

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,            )  
  )  
      Plaintiff/Respondent,         )  
  )  
      v.                                 )     Crim. Action No. 96-88-1-SLR  
  )     Civil Action No. 99-428-SLR  
DARRYL HANDY,                         )  
  )  
      Defendant/Petitioner.         )

**MEMORANDUM ORDER**

**I. INTRODUCTION**

Petitioner Darryl Handy is an inmate at the Federal Correctional Institution in Fairton, New Jersey. (D.I. 106) Currently before the court are petitioner's application for habeas relief filed pursuant to 28 U.S.C. § 2255, request to extend time to file an addendum to his habeas petition, motion for appointment of counsel, and motion for post-rehabilitation relief. Petitioner's habeas petition is denied in part, petitioner's request for an extension of time to file an addendum is granted, and petitioner's remaining motions are denied.

**II. BACKGROUND**

On June 13, 1997, petitioner was convicted of one count of possession of a firearm by a felon in violation of 18 U.S.C. § 922(g)(1).<sup>1</sup> (D.I. 72) On September 5, 1997, the court sentenced defendant to 120 months imprisonment. (Id.) On April 2, 1998,

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<sup>1</sup>A jury found defendant guilty of an additional count, and the court granted defendant's motion for judgment of acquittal as to that count. (D.I. 59)

the Third Circuit affirmed petitioner's conviction. (D.I. 88) Petitioner did not seek a writ of certiorari to the Supreme Court. On September 27, 1999, petitioner filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2255.<sup>2</sup> (D.I. 99) On January 3, 2000, petitioner filed a motion for leave to file an addendum to his petition. (D.I. 101) In an August 14, 2000 order, the court instructed petitioner to file an addendum by September 15, 2000. (D.I. 103) Since that time, petitioner has not filed an addendum, however, he did request an extension of time on September 5, 2000. (D.I. 104) Petitioner also filed a motion for appointment of counsel (D.I. 105) and a motion for post-rehabilitation relief (D.I. 106) on October 10, 2000.

### **III. DISCUSSION**

#### **A. Application for Habeas Corpus Relief**

Petitioner raises six grounds for relief in his habeas petition: 1) the court erred in denying petitioner's motion for judgment of acquittal and a new trial because of insufficient evidence; 2) the court erred in denying petitioner's motion to suppress incriminating statements made in the Brown trial; 3) the court improperly admitted petitioner's statements regarding the Glock firearm, which unfairly prejudiced petitioner's right to a fair trial; 4) petitioner did not knowingly, intelligently and

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<sup>2</sup>The court granted petitioner's request to extend the time to file a 2255 petition to September 28, 1999. (D.I. 91)

voluntarily waive his Fifth Amendment privilege against self-incrimination; 5) the court erred in denying petitioner's motion to suppress items seized at 1120 Conrad Street; and 6) ineffective assistance of counsel. The first five grounds were considered and decided by the Third Circuit on appeal. See United States v. Handy, No. 97-7486, slip op. (3d Cir. Apr. 2, 1998). Therefore, the first five grounds of petitioner's habeas application are dismissed. See United States v. DeRewal, 10 F.3d 100, 105 n.4 (3d Cir. 1993) (holding that Section 2255 may not be employed to relitigate questions which were raised and considered on direct appeal).

Petitioner's request for an extension to file an addendum to his habeas application is granted, however, that addendum may not include any separate or new claims. Since several of petitioner's habeas claims are dismissed, he may only address the claim for ineffective assistance of counsel. See United States v. Thomas, 221 F.3d 430, 436 (3d Cir. 2000) (holding that addendum to habeas petition cannot include separate or new claims, but may amplify existing claims); United States v. Duffus, 174 F.3d 333, 337-38 (3d Cir.), cert. denied, 120 S.Ct. 163 (1999) (same).

#### **B. Appointment of Counsel**

There is no constitutional right to appointed counsel in post-conviction collateral attacks. See Pennsylvania v. Finley,

481 U.S. 551, 555 (1987) (holding that Sixth Amendment right to appointed counsel does not extend to prisoners collaterally attacking their convictions). Since petitioner has offered no persuasive reasons why representation is required at this stage of the proceedings, petitioner's motion for appointment of counsel is denied. However, petitioner does have a statutory right to appointed counsel in a section 2255 proceeding under Rule 8, 28 U.S.C. § 2255, if an evidentiary hearing is required to determine the merits of petitioner's claim for ineffective assistance of counsel. Therefore, the request is denied without prejudice to renew.

**C. Post-Rehabilitation Relief**

Petitioner's motion for post-rehabilitation relief requests placement in the "Choice program" at the Fairton Federal Correctional Institution. The court does not have jurisdiction to entertain such a request under 28 U.S.C. § 2255, as petitioner is challenging the manner in which his sentence is executed rather than the sentence as it was imposed. See United States v. Ferri, 686 F.2d 147, 158 (3d Cir. 1982). Therefore, petitioner's motion for post-rehabilitation relief is denied.

**IV. CONCLUSION**

Therefore, at Wilmington, this 14th day of February, 2001;  
IT IS ORDERED that:

1. The claims in paragraphs 8 through 12 of petitioner's application for habeas corpus relief (D.I. 99) are dismissed.

2. Petitioner's request for an extension to file an addendum to his habeas petition (D.I. 104) is granted, but the addendum is limited to petitioner's ineffective assistance of counsel claim (paragraph 13). Briefing on that claim shall proceed in accordance with the following schedule:

a.) Petitioner shall file and serve an addendum to his application for habeas corpus relief on or before February 28, 2001.

b.) The government shall file and serve an answering brief in response to petitioner's application on or before March 14, 2001.

c.) Petitioner shall file and serve a reply brief in response to the government's answering brief on or before March 28, 2001.

3. Petitioner's motions for appointment of counsel (D.I. 105) and post-rehabilitation relief (D.I. 106) are denied.

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United States District Judge