IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Criminal Action No. 96-27-JJF
	:	Civil Action No. 01-359-JJF
DANIEL HANDSCHU,	:	
	:	
Defendant.	:	
	:	

Robert J. Prettyman, Esquire, Assistant United States Attorney, of the UNITED STATES DEPARTMENT OF JUSTICE, Wilmington, Delaware. Attorney for Plaintiff.

Daniel Handschu, Pro Se Defendant.

MEMORANDUM OPINION

June 1, 2001

Wilmington, Delaware

Farnan, District Judge.

Pending before the Court is a Petition For The Ancient Writ Of Error Coram Nobis (D.I. 23) filed by Daniel Handschu seeking relief from his federal conviction and sentence for conspiring to manufacture and distribute methamphetamine, mescaline and MDMA in violation of 21 U.S.C. §§ 846 and 841(a)(1) and (b)(1)(C). For the reasons set forth below, Defendant's Petition will be dismissed and the relief requested will be denied.

BACKGROUND

According to the Information, Memorandum Of Plea Agreement and Stipulation Of Facts entered in this case, Defendant and his co-conspirator, Jason Getzes agreed to manufacture methamphetamine, mescaline and MDMA during the late summer and early fall of 1994. (D.I. 33 at A-2, 4, 8-13, 16, 21-22, 25-27). In August 1994, Defendant went to Indiana and stole a bottle of gallic acid, which Defendant later used in an attempt to illegally manufacture mescaline at a DuPont Company laboratory in Wilmington, Delaware. (D.I. 33 at A-8, 21-22, 25-27).

Thereafter, Getzes researched the manufacturing of methamphetamine and MDMA and supplied that research to Defendant. Getzes also obtained cans of ether and tablets of ephedrine hydrochloride and pseudoephedrine hydrochloride and supplied those material to Defendant for use in the manufacture of methamphetamine and mescaline. (D.I. 33 at A-9, 21-22, 25-27).

Defendant first attempted to manufacture methamphetamine in September 1994; however, his first attempt failed.

Thereafter, Defendant continued to research manufacturing methods for the drugs and continued to purchase materials used in the manufacturing process, such as 3000 tablets of ephedrine hydrochloride. In the meantime, Getzes contacted potential purchasers for the methamphetamine and MDMA. Defendant continued his manufacturing efforts from the end of September until mid-October. Of three attempts to manufacture the drugs, two failed and one resulted in a small vial of product, which Defendant delivered to Getzes.

During October 20-23, 1994, Defendant possessed the formula for manufacturing methamphetamine and MDMA, possessed a substantial amount of chemicals and lab equipment for the production of the substances and continued to attempt to manufacture methamphetamine. (D.I. 33 at A-10-13, 16, 21-22, 25-17). In all, Defendant and Getzes made six attempts to produce methamphetamine, one attempt to produce mescaline, and one attempt to produce MDMA. (D.I. 33 at A-8-13, 16, 21-22, 25-27).

On March 28, 1996, Defendant was charged with Conspiracy to Manufacture and Distribute Methamphetamine, Mescaline and MDMA, in violation of 21 U.S.C. § 846 and 21 U.S.C. § 841(a)(1) and (b)(1)(C). (D.I. 33 at A-2, 58). On May 30, 1996, with the representation of counsel, Defendant pled guilty to the charge. (D.I. 33 at A-1, 3-7, 14-31, 58).

Thereafter, the Court sentenced Defendant to 27 months imprisonment with a recommendation of Boot Camp-Shock Incarceration pursuant to 18 U.S.C. §§ 3582(a), 3621(b)(4) and 4046 and U.S.S.G. §5F1.7, three years of supervised release, and a $50.00 special assessment. Defendant did not appeal his conviction or sentence. (D.I. 33 at A-57-61).

Approximately one year later, Defendant filed the instant Petition For Writ Of Error Coram Nobis. By his Petition, Defendant contends that his conviction is void and unlawful and requests the Court to "vacate, set aside and expunge from the record" his conviction. (D.I. 23 at 1). Specifically, Defendant contends that (1) his guilty plea was not knowingly, voluntarily and intelligently made, because his counsel failed to inform him of the circumstances associated with his plea; (2) the Court lacked jurisdiction over him; and (3) Congress lacked jurisdiction to pass a law prohibiting conspiracies to manufacture and distribute controlled substances. In response to Defendant's Petition, the Government has filed an Answer and accompanying Brief. Accordingly, the Petition is ripe for the Court's review.

DISCUSSION

Defendant's Petition is styled as a "Petition For The Ancient Writ Of Error Coram Nobis." The writ of coram nobis originated as a common law writ, and was made applicable to

federal proceedings by the All Writs Act, 28 U.S.C. § 1651. Traditionally, the writ of coram nobis was used to present to the court "factual errors 'material to the validity and regularity of the legal proceeding itself.'" Carlisle v. United States, 517 U.S. 416, 428 (1996) (quoting United States v. Mayer, 235 U.S. 55, 67-68 (1914)). In its more modern sense, the writ of coram nobis may be used "to attack allegedly invalid convictions which have continuing consequences;" however, the writ is reserved for those situations in which "the petitioner has served his sentence and is no longer 'in custody' for purposes of 28 U.S.C. § 2255." United States v. Stoneman, 870 F.2d 102, 105 (3d Cir. 1988). Thus, the writ of coram nobis is considered an "extraordinary writ, limited to cases in which 'no statutory remedy is available or adequate.'" United States v. Brown, 117 F.3d 471, 474 (11th Cir. 1997) (citations omitted); Carlisle, 517 U.S. at 1467 (recognizing that there are few situations where a writ of coram nobis would be "necessary or appropriate" and holding that "[w]here a statute specifically addresses the particular issue at hand, it is that authority, and not the All Writs Act, that is controlling").

In this case, Defendant was "in custody" at the time he filed his Petition For Writ Of Error Coram Nobis, and 28 U.S.C. § 2255 specifically addresses Defendant's attack on his criminal

conviction.[1] Accordingly, coram nobis relief is not available to Defendant, and the Court will construe Defendant's Petition For Writ Of Error Coram Nobis as a Motion To Vacate, Set Aside Or Correct Sentence pursuant to 28 U.S.C. § 2255.

I. Defendant's Contention That His Guilty Plea Was Not Knowingly, Voluntarily And Intelligently Made

By his Petition, Defendant contends that his guilty plea was not knowingly, voluntarily and intelligently made, because his counsel failed to inform him of the circumstances associated with his plea. Specifically, Defendant contends that he was coerced and induced to enter into the plea agreement by his counsel, that his counsel did not explain the agreement, and that he did not understand the terms of the agreement, which Defendant contends

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[1] The docket in Defendant's case indicates that Defendant may currently be on probation. However, this does not alter the Court's conclusion that the writ of coram nobis is unavailable to Defendant. Defendant was incarcerated at the time he filed the Petition, and therefore, Defendant was "in custody" within the meaning of Section 2255 such that coram nobis relief would not be available to Defendant. Brown, 117 F.3d at 475 ("Because Brown was in custody within the meaning of §2255 when he filed his petition in the district court, coram nobis relief was unavailable to him, and § 2255 was his exclusive remedy."). Moreover, an individual serving a term of supervised release or probation satisfies the "in custody" requirement of Section 2255. United States v. Essig, 10 F.3d 968, 970 n.3 (3d Cir. 1993); see also United States v. Span, 75 F.3d 1383, 1386 & n.5 (9th Cir. 1996) (converting on appeal coram nobis petition into section 2255 motion where petitioner was on probation when petition was filed); United States v. Rankin, 1994 WL 243862 (E.D. Pa. June 7, 1994) (recognizing that Section 2255 applies to Defendant who filed motion to vacate sentence during probationary period). Accordingly, even if Defendant is currently on probation or supervised release, the writ of coram nobis is unavailable to Defendant, and his claims are governed by Section 2255.

were “fraudulent” and “unconscionable.” (D.I. 23 at 4-6).

It is well-established that Section 2255 may not be utilized as a substitute for direct appeal. United States v. Frady, 456 U.S. 152, 165 (1982) (collecting cases). Accordingly, federal courts apply a procedural default rule to bar consideration of claims which a defendant could have raised on direct appeal, but did not. Id. at 168. In order to overcome the procedural bar, a defendant must show “cause” excusing the procedural default and “actual prejudice” resulting from the errors of which he or she complains. Id. at 167-68. In further defining the “cause and actual prejudice standard,” courts have held that cause exists where a factor external to the defense prevented a defendant from complying with the procedural rule, and actual prejudice exists where the alleged error actually worked a substantial disadvantage to a defendant. Kikumura v. United States, 978 F. Supp. 563, 574-75 (D.N.J. 1997) (citations omitted); Rodriguez v. United States, 866 F. Supp. 783, 785 (S.D.N.Y. 1994) (citations omitted).

In this case, Defendant did not file a direct appeal of his conviction or sentence. Accordingly, Defendant must show cause and prejudice to prevail on his claim of an involuntary guilty plea. Defendant has not alleged cause for his default, and even if Defendant could establish cause for his default, the Court concludes that Defendant cannot establish prejudice because he cannot establish his underlying claim that his guilty plea was

involuntary.

As the Court of Appeals for the Third Circuit has recognized:

> Declarations made under oath [during a plea colloquy] ought not to be lightly cast aside . . .” [T]he representations of the defendant, his lawyer, and the prosecutor at [a plea] hearing, as well as any findings made by the judge accepting the plea, constitute a formidable barrier in any subsequent collateral proceedings. Solemn declarations made in open court carry a strong presumption of verity.

Zilich v. Reid, 36 F.3d 317, 320 (3d Cir. 1994) (citations omitted). In this case, the Court questioned Defendant at length to ascertain whether his plea was voluntary, whether he understood the terms of his plea agreement and the consequences of pleading guilty, and whether he acknowledged his guilt for the acts charged. For example, the Court asked and Defendant answered as follows:

The Court:	[The] United States has charged you by Information in Count I in the summer of ‘94 or around that time until October you were conspiring with some others to manufacture and distribute methamphetamine. **Is that the crime you are guilty of?**
Defendant:	**Yes, sir, it is.**
The Court:	**And when you were doing that, did you know that was against the law and illegal?**
Defendant:	**Yes, sir, I did.**

* * *

The Court:	**Is anybody threatening or forcing you to plead guilty?**

Defendant: **No, sir.**

The Court: Anybody promise you what the sentence will be?

Defendant: No.

The Court: You understand that no one could promise you what the sentence would be because I'm the one that [is] going to sentence you and I don't even know what the sentence is going to be yet, because I have to review a lot of documents and the presentence report, so anybody that would have told you any particular sentence would have clearly have been wrong to tell you that. Do you understand that?

Defendant: Yes.

(D.I. 33 at A-25-28) (emphasis added). After posing additional questions to Defendant, as discussed in more detail below, and observing his demeanor and response to those questions, the Court found that Defendant had entered his plea knowingly, voluntarily and intelligently, and the Court accepted the plea. Defendant has not offered anything in the instant Petition to suggest that the Court's finding was erroneous and that Defendant's plea was involuntary. Accordingly, the Court concludes that Defendant cannot overcome the procedural bar to his claim.

To the extent that Defendant challenges his guilty plea on the basis that his counsel's assistance was ineffective, Defendant must satisfy a modified version of the two-pronged test articulated in Strickland v. Washington, 466 U.S. 668, 687 (1984); Wells v. Petsock, 941 F.2d 253, 259 (3d Cir. 1991).

Under Strickland, a petitioner must demonstrate both: "(1) that counsel's representation fell below an objective standard of reasonableness; and (2) that there is a reasonable probability that, but for counsel's error the result would have been different." Strickland, 466 U.S. at 687-96. A reasonable probability is one which is "sufficient to undermine confidence in the outcome." Id. at 694. However, in analyzing the applicability of these two prongs, the Court must indulge in a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. Id. at 688-89.

This two-pronged test is applicable in situations in which a petitioner challenges the effectiveness of counsel after entry of a guilty plea; however, the test is modified slightly. United States v. Kauffman, 109 F.3d 186, 190 (citing Hill v. Lockhart, 474 U.S. 52 (1985)). Where a defendant has entered a guilty plea on the advice of counsel, the voluntariness of that plea depends on whether there is a reasonable probability that, but for counsel's errors, the defendant would have proceeded to trial instead of pleading guilty. See Kauffman, 109 F.3d at 190 (citing Parry v. Rosemeyer, 64 F.3d 110, 118 (3d Cir. 1995)).

Turning initially to the second prong of the Strickland analysis, the Court must determine whether there is a reasonable probability that, but for counsel's errors, Defendant would have proceeded to trial instead of pleading guilty. After reviewing the record in this case, including Defendant's statements during

the plea colloquy, the Court concludes that Defendant cannot establish a reasonable probability, that but for his counsel's conduct, he would have proceeded to trial instead of pleading guilty. In addition to the previously discussed questions and answers concerning the voluntariness of Defendant's plea, the Court also specifically inquired as to the performance of Defendant's counsel. The Court asked and Defendant answered as follows:

The Court:	Have you had a chance to talk with Ms. Marshall about the charge the Government has brought?
Defendant:	Yes, I have.
The Court:	And do you feel that you have told her everything that is necessary for her to defend you?
Defendant:	Yes.
The Court:	**Are you satisfied with her representation?**
Defendant:	**Yes, I am.**
The Court:	Mr. Prettyman read, at the beginning of the proceeding, read the entire memorandum of plea agreement; and in this plea agreement, it sets forth everything Mr. Prettyman told me, but importantly it sets forth the penalties that you are exposing yourself to. **Do you understand everything in this plea agreement?**
Defendant:	**I believe so, sir.**
The Court:	Okay. Have you reviewed it with Ms. Marshall?
Defendant:	Yes, I have.

The Court: **[Are] there any questions you have about it?**

Defendant: **No, sir.**

(D.I. 33 at A-25-29) (emphasis added).

The Court further questioned Defendant as to whether he agreed with the stipulated set of facts, and Defendant indicated that he agreed with the facts as set forth in stipulation. (D.I. 33 at A-27). As Defendant's responses to the Court's questions indicate, Defendant fully understood the consequences of his plea, the terms of his plea agreement and acknowledged his guilt. Indeed, Defendant apologized to the Court and the prosecutor for his actions. (D.I. 33 at A-41). In addition, the Court expressly informed Defendant that he had a right to proceed to trial and asked Defendant if he understood these rights and wished to waive them. (D.I. 33 at A-28). Defendant unequivocally indicated that he wished to waive these rights. (D.I. 33 at A-28). In light of Defendant's statements at the plea hearing, the Court's finding at the hearing that Defendant's plea was knowingly and voluntarily offered, and Defendants failure to allege at any time during the plea or in his instant Petition and subsequent letters that he would have proceeded to trial, rather than plead guilty, the Court concludes that Defendant cannot establish the second prong of the Strickland test.

Further, the Court concludes that Defendant cannot

established the first prong of Strickland, i.e., that his counsel's performance was objectively unreasonable. As Defendant's affidavit indicates, he was aware that his counsel would "fight the case" and that it was his decision to enter into the plea agreement. (D.I. 24 at 14). However, counsel also advised Defendant that "she didn't think [his] odds of winning were good." (D.I. 24 at 14). Given the overwhelming evidence against Defendant including the confessions and incriminating statements of other witnesses, the incriminating e-mails between Defendant and Getzes, and the expert testimony of a DEA forensic chemist, the Court cannot conclude that counsel's advice or conduct was unreasonable. Further, the overwhelming evidence against Defendant supports the Court's conclusion that it was unlikely that Defendant would have proceeded to trial rather than plead guilty.

Because Defendant cannot satisfy either prong of the Strickland analysis, the Court concludes that Defendant cannot establish that his plea was involuntary as a result of ineffective assistance of counsel. Accordingly, the Court will dismiss Defendant's claim that his plea was involuntary.

II. Defendant's Contention That The Court Lacked Jurisdiction Over Him

Defendant next contends that the Court lacked jurisdiction over him. Specifically, Defendant contends that the Court had no personal jurisdiction over him because he was "induced to 'self-

surrender' and enter a plea." (D.I. 23 at 6-11).

It is well-established that any challenge to the court's personal jurisdiction over a defendant must be raised prior to a plea. Ford v. United States, 273 U.S. 593, 606 (1927). Failure to raise any personal jurisdiction arguments at the requisite time results in the waiver of those arguments. Id.

In this case, neither Defendant nor his counsel contested the Court's personal jurisdiction over him before he entered his guilty plea. Moreover, the fact that Defendant appeared before the Court satisfied any personal jurisdiction requirement. As the Supreme Court has repeatedly held: "[T]he power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a 'forcible abduction.'" Frisbie v. Collins, 342 U.S. 519, 522 (1952) (citations omitted); United States v. Alvarez-Machain, 504 U.S. 655, 657-670 (1992) (holding that court had personal jurisdiction over criminal defendant who had been abducted from foreign country). Thus, even if Defendant was brought within the Court's jurisdiction against his will, the Court had jurisdiction over him.[2] Accordingly, the Court will dismiss Defendant's claim

[2] To the extent that Defendant challenges counsel's performance because she did not raise the personal jurisdiction argument, the Court concludes that Defendant cannot establish that counsel's conduct was objectively unreasonable or that the outcome of the proceeding would have been different. Defendant's presence in Court satisfied any personal jurisdiction requirement, and thus, the Court cannot conclude that counsel's failure to raise this issue was unreasonable. Further, even if

that the Court lacked personal jurisdiction over him.

III. Defendant's Contention That Congress Lacked Jurisdiction To Pass A Law Prohibiting Conspiracies To Manufacture And Distribute Controlled Substances

Defendant next contends that Congress lacked jurisdiction to pass a law prohibiting conspiracies to manufacture and distribute controlled substances. Specifically, Defendant contends that "Title 21 U.S.C. has not been enacted as positive law by Congress with the consent of the national President for all of the sovereign, nonincorporated States within the Union of the American Republic." (D.I. 23 at 13). Defendant goes on to question the source of Congress's authority to enact this legislation: "Is an offense in violation of Title 21 U.S.C. § 846 a crime in violation of the national Law? By what grant of power does the 'federal' government and the plaintiff purport to bring judgment infringing the petitioner's right?" (D.I. 23 at 13-21).

The Court of Appeals for the Third Circuit and numerous other courts have repeatedly recognized that criminal laws prohibiting the manufacture and distribution of controlled

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Defendant had not self-surrendered on the Felony Information, the Government could have sought an arrest warrant for Defendant, which would have resulted in his appearance before the Court, even if he was arrested within another district. See 18 U.S.C. §§ 3041-3042, 3049, Fed. R. Crim. P. 4(a) and (d)(2), Fed. R. Crim. P. 9; Fed. R. Crim. P. 40. Accordingly, the Court cannot conclude that Defendant was prejudiced by his counsel's failure to raise the issue or that the outcome of the proceeding would have been different.

substances are a proper exercise of Congressional authority under the Commerce Clause.[3] United States v. Orozco, 98 F.3d 105, 107 (3d Cir. 1996); United States v. Westbrook, 125 F.3d 996, 1008-1010 (7th Cir. 1997) (rejecting argument that "the manufacture of crack is a local activity [] that has nothing to do with interstate commerce" and upholding validity of 21 U.S.C. §§ 846 and 841 under Commerce Clause). As the Third Circuit stated in Orozco:

> A large interstate market exists for illegal drugs. Congress has the power to regulate that market. . . . Moreover when Congress enacted the Comprehensive Drug Abuse Prevention and Control Act of 1970 (of which 21 U.S.C. § 860 is a part), Congress expressly found that drug trafficking affected interstate commerce.

98 F.3d at 107 (citations omitted). And, as the Court of Appeals for the Ninth Circuit recognized with respect to methamphetamine, in particular:

> [I]n enacting sections 841(a) . . . and 846 [of Title

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[3] See also Durr v. Booker, 1997 WL 8855 at *1-2 (10th Cir. Jan. 10, 1997) (upholding petitioner's conviction for conspiracy to manufacture, distribute or dispense methamphetamine, in violation of 21 U.S.C. §§ 846 and 841(a)(1) and rejecting argument that criminal activity was local issue and Congress lacked authority under Commerce Clause to criminalize it); Proyect v. United States, 101 F.3d 11, 12-14 (2d Cir. 1996) (upholding under Commerce Clause 21 U.S.C. § 841(a)(1) which criminalizes the manufacture of marijuana); United States v. Tucker, 90 F.3d 1135, 1139-1141 (6th Cir. 1996) (upholding under Commerce Clause laws criminalizing manufacture of and possession with intent to distribute crack near a school); United States v. Leshuk, 65 F.3d 1105, 1111-1112 (4th Cir. 1995) (upholding under Commere Clause 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2, despite defendant's contention that cultivation and possession of marijuana was for personal use and did not substantially affect interstate commerce).

> 21 of the United States Code], Congress did not exceed its authority under the Commerce Clause. Intrastate distribution and sale of methamphetamine are commercial activities. The challenged laws are part of a wider regulatory scheme criminalizing interstate and intrastate commerce in drugs. In adopting the Controlled Substance Act, Congress expressly found that intrastate drug trafficking had a "substantial effect" on interstate commerce.

United States v. Tisor, 96 F.3d 370, 375 (9th Cir. 1996) (citations omitted), cert. denied, 117 S. Ct. 1013 (1997).

Moreover, in this case, Defendant admitted that he traveled to Indiana to steal and purchase ingredients used in the manufacture of methamphetamine like gallic acid and ephedrine hydrochloride tablets and attempted to use these ingredients in Delaware to manufacture the drug. Thus, Defendant's activities in this case clearly affected interstate commerce. Accordingly, based on Defendant's admitted activities and the abundance of case law upholding Congress's authority to enact the laws in question, the Court concludes that there is no basis for Defendant's challenge to Congress's authority to enact laws prohibiting conspiracies to manufacture and distribute controlled substances.[4]

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[4] To the extent that Defendant contends that his counsel's assistance was ineffective for failing to challenge Congress's authority to enact the laws in question, the Court likewise rejects Defendant's argument. Given the abundance of case law upholding Congress's validity to enact these laws under the Commerce Clause, the Court cannot conclude that counsel's performance was objectively unreasonable or that the outcome of the proceedings would have been different had counsel raised the issue. Accordingly, the Court concludes that Defendant has not established ineffective assistance of counsel based on counsel's

CONCLUSION

For the reasons discussed, Defendant's Petition For The Ancient Writ Of Error Coram Nobis will be dismissed, and the relief requested will be denied.

An appropriate Order will be entered.

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failure to challenge Congress's lawmaking authority.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
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v.	:	Criminal Action No. 96-27-JJF
	:	Civil Action No. 01-359-JJF
DANIEL HANDSCHU,	:	
	:	
Defendant.	:	
	:	

O R D E R

At Wilmington, this 1 day of June 2001, for the reasons set forth in the Memorandum Opinion issued this date,

IT IS HEREBY ORDERED that:

1. Defendant's Petition For Writ Of Error Coram Nobis (D.I. 23) is DISMISSED and the relief requested is DENIED.

2. Because the Court finds that Defendant has failed to make "a substantial showing of the denial of a constitutional right" under 28 U.S.C. § 2253(c)(2), a certificate of appealability is DENIED.

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UNITED STATES DISTRICT JUDGE