

APPENDIX

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	CASE NO. CV 16-4798-R
	)	CASE NO. CR 99-1285-R
Plaintiff-Respondent,	)	
	)	ORDER DENYING PETITIONER'S
v.	)	RENEWED PETITION FOR WRIT OF
	)	AUDITA QUERELA
MICHAEL FYKES,	)	
	)	
Defendant-Petitioner.	)	

Before the Court is Defendant-Petitioner's ("Petitioner") Renewed Petition for Writ of Audita Querela. (Dkt. No. 7). Having been thoroughly briefed by both parties, this Court took the matter under submission on July 24, 2017.

On October 20, 1992, Petitioner was convicted of violating 21 U.S.C. § 846 and 21 U.S.C. §§ 841(a)(1), (b)(1)(B). Under the applicable Sentencing Guidelines, Petitioner's offense level was 26 and his criminal history category IV. Petitioner was sentenced to 100 months of incarceration and five years of supervised release. Petitioner was released from custody in December, 1999, and his supervised release ended on December 12, 2006. In 2014, the Sentencing Guidelines were amended, lowering the recommended sentences for certain drug crimes, including those for which Petitioner was convicted. The amended Sentencing Guidelines

1 are retroactively applicable. Under the amended Sentencing Guidelines, the recommended
2 sentencing range would have been 41-51 months and Petitioner's offense level 18. Petitioner's
3 prior sentence is currently the basis for a sentencing enhancement in a pending federal matter.
4 Petitioner requests that this Court resentence him under the new Sentencing Guidelines. Petitioner
5 does not allege that his sentence was based on legal or factual error.

6 Audita querela, literally "the complaint having been heard," is a common law writ used to
7 attack a judgment that was correct when rendered, but later became incorrect because of
8 circumstances that arose after the judgment was issued. *Carrington v. United States*, 503 F.3d
9 888, 890 n.2 (9th Cir. 2007). Audita querela "provides relief from the consequences of a
10 conviction when a defense or discharge arises subsequent to entry of the final judgment." *Doe v.*
11 *INS*, 120 F.3d 200, 203 (9th Cir. 1997). The writ of audita querela is only available where there is
12 a legal objection to a conviction, and it may not be granted on purely equitable grounds. *Id.* at
13 204.

14 Here, Petitioner does not claim that his conviction or his sentence is invalid due to a legal
15 defense or discharge that arose after his release. Instead, Petitioner requests relief on a purely
16 equitable basis. Petitioner argues that he is entitled to relief because his lengthy sentence, nearly
17 double what the amended Sentencing Guidelines would have called for, carries collateral
18 consequences now because it is currently the basis for sentencing enhancement in another matter.
19 But, as Petitioner acknowledges, the sentence was not based on any legal error, and "[a]t the time,
20 it was perfectly lawful for the Court to sentence him to 100 months." Accordingly, Petitioner has
21 no legal objection to the conviction or sentence and his petition is denied.

22 **IT IS HEREBY ORDERED** that Petitioner's Renewed Petition for Writ of Audita
23 Querela (Dkt. No. 7) is DENIED.

24 Dated: October 16, 2017



MANUEL L. REAL
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

FEB 16 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MICHAEL FYKES,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

No. 17-56582

D.C. No. 2:16-cv-04798-R
Central District of California,
Los Angeles

ORDER

Before: LEAVY, FERNANDEZ, and MURGUIA, Circuit Judges.

A review of the record and the parties' responses to the court's order to show cause indicates that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (stating standard).

Accordingly, we summarily affirm the district court's order.

AFFIRMED.