLVIA H. RAMBO
United States District Judge

Dated: November 20, 2007.

2:168
Original
copy
Clerk

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

THE UNITED STATES OF AMERICA)

Respondant,)

v.)

Paul N. Littles,
Petitioner.)

FILED
HARRISBURG, PA

SEP 17 2008

MARY E. DIANDREA, CLERK
Per Deputy Clerk

Case No: 1:CR-98-56
Motion to Dismiss for
Lack of Territorial
and Subject matter
Jurisdiction

Comes now before this Honorable Court, Paul N. Littles, known, now as "Petitioner" pro-se, the accused, who hereby demands of this legislative tribunal and judicial assembly for the Dismissal of this cause because of the lack of exclusive "Void" jurisdictional authority over the exact geographical location where the alleged criminal activity took place; and hereby files this formal Motion to Dismiss for Lack of Territorial and Subject Jurisdiction.

JURISDICTION OF THIS COURT

1. The petitioner presents this Motion to Dismiss for Lack of the Government's Territorial and Subject matter Jurisdiction

This Honorable Court who holds exclusive jurisdiction over the matter pursuant to 28 U.S.C.S §§ 1291, 3231, 3742(a)(2).

OPENING HISTORY OF PETITIONER

2. On 1/15/99, the petitioner was unlawfully found guilty and convicted for allegedly violating Federal Statutes under Title 21 U.S.C. §§ 841 and 846, and is now being unlawfully held at the United States Penitentiary, "Canaan" in Pennsylvania.

ARGUMENT I

3. Under Title 18 §4001, "No Citizen shall be held or confined in a United States Prison without the Act of Congress"

4. Act of Congress defined June 25, 1948, Rule 54(c); defines the Act of Congress, application of terms as used in these rules. The following terms have the designated meanings of "Acts of Congress" which would include any Act of Congress that is locally applicable to in force in the District of Columbia, in Puerto Rico, In Territory, or Insular possession. in the United States Constitution Art I § 8, To exclusive legislation in all places whatever, over such district (Not exceeding Ten Miles a Square).

ARGUMENT II

5. The petitioner contends that, this Government lacked the Territorial Jurisdiction and Subject Jurisdiction over him, that the claims alleged in the Indictment were in deed false. That nowhere was there a mention that the petitioner had committed a crime against the United States Government. When in fact the sole crimes alleged occurred within the Territorial boundaries in the City of Harrisburg, and Dauphin County, in the State of Pennsylvania, and not in any Territory ceded to or purchased by the United States. That in order to Charge by Grand jury, hold trial, or Convict the petitioner, the alleged crimes had to have been solely committed on Sovereign Government grounds. And unless the State of Pennsylvania inadvertently transferred powers to prosecute state crimes, he is a citizen, and one of thousands that have been abducted by the United States Government and taken unlawfully into their Territorial limits. See: Courts Records of the State that crimes were in fact committed there (Exhibits A, B, C, D. Attached) Neither had the United States even filed a Complaint, Or Warrant for his arrest See: United States Court Docket (#1:CR-98-56). Wherefore he's being held captive Unlawfully.

LACK OF TERRITORIAL JURISDICTION

8. A dismissal is warranted in this case because of the lack of exclusive jurisdictional authority over the exact geographical location where the alleged criminal activity mentioned in the indictment took place; and hereby moves this court and the United States Government on its lack of jurisdiction.

A recent Supreme Court decision, decided April 26, 1995, addresses the issues of exclusive jurisdiction of the Congress, The powers of the Federal Government, and the Subsequent Subject Matter of a Federal District Court.

Supreme Court Justice Thomas in the Concurring majority opinion in the case of United States V. Lopez, 93-1260, 115 S.Ct. 1624, 131 L.Ed. 2d 626 (1995); states very clearly:

"Indeed, on this crucial point, the majority and justice Breyer [the justice writing the dissenting opinion] agree in principle: the Federal Government has nothing approaching a police power." (pg. 64)

Then justice Thomas went on to discuss "a regulation of police" (pg. 86); wherein he stated: "United States v. Dewitt, 76 US 41 9 Wall 4, 19 L.Ed 593 (870); marked the first time the court struck down as exceeding the power conveyed by the commerce clause. In a two page opinion, the court invalidated a nation-wide law prohibiting all sales of naphtha, and illuminating oils. In so doing, the court remarked that the commerce clause has always been understood as limited by its terms; and a virtual denial of any power to interfere with the internal trade of the separate states."

Further support for this understanding is readily available from courts: "special provisions is made in the Constitution for cession of Jurisdiction from the states over places where the Federal Government shall establish forts or other military works. And it is only in these places, or in territories of the United States, where it can exercise general Jurisdiction" [New Orleans v. United States, 35 US. (10 Pet.) 662 (1836).]

"All legislation is prima facie territorial"

[American Banana Co v. United States Fruit, 213, US 347 at 357-358]

"There is a canon of legislative construction which teaches Congress that, unless a contrary intent appears [legislation] is meant to apply only within a

....territory jurisdiction of the United States."[U.S. v. Spelar, 338 us.217];

"...The United States never held any municipal sovereignty, jurisdiction, or right of soil in Rhode Island, or any new states which were formed...The United States has no Constitutional capacity to exercise municipal jurisdiction, sovereignty or eminent domain, within the limites of a state or elsewhere, except in cases in which it is expressly granted..."[Pollard v. Hagen, 44 U.S.C 213, 221, 223]

"...The states are separate sovereigns, with respect to the Federal Government" [Heath v. Alabama, 474 U.S. 187]

"No sanction can be imposed absent proof of jurisdiction"[Stanard v. Olesen, 74 S. Ct. 768]

"Once challenged, cannot be assumed and must be proved to exist."[Stuck v. Medical examiners, 94 Ca2d 751. 211 P2s 389]

"Jurisdiction, once challenged, cannot be assumed and must be decided."[Maine v. Thiboutot, 100 S.Ct. 250]

"...Federal jurisdiction cannot be assumed, but must be clearly shown."[Brooks v. Yawkey, 200 F.2d 633]

"The law requires proof of jurisdiction to appear on record of the administrative agency and all administrative proceedings."[Hagens v. Lavine, 415 U.S. 533]

"If any tribunal finds absence of proof of jurisdiction over a person and subject matter, the case must be dismissed."[Louisville R.R v. Motley, 211 U.S. 149, 29 S.Ct. 42]

Other cases also such as McNutt v. G.M., 56 S.Ct. 789, 80 L.Ed. 1135, Griffin v. Mathews, 310 Supp. 341, 423 F. 2d 272, Basso v. U.P.L., 495 F 2d. 906, Thomason v. Gaskiel, 62 S.Ct. 673, 83 L.Ed. 111, and Albrecht v. U.S. 1, also confirm, that, when challenged, jurisdiction must be documented, shown, and proven, to lawfully exist before a cause may lawfully proceed in the courts. Title 18 U.S.C. § 7 specifies...

...that the "Territorial Jurisdiction" of the United States extends only outside the boundaries of lands belonging to any of the 50 states, and Title 40 U.S.C. §§ 255 specifies the legal conditions that must be fulfilled for the United States Government to have exclusive or shared jurisdiction within the area of lands belonging to the States of the Union.

LACK OF SUBJECT MATTER JURISDICTION

Title 18 governs the Rules of Criminal Procedures. Title 18 was enacted into positive law by an Act of Congress on June 25, 1948, 62 Stat. 645. A "positive law" title is one which has been enacted into law and the underlying statutes repealed: it is more than prima facie evidence of the law and constitutes the law itself.

Rule 4.(Title 18) Arrest Warrant or Summons upon Complaint reads at (d)(2) Territorial Limits the warrant may be executed or the summons may be served at any place "WITHIN THE JURISDICTION OF THE UNITED STATES".

In the United States, there are two separate and distinct jurisdictions, such as being the jurisdiction of the States within their own Territorial boundaries and the other being Federal jurisdiction. Broadly speaking, State jurisdiction encompasses the legislative power to Regulate, Control and govern real and personal property, individuals and enterprises within the territorial boundaries of any given States. In contrast, Federal jurisdiction is extremely limited, with the same being exercised only in areas external to state legislative power and territory.

The legal effect of the Declaration of Independence was to make each new States a separate and independent sovereign over which there was no other government of superior power or jurisdiction. This was clearly shown in M'Ilvaine v. Coxe's Lessee, 8 U.S. (4 Cranch) 209, 212 (1808), where it was held:

"This opinion is predicated upon a principle which is believed to be undeniable, that the several states which composed this Union, so far at least as regarded their municipal regulations, became entitled, from the time when they declared themselves independent, to all rights and powers of sovereign states, and that...

...they did not derive them from concessions made by the British King. The treaty of peace contains a recognition of their independence, not a grant of it.. From hence its results, that the laws of several state governments were the laws of sovereign states, and as such were obligatory upon the people of such states, from the time they were enacted."

And further expression of similar import is found in Harcourt v. Gaillard, 25 U.S.(12 Wheat)523,526,527(1827); where the Court stated:

"There was no territory within the United States that was claimed in any other right than that of some one confederated states, therefore, there could be no acquisition of territory made by the United States distinct from, or independent of some one of the States."

The jurisdiction of a court is subject to territorial limitations, its jurisdiction cannot extend beyond the territory belonging to the sovereignty on behalf of which it functions, and its jurisdiction can be further limited, by the Constitutional or statutory provisions, to only a part of the territory of the sovereignty to which it belongs. The "Local action rule" is not a venue concept; rather, it pertains to a court's territory boundary. Bauman v. Rayburn, 878 So 2d 1273(Fla. Dist. App. 5th Dist. 2004).

Regarding the requisites for an indictment, See Am jur. 2d. Indictments and informations §§ 65 to 83; regarding the indictment or information as a jurisdictional prerequisite, see Am.jur. 2d. Indictments and Information §18. see also sections on the topic of Indictment in chapters relating to various crimes. for example, Am. Jur. 2d. Arson and related offenses §§ 28 to 39, Am. Jur. 2d. Burglary §§ 33 to 41; Am. Jur.2d. Robbery §§ 33 to 41. See also Predecessor to 18 USCS § 7, clearly included a crime of murder committed on any land within exclusive jurisdiction of the United States and not within any judicial district, as well as crimes committed on the high seas wherein the United States enjoys planetary powers.

"Each declared itself sovereign and independent, according to the limits of its territory.

"[T]he soil and sovereignty within their acknowledged limits were as much theirs at the declaration of independence as at this hour."

Thus, unequivocally, in July, 1776, the new States possessed all sovereignty, power, and jurisdiction over all the soil and persons in their respective territorial limits.

The essence of the retention of state jurisdiction was embodied in Art. I, §8, Cl. 17 of the U.S. Constitution, which read as follows:

"To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings."

The above clause filled an essential need by permitting the federal government to acquire land for the seat of government and other purposes from certain of the States. Such possessions were deemed essential to enable the United States to perform the powers conveyed by the Constitution, and a cession of lands by any particular State would grant exclusive jurisdiction of such lands to Congress.

Since the time of the ratification and implementation of the present U.S. Constitution, the U.S. Supreme Court and all lower courts have had many opportunities to construe and apply the above provision of the Constitution. And the essence of all these decisions is that the States of this nation have exclusive jurisdiction of property and persons located within their borders, excluding such lands and persons residing thereon which have been ceded to the United States.

Perhaps one of the earliest decisions on this point was *United States v. Bevens*, 16 U.S. (3 Wheat.) 336 (1818), which involved a federal prosecution for a murder committed on board the Warship, *Independence*, anchored in the harbor of Boston, Massachusetts. The defense complained that only the state had jurisdiction to prosecute and argued that the federal Circuit Courts had no jurisdiction of this crime supposedly committed within the federal government's admiralty jurisdiction. In argument before the Supreme Court, counsel for the United States admitted as follows:

"The exclusive jurisdiction which the United States have in forts and dock-yards ceded to them, is derived from the express assent of the states by whom the

Page 77 of 220

cessions are made. It could be derived in no other manner; because without it, the authority of the state would be supreme and exclusive therein," 3 Wheat., at 350, 351.

In holding that the State of Massachusetts had jurisdiction over the crime, the Court held:

"What, then, is the extent of jurisdiction which a state possesses?

"We answer, without hesitation, the jurisdiction of a state is co-extensive with its territory, co-extensive with its legislative power," 3 Wheat., at 386, 387.

"The article which describes the judicial power of the United States is not intended for the cession of territory or of general jurisdiction. ... Congress has power to exercise exclusive jurisdiction over this district, and over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.

"It is observable that the power of exclusive legislation (which is jurisdiction) is united with cession of territory, which is to be the free act of the states. It is difficult to compare the two sections together, without feeling a conviction, not to be strengthened by any commentary on them, that, in describing the judicial power, the framers of our constitution had not in view any cession of territory; or, which is essentially the same, of general jurisdiction," 3 Wheat., at 388.

Thus in *Bevans*, the Court established a principle that federal jurisdiction extends only over the areas wherein it possesses the power of exclusive legislation, and this is a principle incorporated into all subsequent decisions regarding the extent of federal jurisdiction. To hold otherwise would destroy the purpose, intent and meaning of the entire U.S. Constitution.

The decision in *Bevans* was closely followed by decisions made in two state courts and one federal court within the next two years. In *Commonwealth v. Young, Brightly*, N.P. 302, 309 (Pa.1818), the Supreme Court of Pennsylvania was presented with the issue of whether lands owned by the United States for which Pennsylvania had never ceded jurisdiction had to be sold pursuant to state law. In deciding that the state law of Pennsylvania exclusively controlled this sale of federal land, the Court held:

"The legislation and authority of congress is confined to cessions by particular states for the seat of government, and purchases made by consent of the legislature of the state, for the purpose of erecting forts. The legislative power and exclusive jurisdiction remained in the several states, of all territory within their limits, not ceded to, or purchased by, congress, with the assent of the state legislature, to prevent the collision of legislation and authority between the United States and the several states."

A year later, the Supreme Court of New York was presented with the issue of whether the State of New York had jurisdiction over a murder committed at Fort Niagara, a federal fort. In *People v. Godfrey*, 17 Johns. 225, 233 (N.Y. 1819), that court held that the fort was subject to the jurisdiction of the State since the lands therefore had **not** been ceded to the United States. The rationale of its opinion stated:

"To oust this state of its jurisdiction to support and maintain its laws, and to punish crimes, it must be shown that an offense committed within the acknowledged limits of the state, is clearly and exclusively cognizable by the laws and courts of the United States. In the case already cited, Chief Justice Marshall observed, that to bring the offense within the jurisdiction of the courts of the union, it must have been committed out of the jurisdiction of any state; it is not (he says,) the offence committed, but the place in which it is committed, which must be out of the jurisdiction of the state."

The decisional authority upon which this court relied was *U.S. v. Bevans*, *supra*.

At about the same time that the New York Supreme Court rendered its opinion in *Godfrey*, a similar fact situation was before a federal court, the only difference being that the murder committed in the case occurred on land which had been ceded to the United States. In *United States v. Cornell*, 25 Fed. Cas. 646, 648 No. 14,867 (C.C.D.R.I. 1819), the court held that the case fell within federal jurisdiction, describing such jurisdiction as follows:

"But although the United States may well purchase and hold lands for public purposes, within the territorial limits of a state, this does not of itself oust the jurisdiction or sovereignty of such State over the lands so purchased. It remains until the State has relinquished its authority over the land either expressly or by necessary implication.

"When therefore a purchase of land for any of these purposes is made by the national government, and the State Legislature has given its consent to the purchase, the land so purchased by the very terms of the constitution *ipso facto* falls within the exclusive legislation of Congress, and the State jurisdiction is completely ousted."

Almost 18 years later, the U.S. Supreme Court was again presented with a case involving the distinction between State and federal jurisdiction. In *New Orleans v. United States*, 35 U.S. (10 Pet.) 662, 737 (1836), the United States claimed title to property in New Orleans likewise claimed by the city. After holding that title to the subject lands was owned by the city, the Court addressed the question of federal jurisdiction and stated:

"Special provision is made in the Constitution for the cession of jurisdiction from

the States over places where the federal government shall establish forts or other military works. And it is only in these places, or in the territories of the United States, where it can exercise a general jurisdiction."

The single most important case regarding the subject of federal jurisdiction appears to be *Fort Leavenworth R. Co. v. Lowe*, 114 U.S. 525, 531, 5 S.Ct. 995 (1885), which sets forth the law on this point fully. There, the railroad company property which passed through the Fort Leavenworth federal enclave was being subjected to taxation by Kansas, and the company claimed an exemption from state taxation. In holding that the railroad company's property could be taxed, the Court carefully explained federal jurisdiction within the States:

"The consent of the states to the purchase of lands within them for the special purposes named, is, however, essential, under the constitution, to the transfer to the general government, with the title, of political jurisdiction and dominion. Where lands are acquired without such consent, the possession of the United States, unless political jurisdiction be ceded to them in some other way, is simply that of an ordinary proprietor. The property in that case, unless used as a means to carry out the purposes of the government, is subject to the legislative authority and control of the states equally with the property of private individuals."

Thus, the cases decided within the 19th century clearly disclosed the extent and scope of both State and federal jurisdiction. In essence, these cases, among many others, hold that the jurisdiction of any particular State is co-extensive with its borders or territory, and all persons and property located or found therein are subject to such jurisdiction; this jurisdiction is superior. Federal jurisdiction results only from a conveyance of state jurisdiction to the federal government for lands owned or otherwise possessed by the federal government, and thus federal jurisdiction is extremely limited in nature. And there is no federal jurisdiction if there be no grant or cession of jurisdiction by the State to the federal government. Therefore, federal territorial jurisdiction exists only in Washington, D.C., the federal enclaves within the States, and the territories and possessions of the United States.

One of the first cases to acknowledge the proposition that a State could retain a degree of jurisdiction over property ceded to the federal government was *Surplus Trading Co. v. Cook*, 281 U.S. 647, 50 S.Ct. 455 (1930). In this case, a state attempt to assess an ad valorem tax on Army blankets located within a federal army camp was found invalid and beyond the state's jurisdiction. But, in regards to the proposition that a State could make a qualified cession of jurisdiction to the federal government, the Court held:

"[T]he state undoubtedly may cede her jurisdiction to the United States and may make the cession either absolute or qualified as to her may appear desirable, provided the qualification is consistent with the purposes for which the reservation is maintained and is accepted by the United States. And, where such a cession is made and accepted, it will be determinative of the jurisdiction of both the United

States and the state within the reservation," 281 U.S., at 651, 652.

Two cases decided in 1937 by the U.S. Supreme Court further clarify the constitutionality of a reservation of any degree of state jurisdiction over lands ceded to the jurisdiction of the United States. In *James v. Dravo Contracting Company*, 302 U.S. 134, 58 S.Ct. 208 (1937), the State of West Virginia sought to impose a tax upon the gross receipts of the company arising from a contract which it had made with the United States to build some dams on rivers. One of the issues involved in this case was the validity of the state tax imposed on the receipts derived by the company from work performed on lands to which the State had ceded "concurrent" jurisdiction to the United States. In the Court's opinion, it held that a State could reserve and qualify any cession of jurisdiction for lands owned by the United States; since the State had done so here, the Court upheld this part of the challenged tax notwithstanding a partial cession of jurisdiction to the U.S. A similar result occurred in *Silas Mason Co. v. Tax Commission of State of Washington*, 302 U.S. 186, 58 S.Ct. 233 (1937). Here, the United States was undertaking the construction of several dams on the Columbia River in Washington, and had purchased the lands necessary for the project. Silas Mason obtained a contract to build a part of the Grand Coulee Dam, but filed suit challenging the Washington income tax when that State sought to impose such tax on the contract proceeds. Mason's argument that the federal government had exclusive jurisdiction over both the lands and such contract was not upheld by either the Supreme Court of Washington or the U.S. Supreme Court. The latter Court held that none of the lands owned by the U.S. were within its jurisdiction and thus Washington clearly had jurisdiction to impose the challenged tax; see also *Wilson v. Cook*, 327 U.S. 474, 66 S.Ct. 663 (1946).

A final point which must be made regarding federal jurisdiction involves the point as to when such jurisdiction ends or ceases. This point was considered in *S.R.A. v. Minnesota*, 327 U.S. 558, 66 S.Ct. 749 (1946), which involved the power of a State to tax the real property interest of a purchaser of land sold by the United States. Here, a federal post office building was sold to S.R.A. pursuant to a real estates sale contract, which provided that title would pass only after the purchase price had been paid. In refuting the argument of S.R.A. that the ad valorem tax on its equitable interest in the property was really an unlawful tax on U.S. property, the Court held:

"In the absence of some such provisions, a transfer of property held by the United States under state cessions pursuant to Article I, Section 8, Clause 17, of the Constitution would leave numerous isolated islands of federal jurisdiction, unless the unrestricted transfer of the property to private hands is thought without more to revest sovereignty in the states. As the purpose of Clause 17 was to give control over the sites of governmental operations to the United States, when such control was deemed essential for federal activities, it would seem that the sovereignty of the United States would end with the reason for its existence and the disposition of the property. We shall treat this case as though the Government's unrestricted transfer of property to non-federal hands is a relinquishment of the exclusive legislative power," 327 U.S., at 563, 564.

acquisition of legislative jurisdiction -- by State consent under Article I, section 8, clause 17.... Justice McLean suggested that the Constitution provided the sole mode for transfer of jurisdiction, and that if this mode is not pursued, no transfer of jurisdiction can take place," *Id.*, at 41.

"It scarcely needs to be said that unless there has been a transfer of jurisdiction (1) pursuant to clause 17 by a Federal acquisition of land with State consent, or (2) by cession from the State to the Federal Government, or unless the Federal Government has reserved jurisdiction upon the admission of the State, the Federal Government possesses no legislative jurisdiction over any area within a State, such jurisdiction being for exercise by the State, subject to non-interference by the State with Federal functions," *Id.*, at 45.

"The Federal Government cannot, by unilateral action on its part, acquire legislative jurisdiction over any area within the exterior boundaries of a State," *Id.*, at 46.

"On the other hand, while the Federal Government has power under various provisions of the Constitution to define, and prohibit as criminal, certain acts or omissions occurring anywhere in the United States, it has no power to punish for various other crimes, jurisdiction over which is retained by the States under our Federal-State system of government, unless such crime occurs on areas as to which legislative jurisdiction has been vested in the Federal Government," *Id.*, at 107.

Thus, from an abundance of case law, "jurisdiction of the United States" is carefully circumscribed and defined as a very precise portion of America. The United States is one of the 51 jurisdictions existing on this continent, excluding Canada and its provinces.

Title 18 USC §7 The term "special maritime and territorial jurisdiction of the United States" as used in this title, includes:

(3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

Title 40 USC §255 specifies the legal conditions that must be fulfilled for the United States government to have exclusive or shared jurisdiction within the area of lands belonging to the States of the Union.

Therefore, the defendant would demand of this court to establish the required Federal jurisdiction that has been merely assumed in this matter consisting of:

1. Documentation of the legal standing of the "United States of America" and if in fact it has standing within the States of the Union(i.e. Pennsylvania, New York, New Jersey Ect.)

2. Documentation showing ownership of each and every part of the geographical location mentioned in the instant Indictment that has been merely assumed in this matter, consisting of the Indictment wherein the alleged criminal activity took place.

3. Documentation from legislation's of each States of the Union surrendering jurisdiction to the Federal Government over each State, and its territory.

4. Documentation pursuant to Title 40 U.S.C. § 255, wherein the United States accepted jurisdiction to the same geographical locations specified in #1, Or, Documentation showing concurrent jurisdiction with the sovereign States of the Union.

Absent the production of such required documents showing lawful Federal jurisdiction over the States, requires a Dismissal of the action and cause entirely, and immediately without delay.

PRAYER TO THE COURT

The petitioner has proven beyond a reasonable doubt that no crime has in fact been committed against the "United States of America" and that this Honorable Court should grant the petitioner's Motion to Dismiss for lack of Territorial and Subject matter Jurisdiction, and that if it does not, it should explain why it shouldn't on all the merits presented.

Wherefore, the petitioner prays to this Court to Vacate, Set aside, and Dismiss this action forthwith and without delays.

Very Respectfully Submitted

Date: 9/10/08, Paul N. Feltner
Petitioner

PROOF OF SERVICE

I certify that on 9/10/2008 (Date) I mailed a copy of this motion and attachments via first class mail to the following parties at the addresses listed below:

Assistant U.S. Attorney
Eric Pfisterer
P.O. Box 11754
Room 218, Federal Building
Harrisburg, PA 17108

United States District Court Clerk
for the Middle District of Pennsylvania
P.O. Box 983
Harrisburg, PA 17108

PROOF OF SERVICE FOR INSTITUTIONALIZED OR INCARCERATED LITIGANTS

In addition to the above proof of service all litigants who are currently institutionalized or incarcerated should indicate the following statement on all documents to be filed with this Court:

I certify that this document was given to prison officials on 9/10/2008 (date) for forwarding to the Court . . . I certify under the penalty of perjury that the foregoing is true and correct. 28 U.S.C. §1746.


Signature

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF DAUPHIN**CRIMINAL COMPLAINT AND
PROBABLE CAUSE AFFIDAVIT**

Mag. Dist. No.: 12102

DJ Name: Hon. JAMES PIANKA

Address: 2967-A N 7TH STREET
HARRISBURG PA 17110

Telephone: 717 238 3388

DEFENDANT:

COMMONWEALTH OF
PENNSYLVANIA

VS.

AKA: PAUL N LITTLES
PAUL I. WIENAME and ADDRESS
PAUL N LITTLES
1928 N 3RD ST
HBG

PA 17103 0000 00

Docket No.:

Date Filed:

OTN:



Registration Number

Annual Sticker Number

OLN Number

SID Number

Complaint Number

Complaint Numbers if other Participants

Incident Number

UCR Number

98010013104 HBG

1810 2020 2050

R.S.A.: BM 41

D.O.B.: 09 05 1956

S.S.#: 197 46 2552

ORI NO.: PA0220200

District Attorney's Office

Approved

Disapproved because:

(The District Attorney may require that the complaint, arrest warrant affidavit, or both be approved by the attorney for the Commonwealth prior to filing. Pa. R. Cr. P. 107.) When the affiant is not a police officer as defined in Rule 51(C) and the offense(s) charged include(s) a misdemeanor or felony which does not involve a clear and present danger to any person or the community, the complaint shall be submitted to the attorney for the Commonwealth, who shall approve or disapprove without unreasonable delay).

(Issue Date)

(Signature)

I, (Name of Affiant) LT JOHN F GOSHERT
of HARRISBURG POLICE BUREAU
residing at 123 WALNUT ST HARRISBURG PA 171010000
do hereby state: (check appropriate area)

BADGE 607

1. ☒ I accuse the above named defendant, who lives at the address set forth above or,
☐ I accuse an individual whose name is unknown to me but who is described as

☐ I accuse the defendant whose name and popular designation or nickname is unknown to me and whom I have therefore designated as John Doe

with violating the penal laws of the Commonwealth of Pennsylvania at:
1928 N 3RD ST 3RD FL HBG
in (County) DAUPHIN

HARRISBURG CITY OF

(Place/Political Subdivision)

on or about 01 30 1998 1734 HRS

Participants were: (if there were participants place their names here, repeating name of above defendant)

2. The acts committed by the accused were:

(Set forth a summary of the facts sufficient to advise the defendant of the nature of the offense charged. Neither the evidence nor the statute allegedly violated need be cited, nor shall a citation of the statute allegedly violated, by itself, be sufficient. In a summary case, set forth a citation of the specific section and sub-section of the statute or ordinance allegedly violated).

** MAN/DEL/POSS W INT TO MAN/DEL CONTRLLD SUBS

CTS 1

DID INTENTIONALLY, KNOWINGLY AND UNLAWFULLY MANUFACTURE,
DELIVER, OR POSSES WITH INTENT TO MANUFACTURE OR DELIVER, A
CONTROLLED SUBSTANCE BY A PERSON NOT REGISTERED UNDER THIS
ACT, OR DID KNOWINGLY CREATE, DELIVER OR POSSESS WITH INTENT

Exhibit I

-109-

Copy: District Justice

Defendant

Return of Service

Police

4/97wp



CRIMINAL COMPLAINT AND PROBABLE CAUSE AFFIDAVIT

Page 2

Defendant Name: PAUL N LITTLES

Docket Number:

INCIDENT NO: 98010013104 HBG

TO DELIVER, A COUNTERFEIT CONTROLLED SUBSTANCE.
THE DEFENDANT DID POSSESS OR HAVE UNDER HIS CONTROL HEROIN A
SCHEDULE ONE SUBSTANCE WITH THE INTENT TO DELIVER SAID SUBSTANCE
ALL OF WHICH WERE AGAINST THE PEACE AND DIGNITY OF THE COMMONWEALTH OF
PENNSYLVANIA AND CONTRARY TO THE ACT OF ASSEMBLY,
OR IN VIOLATION OF 780-113 A30 OF THE ACT OF 35
OR THE ORDINANCE OF

** ENDANGERING WELFARE OF CHILDREN

CTS 1

BEING A PARENT, GUARDIAN OR OTHER PERSON SUPERVISING THE
WELFARE OF A CHILD UNDER 18 YEARS OF AGE, DID KNOWINGLY ENDANGER
THE WELFARE OF SAID CHILD BY VIOLATING A DUTY OF CARE,
PROTECTION OR SUPPORT.
THE DEFENDANT DID HAVE IN HIS POSSESSION HEROIN, AND WAS INVOLVED
IN THE SALE OF HEROIN, WHILE IN THE CARE OF A EIGHT AND TWELVE
YEAR OLD, AND WHILE THEY WERE PRESENT IN THE RESIDENCE.
ALL OF WHICH WERE AGAINST THE PEACE AND DIGNITY OF THE COMMONWEALTH OF
PENNSYLVANIA AND CONTRARY TO THE ACT OF ASSEMBLY,
OR IN VIOLATION OF 4304 OF THE ACT OF 18
OR THE ORDINANCE OF

I ask that a warrant of arrest or a summons be issued and that the accused be required to answer the charges I have made. **(In order for a warrant of arrest to issue, the attached affidavit of probable cause must be completed and sworn to before the issuing authority.)**

I verify that the facts set forth in this complaint are true and correct to the best of my knowledge or information and belief. I certify the complaint has been properly completed and verified, and that there is probable cause for the issuance of process. This verification is made subject to the penalties of Section 4904 of the Crimes Code (18 PA. C.S. 4904) relating to unsworn falsification to authorities.

Date:

(Signature of Complainant)

ND NOW, on this date,
erified, and that there is probable cause for issuance of process.

I certify the complaint has been properly completed and

(Magisterial District)

(Issuing Authority)

(SEAL)

-110-



Commonwealth of Pennsylvania
COUNTY OF DAUPHIN

SEARCH WARRANT
AND AFFIDAVIT

Det. Gary B. Santolite Dauphin Co. Drug Task Force (717) 255-2775
(Name of Affiant) (Police Department or address of private Affiant) (Phone No.)

WARRANT CONTROL
M 16105

DATE OF APPLICATION

01-20-98

INVENTORY NO.

M24538

Being duly sworn (or affirmed) before me according to law, deposes and says that there is probable cause to believe that certain property is evidence of or the fruit of a crime or is contraband or is unlawfully possessed or is otherwise subject to seizure, and is located at particular premises or in the possession of particular person as described below.

IDENTIFY ITEMS TO BE SEARCHED FOR AND SEIZED (be as specific as possible): Marijuana, a Schedule I substance; drug paraphernalia; drug proceeds; papers; any and all other physical and/or documentary evidence that relates to the illegal distribution or use of controlled substances as outlined under the Pa. Controlled Substance, Drug, Device and Cosmetic Act of 1972.

SPECIFIC DESCRIPTION OF PREMISES AND/OR PERSONS TO BE SEARCHED (Street and No., Apt. No., Vehicle, Safe Deposit Box, etc.): 1205 NORTH HARRIS STREET, THIRD FLOOR APARTMENT, IN THE CITY OF HARRISBURG, DAUPHIN COUNTY; PERSON OF PAUL LITTLE; persons of any other persons present at, leaving from or coming to a vehicle; 1984 Toyota Tercel 803-1314; 1988 Dodge Caravan 603-4776. (if found in the immediate vicinity of the residence).

NAME OF OWNER, OCCUPANT OR POSSESSOR OF SAID PREMISES TO BE SEARCHED (If proper name is unknown, give alias and/or description): PAUL LITTLE

VIOLATION OF (Describe conduct or specify statute):

Pa. Controlled Substance, Drug, Device and Cosmetic Act of 1972
Section 15(a)30 dealing with the unlawful delivery of a Controlled Substance

DATE OF VIOLATION

during the past
100 days.

PROBABLE CAUSE BELIEF IS BASED ON THE FOLLOWING FACTS AND CIRCUMSTANCES:

SEE ATTACHED AFFIDAVIT OF PROBABLE CAUSE

PREVIOUS CIVIL AFFIDAVIT SEALED BY COURT ORDER IS. 67 M.D. 1998

ATTACH ADDITIONAL PAPER (5) COPIES IF NECESSARY ☐ CHECK HERE IF ADDITIONAL PAPER IS USED.

RESULT OF SEARCH GIVE BRIEF NARRATIVE OF WHAT HAPPENED	DATE AND TIME OF SEARCH <u>1/30/98 1545</u>		<input type="checkbox"/> A.M. <input checked="" type="checkbox"/> P.M.	ARREST <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	JUDGE'S DISPOSITION <input type="checkbox"/> DISC. <input type="checkbox"/> HELD FOR COURT <input type="checkbox"/> FURTHER HEARING <input type="checkbox"/> FINED OR COMMITT	
	PROPERTY SEIZED (If "yes" list inventory on separate form, R2008 and enter control number(s) here <u>M24538</u>) <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO					
	SIGNATURE OF PERSON SEIZING PROPERTY <u>[Signature]</u>		BADGE NO. <u>14</u>	OTHER OFFICERS PARTICIPATING IN SEARCH: <u>Det. Lankford, Det. Jankowski, Det. [unclear], Det. [unclear], Det. [unclear]</u>		
	SIGNATURE OF ISSUING AUTHORITY <u>[Signature]</u>					
Signature of Affiant		Address of Private Affiant		Badge No.	District/Unit	
Sworn to and subscribed before me this <u>19</u> day of <u>Jan</u> 19 <u>98</u> Office Address						
(SEAL) Mag. Dist. No.						

VI

TO LAW ENFORCEMENT OFFICER: WHEREAS, facts have been sworn to or affirmed before me by written affidavit(s) attached hereto from which I have found probable cause, I do authorize you to search the premises of person (described on the reverse side), and to seize, secure, inventory, and make return according to the Pennsylvania Rules of Criminal Procedure, the items described on the reverse side.

* ☒ This Warrant should be served as soon as practicable but in no event later

than 4³⁰ ☐ A.M. ☒ P.M. 30 Jan, 19 98

and shall be served only during daytime hours of 6 A.M. to 10 P.M.

Issued under my hand this 28 day of January
19 98, at 4 P M. o'clock. (Issue time must be stated)

** ☐ This Warrant should be served as soon as practicable but in no event later

than _____ ☐ A.M. ☐ P.M. _____, 19 _____

and may be served anytime during day or night.

Issued under my hand this _____ day of _____
19 _____, at _____ M. o'clock. (Issue time must be stated)

(SEAL)

(Signature of Issuing Authority)

Mag. Dist. Jd.

Office Address

(Signature of Issuing Authority)

Phone No.

Date Commission Expires

Title of Issuing Authority

*The issuing authority should specify a date not later than two (2) days after issuance, P.A. R. Crim. P. 2005(d).

**If issuing authority finds reasonable cause for issuing a nighttime warrant on the basis of additional reasonable cause set forth in the accompanying affidavits and wishes to issue a nighttime search warrant, only this section shall be completed, P.A. R. Crim. 2006(h).

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **DAUPHIN****PRELIMINARY ARRAIGNMENT
NOTICE**COMMONWEALTH OF
PENNSYLVANIA

Mag. Dist. No.:	12-0-00
DJ Name: Hon.	DAUPHIN CTY NIGHT CT
Address:	123 WALNUT STREET HARRISBURG, PA
Telephone: (000)	17101

VS.

 DEFENDANT: NAME and ADDRESS
LITTLES, PAUL N
1928 N 3RD ST
HARRISBURG, PA 17102
PAUL N. LITTLES
1928 N 3RD ST
HARRISBURG, PA 17102

 Docket No.: **CR-0000186-98**
 Date Filed: **1/30/98**
 OTN: **F 123148-4**


Charge(s):

35 \$780-113 \$SA30 MAN/DEL/POSS W INT TO MAN/DEL CONTRLLD SUBS
18 \$4304 \$\$ ENDANGERING WELFARE OF CHILDREN

You are hereby notified that a preliminary arraignment will be held in the above captioned case at the following time and place:

Date: 1/30/98	Place: DISTRICT COURT 12-0-00 123 WALNUT STREET HARRISBURG, PA 17101
Time: 9:00 PM	

At the preliminary arraignment, you will be given a copy of the criminal complaint that has been filed against you. In addition, you will be advised of your right to counsel, your right to a preliminary hearing, and the amount and types of bail available if your offense is a bailable offense.

At the preliminary arraignment, a date and time will be fixed for your preliminary hearing and you will be given a reasonable opportunity to post bail. If bail is not posted, you may be committed according to law.

If you are disabled and require assistance, please contact the Magisterial District office at the address above.

If you have any questions, please call the above office immediately.

1-30-98 Date *[Signature]* District Justice
 My commission expires first Monday of January, 2000. SEAL

DATE PRINTED: **1/30/98** COMPLAINT NUMBER:
 DATE COMPLAINT SIGNED: **1/30/98**

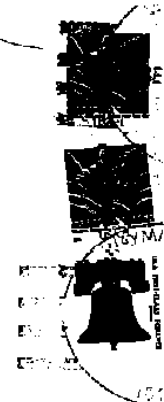
Paul Little
#09149-067
USP Conaan
P.O. Box 300
Waymart, Pa 18472

Case 1:19-cv-00056-SHR Document 1-1 Filed 08/11/20 Page 2 of 2

CERTIFIED MAIL



7007 0710 0002 2240 3306



OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA
U.S. COURTHOUSE
228 WALNUT STREET
P.O. Box 983
HARRISBURG, PA 17108

Legal
mail



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

UNITED STATES OF AMERICA	:	CRIMINAL NO. 1:CR-98-056
	:	
	:	
	:	
v.	:	
	:	
	:	
PAUL N. LITTLES	:	

MEMORANDUM AND ORDER

Before the court is a motion to dismiss for lack of territorial and subject matter jurisdiction filed on September 17, 2008 by Paul N. Littles. Petitioner has also filed an application to proceed *in forma pauperis*. The motion alleges that the criminal activity for which he was prosecuted occurred in Dauphin County, Pennsylvania and, therefore, the federal government and this court had no lawful jurisdiction over his criminal offense.

The motion will be deemed to be one pursuant to 28 U.S.C. § 2255. Title 28 U.S.C. § 2255(a) and (b) are the proper methods to raise the jurisdiction of the court.

Petitioner was sentenced by this court on January 15, 1999. He filed an appeal on January 19, 1999. The decision of this court was affirmed by the court of appeals on April 5, 2000. On September 4, 2001, Petitioner filed his first motion pursuant to 28 U.S.C. § 2255 which was denied by this court on November 7, 2001. Petitioner was denied a certificate of appealability by the circuit court on June 3, 2002 and his petition for a writ of certiorari was denied on October 1, 2003. On

January 20, 2006, Petitioner filed a second motion pursuant to 28 U.S.C. § 2255 which was denied by this court on January 24, 2006. On November 15, 2007, Petitioner filed a third motion pursuant to 28 U.S.C. § 2255. Accompanying that motion was a motion and brief filed under 28 U.S.C. § 2244 seeking permission to file a second or successive petition. By order dated November 20, 2007, this court directed the Clerk of Court to forward Petitioner's documents to the Third Circuit Court of Appeals for consideration by that court. On July 7, 2008, the court of appeals denied Petitioner's request to file a second or successive petition.

Once again, Petitioner has filed a collateral motion on an issue that could have been raised on direct appeal or in a previously filed § 2255 petition. Petitioner has failed to obtain from the court of appeals authorization to bring a successive motion as required by 28 U.S.C. § 2255(b) and 28 U.S.C. § 2244. This court is without jurisdiction to entertain the instant motion.

IT IS THEREFORE ORDERED THAT:

- 1) Petitioner is granted leave to proceed *in forma pauperis*.
- 2) The motion entitled "Motion to dismiss for Lack of Territorial and Subject Matter Jurisdiction" is deemed to be a motion filed pursuant to 28 U.S.C. § 2255 and the motion is **DISMISSED**.
- 3) The court declines to issue a certificate of appealability.
- 4) The Clerk of Court shall close the file.

s/Sylvia H. Rambo
 SYLVIA H. RAMBO
 United States District Judge

Dated: September 18, 2008.

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

UNITED STATES OF AMERICA
Plaintiff

vs.

PAUL N. LITTLES
Defendant/Petitioner

*
* CRIMINAL CASE NO. 1-CR-98-056
*
* 28 U.S.C. §2255 (F) (3) (4) (1)
*
*
*
*
*
*
*

FILED
HARRISBURG, PA

JAN 20 2015

m

28 U.S.C. § 2255 (F) (3) (4) (1)

SUBSTANTIAL CHANGE OF LAW

ALTERNATIVE PETITION FOR WRIT OF CORAM NOBIS; AND
ALTERNATIVE PETITION FOR A WRIT OF AUDITA QUERELA
ALTERNATIVE PETITION FOR RELIEF UNDER 28 § U.S.C. 2241:

Petitioner, in proper-person and by way of pro-se, hereby and moves this Court to vacate his sentence and enter a new sentence that is based on substantial change of law, using a Supreme Court ruling re-interpretation of 21 U.S.C. § 841(b) in *Burrage v. United States*, 571 U.S. 134 S.Ct 881, 187 L.Ed.2d 715 (2014). Petitioner sentence was dramatically increased because, as we now understand, he was improperly enhanced by his drug quantity amounts..

The petitioner now uses the standards of Haines v. Kerner that this court should not hold the petitioner to the same standards as an attorney.

FIRST FINDING OF FACTS

1. The petitioner states that this court has jurisdiction over said matter.
2. The petitioner is being held as a Federal Prisoner at F.C.I. SCHUYLKILL Minersville, PA. 17954.

STATEMENT OF CASE

3. On July 21, 1998, a jury in the United States District Court for the Middle District Of Pennsylvania found the petitioner, Paul N. Littles guilty of distribution of heroin and conspiracy to distribute heroin.

4. On January 15, 1999, the United States District Court for the Middle District of Pennsylvania, Rambo, J., sentenced Mr. Littles to thirty years imprisonment for distribution of heroin. and thirty years imprisonment for conspiracy to distribute heroin. and ordered that the sentence run concurrently,.

5. By unpublished order dated January 14, 2000. the judgement of District Court was affirmed by the United States Court Of Appeals for The Third Circuit.

6. By order date October 2, 2000, a petition for Writ Of Certiorari was denied.

7. Petitioner's sentence of thirty years imprisonment resulted from the following calculations

Petitioner Is Entitled to § 2255
Because the Imposition of His Sentence Violates Due Process,
Constitutes a Miscarriage of Justice, and No Previous
Channel of Review Available Was Available Due to Circuit Precedent

8. 28 U.S.C. §2255 provides relief in a variety of contexts. Relief must be granted if (1) judgment was rendered without jurisdiction; or (2) the sentence imposed was not authorized by law; or (3) the sentence is otherwise open to collateral attack; or (4) "there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack. "28 U.S.C. §2255(b). The text of §2255 is "broad enough" to cover a claim that "an enhanced federal sentence violates due process". Daniels v. United States, 532 U.S. 374, 382 (2001). if the sentencing court imposes a sentence based on a mandatory minimum which was erroneously applied, it is an "arbitrary disregard of the petitioner's right to liberty [and] is a denial of due process of law." Hicks v. Oklahoma, 100 S.Ct. 2227, 2229 (1980). Further relief is available under §2255 for fundamental defects or errors "which inherently result in a complete miscarriage of justice" or "an omission inconsistent with the rudimentary demands of fair procedure." Hill v. United States, 386 U.S. 434, 428 (1962); see also United States v. Addonizio, 99 S.Ct. 2235 (1979). The Fourth Circuit has specifically held that "a change in the law can serve as the basis for a section 2255

motion, whether the change is constitutional or nonconstitutional." United States v. Bonnettem 781 F.3d 357, 364 (4th Cir. 1986)(citing Davis v. United States, 417 U.S. 333 (1974)).

9. Through generic sentencing guidelines miscalculations are typically not be cognizable in a § 2255 proceedings. It has long been recognized that this bar does not encompass extraordinary circumstances that result in a miscarriage of justice of justice, nor circumstances where a petitioner had no previous meaningful avenue of review. Post-conviction relief is available to one "sentenced on the basis of assumption concerning his criminal record which were materially untrue. "United States v. Tucker, 92 S.Ct. 589, 592 (1972)(granting habeas relief because the trial judge based sentence in part by the probation agency enhancement of his drug quantity amount and later determine to be invalid); See Burrage v. United States, 571 U.S. ___, 134 S.Ct. 881, 187 L.Ed.2d 715 (2014). The Supreme Court has recognized that the inability to seek review or otherwise challenge the legality of a sentence can result in a miscarriage of justice:

there may be rare cases in which no channel of review was actually is defendant with respect to a drug enhancement, due to no fault of his own, in which case a prisoner might be able to use a motion under §2255 to challenge the drug enhancement as well as the sentence based on it.

Petitioner Has Filed His Motion Within The Applicable
Statute Of Limitations.

Petitioner not only grounds for relief, but his claim is timely. 28 U.S.C. §2255 F, directs that a one year statute of limitations runs from the latest of:

- (1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to making a motion created by government action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence. The one-year limitation period ends on January 27, 2015.

Notice of this §2255(f)(4) triggering fact does not occur until the petitioner receives notice of the court order and the court order is final. Johnson, 544 U.S. 295 at 307 (emphasis added); Gadsen, 32 F.3d 224 at 227 (the fact of court decision was "not conclusive" for § 2255(f)(4) purposes "until the South Carolina Supreme Court denied the government's petition for "certiorari" on the vacated conviction.) The facts supporting Petitioner's claim could not have been discoverable for purposes of challenging his federal conviction through § 2255 any earlier than when the Third Circuit's decision in Burrage became final - 90 days after the entry of the Order in Burrage.

EVEN IF PETITIONER FILED THIS MOTION OUTSIDE
THE LIMITATIONS PERIOD, EQUITABLE TOLLING IS WARRANTED

10. Even if this Court concludes that Petitioner filed his motion outside the one-year limitations period of §2255(f), Petitioner presents an "appropriate case[]" that warrants an equitable exception to the statute of limitations. Holland v. Florida, 130 S.Ct. 2549, 2560 (2010). Notwithstanding the one-year limitations period, the Supreme Court has recently held that a petitioner is entitled to equitable tolling in the habeas corpus context if he shows" (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstances stood in his way' and prevented timely filing," Id. at 2562 (quoting Pace v. DiGuglieimo, 544 U.S. 408, 418 (2005)).

Moreover, a determination of whether "extraordinary circumstances" exist such that equitable relief is warranted, must be made on "case-by-case" basis, but certainly applies to "correct...particular injustices." Holland, 130 S.Ct. at 2563 (internal quotations omitted). It would be particularly unjust to allow Petitioner to serve a lengthy, enhanced sentence that everyone agrees is unlawful.

Alternatively, Petitioner Is Entitled to § 2241 Relief

11. The Court explained that § 2255 was designed to strengthen, not dilute, the protections of the writ of habeas corpus by "providing that a writ if habeas corpus would be available if the alternative process proved inadequate or ineffective." Id. And the Court "considered it uncontroversial.. that the privilege of habeas corpus entitles the prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to 'the erroneous application or interpretation' of relevant law." Id. at 799 (quoting INS v. St. Cyr, 533 U.S. 289, 302 (2001)). The Court further explained that, while the power to order release or retrial "are the easily identified attributes of any constitutionally adequate habeas corpus proceeding... depending on the circumstances, more may be required." Id. at 779. Because "common-law habeas corpus was, above all, an adaptable remedy[, i]ts precise application and scope changed depending on the circumstances." Id.

If this Court concludes that gate-keeping measures preclude Petitioner from making a viable challenge under § 2255, as the government has argued in McClain and Powell, then that is exactly the type of "inadequate" and "ineffective" remedy that can give rise to a § 2241 claim.

Alternatively, even if Petitioner has not satisfied the precise requirements laid out in *In re Jones*, the Supreme Court's decision in *Boumediene* makes clear that the *In re Jones* framework must be interpreted with some degree of flexibility in order to provide a prisoner with "a meaningful opportunity to demonstrate that he is being held" under an "erroneous application or interpretation" of relevant law." 553 U.S. at 799 (quoting *St. Cyr*, 533 U.S. at 302); see also *Schlup v. Delo*, 513 U.S. 298, 319 (1995) (habeas is an equitable remedy). Petitioner has been deprived of the opportunity to present his claim to the courts under §2255 through no fault of his own, and under *Boumediene*, he must be allowed to present his claim that he has been sentenced unlawfully. Depriving him of the opportunity ever to have a court consider his claim creates an untenable risk of an erroneous deprivation of his liberty for years, particularly in the face of such a clear and easily remediable mistake, and would violate his rights under the Due Process Clause. See *Boumediene*, 553 U.S. at 781 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)) (test for procedural due process requires assessment of risk of erroneous deprivation of liberty and probable value of additional procedural safeguards).

If Petitioner Is Precluded from Relief Under
§§2255 and 2241, He is Entitled to
Coram Nobis Relief

12. If the Court concludes that neither 28 U.S.C. §2255 nor 28 U.S.C. §2241 entitled Petitioner to relief from his erroneous sentence, Petitioner nevertheless is entitled to relief under 28 U.S.C. §1651(a), through a writ of error coram nobis. See, generally, *United States v. Morgan*, 346 U.S. 502 (1954). Although courts infrequently resort to that common-law remedy, it is appropriate in cases where unusual circumstances compel its use to achieve justice. *United States v. Akinsade*, 686 F.3d 248, 252 (4th Cir. 2012).

To obtain a writ of error coram nobis, a petitioner must show that:

"(1) a more usual remedy is not available; (2) valid reasons exist for not attacking the conviction earlier; (3) adverse consequences exist from the conviction sufficient to satisfy the case or controversy requirement of Article III; and (4) the error is of the most fundamental character."

Id. (quoting *Hirabayashi v. United States*, 828 F.2d 591, 604 (9th Cir. 1987)). if this Court denied relief under §§2255 and 2241, Petitioner, like the petitioner in *Akinsade*, will satisfy all four requirements.

This case prevents an unusual example of injustice: the defendant is serving a prison sentence that everyone recognizes is illegal under *Burrage* and that is substantially longer than the sentence he should have received. If the Court concludes that §§2255 and 2241 are unavailable to Petitioner, it should award a writ of coram nobis vacating Petitioner's sentence.

If Petitioner Is Denied Relief Under
§§ 2255 and 2241 and Is Denied a Writ of Error
Coram Nobis, He is Entitled Relief by Writ of Audita Querela

13. If no other avenue of relief is open to Petitioner, he is entitled to relief through a writ of audita querela. The common law writ of audita querela is available to a petitioner who raises a legal—as opposed to an equitable—objection to a conviction or sentence that has arisen after his conviction and that cannot be redressed under another post-conviction remedy. *United States v. Richter*, 510 F.3d 103, 104 (2nd Cir. 2007); *United States v. Johnson*, 962 F.2d 579, 581-82 (7th Cir. 1992). Audita querela relief is available under the Supreme Court's decision in *United States v. Morgan* if it is "necessary to plug a gap in the system of federal postconviction remedies." *Johnson*, 962 F.2d at 583 (quoting *United States v. Kimberlin*, 675 F.2d 866, 869 (7th Cir. 1982)).

Where there is no other avenue of relief "available to a party who claims that [he] is factually or legally innocent as a result of a previously unavailable statutory interpretation," the writ of audita querela may be available, because the absence of any avenue of collateral attack would

present "a thorny constitutional issue. "Richter, 510 F.3d at 104 (quoting In re Dorsainvil, 119 F.3d 245, 248 (3rd Cir. 1997)). Where a new rule of law-like the rule announced in Burrage-applies, one year limitation that ends of January 27, 2015, but if a habeas relief is unavailable under §255 and §2241, a writ of audita querela may lie. Cf. id. (writ of audita querela was not available to petitioner who raised a Booker error, because Booker did not apply retroactively to cases on collateral review).

14. If the Court concludes that no other avenue of relief is open to Petitioner, then a writ of audita querela should lie. Otherwise, petitioner will be forced to serve an illegal prison sentence with no possibility redress. Unlawfully imprisoning a defendant while providing no avenue for relief would present a significant Fifth Amendment due process issue. See Heiser v. Ryan, 951 F.2d 559, 563 (3rd Cir. 1991)(due process clause guarantees the right to attack a conviction). It may also violate Article I, Section 9 of the Constitution, which prohibits Congress from suspending "[t]he privilege of the Writ of Habeas Corpus....unless when in Cases of Rebellion or Invasion the public Safety may require it. "U.S. Const. Art. I, § 9. Cf. Felker v. Turpin, 518 U.S. 651 (1996)(restriction on successive petitions to impose restraint on "abuse of the writ" do not amount to suspension of the writ of habeas corpus contrary to Article I, §9. Thus, if no other avenue of redress provides a remedy for petitioner, a writ of audita querela is justified.

BASIS FOR MOTION

On January 27, 2014, the Supreme Court made a "substantive" change to 21 U.S.C. §§ 846 and 841(a)(1), which was not available to the movant at the time of his conviction, any appeal or 28 U.S.C. § 2255. this "substantive" change was do to the re-interpretation of 21 U.S.C. § 841(b), in Burrage v. United States, 571 U.S. ___, 134 S. ct. 881, 187 L. Ed. 2d 715 (2014). And this "substantive" change directly affects the movant's sentence, as it makes the former sentencing factors in § 841(b), elements of the offense in §§ 846 and 841(a)(1).

The newly established elements must transplant the same Sixth Amendment procedural safeguards allotted to the previously established elements in §§ 846 and 841(a)(1). And because these facts were not elements at the time of the movant's trial, but were used to enhance his sentencing range, without ever being charged in his indictment by a grand jury; presented to a petit jury; nor found beyond a reasonable doubt, he is permitted to challenge the sentence in this Court.

Also, "a new rule of substantive criminal law is presumptively retroactive". United States v. Mandanici, 205 F3d 519, 525 (2nd Cir. 1999).

SUMMARY OF ARGUMENT

The movant will also assert that he was not able to

present this issue during trial, on any appeal or § 2255 motion, because the Supreme Court's interpretation on § 841(b) factors, was that they had to be determined by the court, not the jury, See e.g., Neal v. United States, 516 U.S. 284, 296, 116 S. ct. 763, 133 LEd 2d 709 (1996), and beyond a reasonable doubt. Hence, the only means of redress is through a motion filed pursuant to § 2255.

ARGUMENT

The movant was erroneously sentenced beyond one year of imprisonment on each count of his indictment at 21 U.S.C. §§ 846 and 841(a)(1). As a matter of retroactive statutory construction in **Burrage**, he was never charged with the identity of the controlled substance in 21 U.S.C. § 841(b)-as an element of §§ 846 and 841(a)(1)-by a grand jury nor did the petit jury ever unanimously find it beyond a reasonable doubt during his trial process. Entitling him to immediate release.

APPLICABLE LEGAL PRINCIPLE(S)

Any fact in 21 U.S.C. § 841(b), used to increase a sentencing range from the "catchall" or "default" statutory range

of not more than one year, is an element of the offense in 21 U.S.C. §§ 846 and 841(a)(1), that must be charged in the indictment by a federal grand jury, as an element of an aggravated offense, subject to the Sixth Amendment's triumvirate of procedural safeguards. Cf. Burrage v. United States, 137 LEd 2d at 722.

DISCUSSION

The movant was found guilty as charged in his indictment by a petit jury in this court, after being indicted by a grand jury, that did not include the identity of the controlled substance from 21 U.S.C. § 841(b), as a statutory element of the offense in 21 U.S.C. §§ 846 and 841(a)(1)-but a mere sentencing factor to be determined by a preponderance of the evidence during a sentencing hearing.

On January 27, 2014, the Supreme Court's opinion in facts in § 841(b), are not mere sentencing purposes, and are (as a matter of statutory construction) elements of an aggravated offense. 137 LEd 2d at 722. which belied the former interpretation for the same facts in § 841(b), as construed in Neal, 516 U.S. at 296. And it is well established that a judicial construction of a criminal statute is an authoritative statement of what the statute meant before, as well as after the decision of the case giving rise to that construction. Rivers v. Roadway Express Inc., 511 U.S. 298,

312-13, 114 S. ct. 1510, 128 Led 2d 274 (1994). Hence, the Court's "authoritative statement" of what the elements are for an aggravated offense in §§ 846 and 841(a)(1) are can be found in Burrage; a decision of substantive criminal law, that functions and addresses the menaing and scope of a substantive criminal statute, see Bousley v. United States, 523 U.S. 614, 620, 118 S. ct. 1604, 140 LEd 2d 828 (1998), and narrowed the scope of aggravated offenses in §§ 846 and 841(a)(1)- as it relates to § 841(b). Cf. Schriro v. Summerlin, 542 U.S. 348, 351, 124 S. ct. 2519, 159 LEd 2d 442 (2004).

However, at the time of the movant's trial, time of appeal or 28 U.S.C. § 2255 motion, no elements of an aggravated offense in §§ 846 and 841(a)(1) was of issue, necessarily rest on a determination of what the identity of the controlled substance was; nor was it found unanimously beyond a reasonable doubt, in order to enhance his sentence his sentence above the "default" or "catchall" statutory maximum of more than one year, Cf. 21 U.S.C. § 841(b) (3). And once Burrage reinterpreted the elements of §§ 846 and 841(a)(1), to require aggravated elements, in order to establish an aggravating offesne, all the legal aspects attributable to elements, were automatically transplanted with that decision. As the Supreme Court held in Richardson v. United States, 526 U.S. 813, 818, 119 S. ct. 1707, 143 LEd 2d 985 (1999), "[c]alling a particular kind of fact, an 'element' carries certain legal consequences". Id. See e.g., Apprendi v. New jersey, 530 U.S. 466, 501, 120 S. ct. 2348, 147 LEd 2d 435 (2000) ("if the legislature defines some core crime and then provides for increasing the punishment of whatever sort....--- the

core crime and aggravating fact together constitute an aggravated crime." (Thomas J. concurring).

Also, Burrage's new statutory interpretation extends § 841(a)'s "knowledge" (means rea) element to the necessary elements in §841(b) in establishing an aggravated offense.

While the phrase "knowingly or intentionally" only appears in § 841(a), that mental state must extend to all subsequent elements of an aggravated offense in § 841(b), which depends on the identity of the controlled substance. See Flores-Figueroa v. United States, 556 U.S. 646, 646-47, 129 s. ct. 1886, 173 LEd 2d 853 (2009) (finding that "knowingly" applied to subsequent elements of an offense). So, clear "analysis requires that the question of the kind of culpability required to establish the commission of an offense be faced separately with respect to each material element of the crime". United States v. Bailey, 444 U.S. 394, 406, 100 S. ct. 624, 62 LEd 2d 575 (1980) (quoting Model Penal Code Comments 123).

In other words, after Burrage, courts must read §§ 841(a) and 841(b) together, and that the "knowingly or intentionally" element of § 841(a) now applies equally to the "involved" element of § 841(b), as well as § 841(a) to § 841(b) by the grand jury, or petit jury; nor was the extention determined beyond a reasonable doubt.

The Supreme Court, long ago, expressly held that a sentencing court has no authority to impose a sentence other than which the law provides for the offense on which a defendant was indicted and convicted. In re Bonner, 151 U.S. 242, 254, 14 S. ct. 323, 38 LEd 149(1894). And even "[i]f the court is authorized to impose

imprisonment, based on the elements found by the petiti jury beyond a reasonable doubt.

CONCLUSION

✓
WHEREFORE, based on all of the above, and the motion that this memorandum of law, points and authorities was incorporated into, the movant humbly requests that this Honorable Court grants the motion, and provide the above relief sought, in the interest of justice.

Paul N. Littles
Paul N. Littles

Dated: Jan 15/2015

RELIEF SOUGHT

The movant seeks an order from this Court, that states, that due to the Supreme Court's new "substantive" change in its jurisprudence, regarding §§ 846 and 841(a)(1), and their relationship to § 841(b), the portion of the judgement that reflects a sentence on any count beyond one year, be vacated since, the enhancement of any sentence was not conducted in accord with the Sixth Amendment's triumvarate of procedural safeguards.

And that while the movant has been in custody beyond one year on the counts of his indictment consecutively, he should be released from custody.

JUDICIAL NOTICE LEGAL STANDARD

The movant also made an attempt to file a motion pursuant to 28 U.S.C. § 2255, which this court denied on 2001 but, because this court did not provide him with the Castro v. United States, 540 U.S. 375, 383, 124 S. ct. 786, 157 LEd 2d 778 (2003) warning, that motion cannot serve as a first motion for second or successive purpose; See Norwood v. United States, 472 Fed. Appx. 113, 117 (3rd Cir. 2012); Wilson v. United States, 287 Fed Appx. 490, 492 (6th Cir. 2008).

CERTIFICATE OF SERVICE

I, Paul N. Littles, hereby attest a copy of his 28 U.S.C. §2255 (F)(3)(4)(1) or Alternative Petition for Writ of Coram Nobis; and Alternative Petition for A Writ Of Audita Querela, and Alternative Petition For Relief under 28 § U.S.C. 2241 has been sent to the following below address:

Assistant U.S. Attorney
Eric Pfisterer
P.O. Box 11754
Room 218, Federal Building
Harrisburg, PA 17108

Dated: Jan 15 2015

Paul N. Littles
Paul N. Littles

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

UNITED STATES OF AMERICA	:	CRIMINAL NO. 1:CR-98-056
	:	
	:	
	:	
v.	:	
	:	
	:	
PAUL N. LITTLES	:	

MEMORANDUM

Before the court is a petition filed by Paul N. Littles filed pursuant to 28 U.S.C. § 2255 (f)(3)(4) and, in the alternative, a petition for writ of coram nobis or writ of audita querela, or for relief under 28 U.S.C. § 2241. This court will preliminarily review the petition pursuant to Rule 4 of the Rules Governing Section 2254 and appropriately applied to proceedings under 28 U.S.C. § 2255 and § 2241 to determine if the petitioner is entitled to relief. For the following reasons, the motion will be denied.

I. Discussion

The instant motion seeks relief pursuant to *Burrage v. United States*, __ U.S. ___, 134 S. Ct. 881 (2014). In that case, the petitioner was charged with unlawful distribution of heroin and that death resulted from the use of that substance. (*Id.* at 883.) The United States Supreme Court held, “At least where use of the drug distributed by the defendant is not an independently sufficient cause of the victim’s death or serious bodily injury, a defendant cannot be liable for penalty enhancement

under § 841((b)(1)(C)) unless such use is a but-for cause of the death or injury.” (*Id.* at 886-92.)

The *Burrage* case is not applicable to the facts of the case at bar. Littles was charged with conspiracy to distribute and possess with intent to distribute in excess of a kilogram of heroin pursuant to 21 U.S.C. § 841(a)(1) and actual possession and distribution of the same amount of heroin in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2. Littles was not charged with the death or serious bodily injury of anyone to whom he allegedly distributed heroin nor was there any enhancement applied for this element in determining his sentence. Littles’ offense level computation was based on the following:

Base offense level (drug amount)	32
Role in the offense	+4
Classification as a career offender (USSG § 4B1.1(H))	+1
Total computation:	37

No consideration involved any claim that his crime resulted in the death of any person.

In addition, under the AEDPA, a prisoner may not bring a second or successive petition under 2 U.S.C. § 2255 unless “a panel of the appropriate court of appeal” certifies that the motion contains (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or (2) a new rule of constitutional law made retroactive to cases on collateral review by the United States Supreme Court that was previously unavailable.

Burrage was decided on January 27, 2014. If *Burrage* does as Petitioner argues, and if it applies to his case and creates a new right that is retroactively applicable to cases on collateral review, the one year limitations period would commence on January 27, 2014 and close on January 26, 2015. Petitioner has had almost a full year to seek permission from the Third Circuit Court of Appeals to file a second or successive petition in this court and still has time to do so. An appropriate order will be issued.¹

s/Sylvia H. Rambo
United States District Judge

Dated: January 23, 2015.

¹An application for a writ of coram nobis is an impermissible successive collateral attack. *Robinson v. Johnson*, 313 F.2d 125, 139-40 (3d Cir. 2002); nor under the facts and procedural history of this case does a writ of audita querela provide a basis to seek relief. *Massey v. United States*, 581 F.3d 172, 174 (3d Cir. 2009).

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

UNITED STATES OF AMERICA

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:
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:
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:
:
:

CRIMINAL NO. 1:CR-98-056

v.

PAUL N. LITTLES

ORDER

AND NOW, this 23rd day of January, 2015, **IT IS HEREBY ORDERED THAT** Petitioner's motion filed pursuant to 28 U.S.C. § 2255(f)(3)(4), or in the alternative for a writ of coram nobis, or in the alternative for a writ of audita querela; or for relief under 28 U.S.C. § 2241, is **DISMISSED** for lack of jurisdiction by this court. Petitioner Paul N. Littles is precluded from filing a motion for reconsideration of this order. This court declines to issue a certificate of appealability.

s/Sylvia H. Rambo

United States District Judge

FROM: 09199067
TO: Littles, Paul
SUBJECT: Clerk of Court
DATE: 03/28/2016 02:40:51 PM

MAR 30 2016

MARIA E. ELKINS, CLERK
Per VE

Paul Littles #09199-067
FCI Schuylkill
PO Box 759
Minersville, PA 17954-0759

RE: Whether I can get relief under the Johnson Supreme Court Decision (June 26,2015), as I have been incarcerated since 1998 and sentenced as a "Career Offender", with 2 prior robbery offenses which were used as predicate offenses. One was in 1976, and the other in '82.

I am wondering if I am eligible for relief consistent with the Supreme Court decision in Johnson?

Will you please look into my history and sentencing, and let me know if I qualify to have an attorney appointed, and whether I may be resentenced in the future?

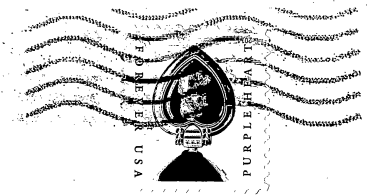
Sincerely, *Paul Little*
Paul Little

Case 1:13-cr-00056-SRR Document 1-1 Filed 03/30/16 Page 2 of 2

Federal Correctional Institution Schuylkill
P.O. Box 759
Minersville, PA 17954-0759

HARRISBURG PA 171

29 MAR 2016 PM 11



Mailed from
Federal Correctional Institution
Schuylkill, PA

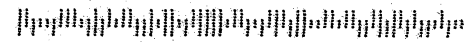
RECEIVED
HARRISBURG, PA

MAR 30 2016

MARIA E. ELKINS, CLERK
Per VE

TO
⇌ 09199-067 ⇌
Office Of The Clerk
U. S. District Court
C/O United States Courthouse
POST Office BOX# 983
Harrisburg, PA 17108
United States

17108098383



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

UNITED STATES OF AMERICA	:	1:98-CR-0056
	:	
v.	:	(Judge Rambo)
	:	
PAUL LITTLES	:	(Electronically Filed)

ORDER

AND NOW, this 4th day of April, 2016, upon consideration of the within Motion to Hold *Pro Se* Filing in Abeyance, **IT IS HEREBY ORDERED** that the motion is **GRANTED**.

BY THE COURT:

s/Sylvia H. Rambo

United States District Judge