

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

STEPHEN J. BUSH,	:	
	:	
Movant/Defendant,	:	
	:	
v.	:	Civ. A. No. 12-1309-LPS
	:	Cr. A. No. 93-40-LPS
	:	
UNITED STATES OF AMERICA,	:	
	:	
Respondent/Plaintiff.	:	

MEMORANDUM

I. BACKGROUND

In 1993, Movant Stephen J. Bush pled guilty to violating 18 U.S.C. §§ 876 and 2. (D.I. 19) The Honorable Joseph J. Farnan, Jr. sentenced him to thirty-seven months of imprisonment and three years of supervised release, to run consecutive to his then-current Delaware state sentence. (D.I. 27) Movant remained incarcerated in the Delaware state prison system for a total of thirty years, with a scheduled parole release date of October 29, 2012. (D.I. 36 at 2)

Presently pending before the Court is Movant’s “Motion to Vacate/Set Aside Consecutive Sentence,” in which Movant asks the Court to set aside or vacate his thirty-seven month federal sentence and impose a probationary period in its place. (D.I. 36 at 3)

II. LEGAL STANDARDS

Federal courts are required to liberally construe *pro se* filings. *See Royce v. Hahn*, 151 F.3d 116, 118 (3d Cir. 1998). Nevertheless, a district court may summarily dismiss a § 2255 motion “if it plainly appears from the face of the motion and any exhibits annexed to it that the moving party is not entitled to relief.” *See* Rule 4, 28 U.S.C. foll. § 2255. Significantly, in order

to pursue relief under to 28 U.S.C. § 2255, a movant must assert that his “sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack.” 28 U.S.C. § 2255(a).

III. DISCUSSION

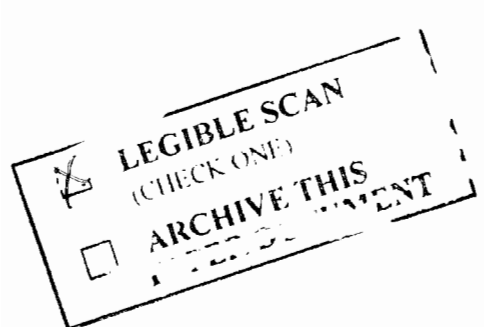
Having reviewed the face of the Motion, the Court concludes that summary dismissal is appropriate. Movant’s contention that his thirty-seven month federal sentence should be set aside because he is sixty-two years old and suffering from serious medical conditions (D.I. 3 at 2) does not challenge the constitutionality or legality of Movant’s conviction, sentence, and/or custody. Therefore, the Motion does not assert a basis for § 2255 relief.

IV. CONCLUSION

For the reason set forth above, the Court will summarily dismiss Movant’s § 2255 Motion. The Court will also decline to issue a certificate of appealability because Movant has failed to make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); 3d Cir. L.A.R. 22.2 (2011); *United States v. Eyer*, 113 F.3d 470 (3d Cir. 1997). A separate order will be entered.

Dated: February 21, 2013


UNITED STATES DISTRICT JUDGE



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Movant/Defendant,	:	
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v.	:	Civ. A. No. 12-1309-LPS
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	:	
UNITED STATES OF AMERICA,	:	
	:	
Respondent/Plaintiff.	:	

At Wilmington, this 21st day of February, 2013, for the reasons set forth in the Memorandum issued this date;

IT IS HEREBY ORDERED that:

1. Movant Stephen J. Bush’s Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 (D.I. 36) is **SUMMARILY DISMISSED** pursuant to Rule 4, 28 U.S.C. foll. § 2255.
2. The Court declines to issue a certificate of appealability because Movant has failed to satisfy the standards set forth in 28 U.S.C. § 2253(c)(2).
3. The Clerk shall send a copy of this Memorandum and Order to Movant at his address on record. *See* Rule 4, 28 U.S.C. foll. § 2254.
4. The Clerk of the Court shall close this case.



 UNITED STATES DISTRICT JUDGE