

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-14385-CIV-MIDDLEBROOKS  
(00-14086-CR-MIDDLEBROOKS)  
MAGISTRATE JUDGE P.A. WHITE

ANTHONY J. SANDERS,	:	
	:	
Movant,	:	
	:	
v.	:	<u>REPORT RE §2255 WITH</u>
	:	<u>PENDING APPEAL</u>
UNITED STATES OF AMERICA,	:	
	:	
Respondent.	:	

---

Anthony Sanders has filed a pro se motion to vacate pursuant to 28 U.S.C. §2255 attacking the conviction and/or sentence imposed in Case No. 00-14086-Cr-Middlebrooks, for possession with intent to distribut five grams or more of crack cocaine, in violation of 21 U.S.C. §841. The movant is seeking a reduction of sentence.

The Court has reviewed the record and the government's response to an order to show cause (DE#7). The docket of the criminal case reveals that the movant filed a notice of appeal on October 31, 2008, and that the appeal remains pending before the Eleventh Circuit Court of Appeals. The movant is appealing the denial of his motion to reduce sentence filed pursuant to 18 U.S.C. §3582.

The notice of appeal divested this Court of jurisdiction to entertain a collateral attack upon the validity of the conviction

and sentence. United States v. Tovar-Rico, 61 F.3d 1529, 1532 (11 Cir. 1995), United States v. Wilson, 894 F.2d 1245, 1252 (11 Cir. 1990). The motion should be dismissed, without prejudice to refile if it concerns a matter appropriate to be raised after the appeal. United States v. Khoury, 901 F.2d 948, 969 n.20 (11 Cir. 1990); Shewchun v. United States, 797 F.2d 941 (11 cir. 1986).

It is therefore recommended that this motion be dismissed, without prejudice as to any issue not cognizable on appeal.

Objections to this report may be filed with the District Judge within ten days of receipt of a copy of the report.

Dated this 17<sup>th</sup> day of December, 2008.



UNITED STATES MAGISTRATE JUDGE

cc: Anthony J. Sanders, Pro Se  
Reg. No. 39637-018  
FCC-Coleman Low  
Address of Record

United States Attorney Rinku Talwar  
99 N.E. 4th Street  
Miami, FL 33132