

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

AMADOR IRIZARRY-SANABRIA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 12-1855 (JAF)

(Crim. No. 92-54-JAF-1, 93-102-CC-7)

OPINION AND ORDER

Petitioner, Amador Irizarry-Sanabria (“Irizarry-Sanabria”), appearing pro se, brings this petition to nullify his conviction, styled as a writ for coram nobis. (Docket No. 1.) However, if a petition for coram nobis falls within the substantive scope of § 2255, then we must re-characterize it as a § 2255 petition. Trenkler v. United States, 536 F.3d 85, 97 (2008). In light of this re-characterization, we must dismiss Irizarry-Sanabria’s petition as both time-barred and as a successive motion under Section 2255.

I.

Background

This petition involves two distinct cases: One before the undersigned and one before Judge Cerezo, both in the District of Puerto Rico.

The case before me began in 1992. Irizarry-Sanabria was convicted by a jury for “conspiracy to import approximately 3000 pounds of marijuana and for the possession of a firearm in relation to the commission of said narcotics offense, in violation of 21 U.S.C. §§ 952(a) and 963, and 18 U.S.C. § 924(c)(1), respectively.” United States v. Andujar, 49 F.3d 16, 18 (1st Cir. 1996). I sentenced Irizarry-Sanabria to 120 months imprisonment for Count One and 60 months imprisonment for Count Two. (Crim. No. 92-054.) On March 6,

1 1995, the First Circuit affirmed the convictions. U.S. v. Andujar, 49 F.3d 16 (1st Cir. 1995).
2 On May 9, 1995, Irizarry-Sanabria filed a petition to vacate this sentence under 28 U.S.C.
3 2255 in Crim. No. 92-54, alleging that his sentence was mistakenly enhanced because he was
4 incorrectly deemed to have used or carried a firearm in relation to the drug trafficking crime.
5 (Civ. No. 95-1579.) On February 15, 1996, I granted Irizarry-Sanabria's motion and
6 resentenced him to 121 months of imprisonment followed by a five-year term of supervised
7 release. (Civ. No. 95-1579; see also Crim. No. 93-102, Docket No. 474.) Irizarry-Sanabria
8 requested a certificate of appealability from the First Circuit. Irizarry-Sanabria v. U.S., 101
9 F.3d 106 (1st Cir. 1996.) On November 18, 1996, the First Circuit granted his request but
10 affirmed the judgment, stating that any error in failing to hold a sentencing hearing was
11 harmless, and affirming the rejection of the two other grounds for habeas relief. Id.

12 In a separate prosecution before Judge Cerezo in 1993, Irizarry-Sanabria was charged
13 with violating 21 U.S.C. §§ 952 and 963. (Crim. No. 93-102.) He moved for dismissal,
14 claiming that he had already been tried and sentenced on the same charges before the
15 undersigned in Crim. No. 92-54-JAF, in violation of the Fifth Amendment right against
16 double jeopardy. (Crim. No. 93-102, Docket No. 137.) Judge Cerezo denied this motion.
17 (Crim. No. 93-102, Docket No. 199.) On October 21, 1993, Irizarry-Sanabria pled guilty to
18 Count One of the indictment. (Crim. No. 93-102, Docket No. 229.) Before sentencing, he
19 unsuccessfully moved for reconsideration, again including double jeopardy violations among
20 his claims. (Crim. No. 93-102, Docket No. 327.) Irizarry-Sanabria filed a notice of appeal to
21 the First Circuit on December 8, 1994. (Crim. No. 93-102, Docket No. 359.) On August 22,
22 1996, the First Circuit affirmed his conviction after reviewing numerous claims, including
23 those of double jeopardy violations. U.S. v. Irizarry-Sanabria, 94 F.3d 640 (1st Cir. 1996.)

1 On November 18, 1996, Irizarry-Sanabria's petition for writ of certiorari was denied.
2 Irizarry-Sanabria v. U.S., 519 U.S. 1000 (1996). Judge Cerezo sentenced Irizarry-Sanabria
3 to 120 months in prison and five years of supervised release, to be served concurrently with
4 the sentence I imposed. (Crim. No. 93-102, Docket No. 474.) Irizarry-Sanabria filed a
5 petition under 28 U.S.C. § 2255 on January 15, 1997. (Crim. No. 93-102, Docket No. 419.)
6 On August 12, 1999, Judge Cerezo denied Irizarry-Sanabria's petition for habeas relief.
7 (Crim. No. 93-102, Docket No. 425.)

8 Irizarry-Sanabria completed his prison sentence and began supervised release on
9 November 8, 2002. (Crim. 93-102, Docket No. 474.) On March 20, 2003, Irizarry-Sanabria
10 pled guilty to violating a condition of his supervised release, namely the condition that he not
11 commit another crime. His most recent crime was again related to drugs and the
12 accompanying conspiracy: A violation of 21 U.S.C. 841(a)(1) and 846 in the Middle District
13 of Florida. For this violation, I revoked Irizarry-Sanabria's supervised release and sentenced
14 him to twenty-four months imprisonment. (Crim. No. 92-54, Docket No. 177.) Judge
15 Cerezo also revoked Irizarry-Sanabria's supervised release and sentenced him to twenty-
16 seven months imprisonment, to run concurrently with both my sentence and the sentence
17 imposed by the Middle District of Florida. (Crim. No. 93-102, Docket No. 477.)

18 On October 10, 2012, Irizarry-Sanabria filed a motion before me to nullify his second
19 conviction -- the conviction before Judge Cerezo -- under a writ of coram nobis. (Civ. 12-
20 1855, Docket No. 1.) Irizarry-Sanabria argues that his second conviction, Crim. No. 93-102,
21 is null and void because it was obtained in violation of the Speedy Trial Act, 18 U.S.C.
22 § 3161, and once again argues that it violates double jeopardy because it was part of the same
23 conspiracy tried before me a year earlier, in Crim. No. 92-54-JAF. (Docket No. 1.) On

1 October 1, 2013, we ordered the government to file a response to Irizarry-Sanabria's motion,
2 addressing the claims that his conviction violated the Speedy Trial Act and the Double
3 Jeopardy clause. (Docket No. 8.) On October 21, 2013, the government filed a response
4 which argued only that Irizarry-Sanabria had waived his right of dismissal under the Speedy
5 Trial Act and that he did not satisfy the requirements to file a writ of coram nobis. (Docket
6 No. 10.)

7 **III.**

8 **Jurisdiction**

9 If a petition for coram nobis falls within the substantive scope of § 2255, then we
10 must re-characterize it as a § 2255 petition. Trenkler v. United States, 536 F.3d 85, 97
11 (2008). Therefore, we deem Irizarry-Sanabria's motion to be a petition for a writ of
12 habeas corpus under 28 U.S.C. § 2255. Irizarry-Sanabria is currently in federal custody
13 having been sentenced by this district court, as required by 28 U.S.C. § 2255. We note
14 that Irizarry-Sanabria is challenging Judge Cerezo's sentence, not ours. To file a timely
15 motion, Irizarry-Sanabria had one year from the date that Judge Cerezo's judgment
16 became final. 28 U.S.C. § 2255(f). He is challenging his conviction in Judge Cerezo's
17 court, and that judgment became final when certiorari was denied on November 18, 1996.
18 Irizarry-Sanabria, 519 U.S. 1000 (1996). He filed the instant petition on October 10,
19 2012, far more than a year after his judgment became final. Therefore, the petition is
20 time-barred and we do not have jurisdiction to hear the case.

21 Furthermore, before filing a second or successive motion under Section 2255, a
22 defendant "shall move the appropriate court of appeals for an order authorizing the
23 district court to consider the application." 28 U.S.C. § 2244(b)(3)(A); see also 28 U.S.C.

1 § 2255 (“A second or successive motion must be certified as provided in section 2244 by
2 a panel of the appropriate court of appeals....”). A district court lacks jurisdiction over a
3 second or successive petition unless the defendant obtains certification from the
4 appropriate court of appeals regarding that case. Trenkler v. United States, 536 F.3d 85,
5 96 (1st Cir. 2008). Irizarry-Sanabria submitted his first motion for habeas relief from this
6 conviction and sentence on January 15, 1997, and Judge Cerezo dismissed that motion on
7 August 12, 1999. (Crim. No. 93-102, Docket Nos. 419, 425.) Irizarry-Sanabria has not
8 obtained certification from the First Circuit to file a successive petition and, therefore, the
9 district court lacks jurisdiction.

10 IV.

11 Certificate of Appealability

12
13 In accordance with Rule 11 of the Rules Governing § 2255 Proceedings, whenever
14 issuing a denial of § 2255 relief we must concurrently determine whether to issue a
15 certificate of appealability (“COA”). We grant a COA only upon “a substantial showing
16 of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make this showing,
17 “[t]he petitioner must demonstrate that reasonable jurists would find the district court’s
18 assessment of the constitutional claims debatable or wrong.” Miller-El v. Cockrell, 537
19 U.S. 322, 338 (2003) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)). While
20 Irizarry-Sanabria has not yet requested a COA, we see no way in which a reasonable
21 jurist could find our assessment of his constitutional claims debatable or wrong. Irizarry-
22 Sanabria may request a COA directly from the First Circuit, pursuant to Rule of
23 Appellate Procedure 22.

Conclusion

IT IS SO ORDERED.

San Juan, Puerto Rico, this 28th day of February, 2014.

S/José Antonio Fusté
JOSE ANTONIO FUSTE
U. S. DISTRICT JUDGE