
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

CARLOS ALBERTO GAMEZ-ACUNA,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**MEMORANDUM DECISION
AND ORDER**

Case No. 2:10CV66 DAK

This matter is before the court on Petitioner Carlos Alberto Gamez-Acuna's Motion pursuant to 28 U.S.C. § 2255 to vacate and correct his sentence. On February 26, 2008, Petitioner was convicted by a jury. On June 11, 2008, he was sentenced to 180 months in the custody of the Bureau of Prisons, followed by 60 months of supervised release.

Prior to his sentencing, Mr. Gamez filed a Notice of Appeal. He again filed another Notice of Appeal on June 25, 2008. Shortly thereafter, Mr. Gamez's counsel withdrew and new counsel was appointed, delaying the briefing of the appeal. In addition, Mr. Gamez requested and received an extension of the briefing deadline so that he could supplement the record on appeal. Based on this court's docket, the record on appeal has been supplemented.

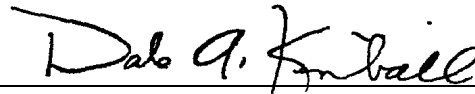
Because Petitioner's appeal is still pending at the Tenth Circuit, this court will not consider his § 2255 Petition because "[a]bsent extraordinary circumstances, the orderly administration of criminal justice precludes a district court from considering a § 2255 motion

while review of the direct appeal is still pending.” *United States v. Cook*, 997 F.2d 1312, 1319 (10th Cir.1993).

Accordingly, this Petition is DISMISSED without prejudice to file another § 2255 Petition if appropriate, within one year after the conclusion of his direct appeal. This case is now closed.

DATED this 16th day of February, 2010.

BY THE COURT:

A handwritten signature in black ink that reads "Dale A. Kimball". The signature is written in a cursive style with a horizontal line underneath it.

DALE A. KIMBALL
United States District Judge