

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

LEVAR SIMMS,

Defendant.

Criminal No. 06-268 (RJL)

FILED

OCT 29 2009

**MEMORANDUM ORDER**

(October 25, 2009) [# 51]

NANCY MAYER WASHINGTON, CLERK  
U.S. DISTRICT COURT

Now before the Court is defendant Simms's collateral attack, pursuant to 28 U.S.C. § 2255, against his conviction and sentence. Simms was convicted in this Court on January 28, 2008, of Interstate Transportation of a Minor for Purposes of Prostitution, in violation of 18 U.S.C. § 2423(a). (*See* Jury Verdict Form [# 31].) On July 7, 2008, this Court sentenced Simms to ninety-six months imprisonment. (*See* Minute Entry, July 7, 2008.) Three days later, Simms appealed his conviction and sentence to the United States Court of Appeals for the District of Columbia. (*See* Notice of Appeal [# 50].) Finally, six days after Simms filed notice of his direct appeal, he filed in this Court the Section 2255 challenge which is the subject of this Order.

Because Simms's direct appeal is still pending, and, in fact, now scheduled for oral argument on November 16, 2009,<sup>1</sup> his Section 2255 motion is DENIED as premature. Indeed, our Circuit has specifically noted:

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<sup>1</sup> *See* United States v. Simms, No. 08-3068 (D.C. Cir. Sep. 25, 2009) (order scheduling oral argument).

that [while] there is no jurisdictional bar to the District Court's entertaining a Section 2255 motion during the pendency of a direct appeal . . . the orderly administration of criminal law precludes considering such a motion absent extraordinary circumstances. A motion under Section 2255 is an extraordinary remedy and not a substitute for a direct appeal. Moreover, determination of the direct appeal may render collateral attack unnecessary.

*Womack v. United States*, 395 F.2d 630, 631 (D.C. Cir. 1968) (per curiam). To date, Simms has not presented any extraordinary circumstances which mitigate in favor of circumventing *Womack's* generally applicable rule of judicial efficiency. Accordingly, it is hereby

**ORDERED** that Simms's Motion pursuant to 28 U.S.C. § 2255 [# 51] is hereby DENIED as premature.

**SO ORDERED.**

A handwritten signature in black ink, appearing to read "Richard J. Leon", is written over a horizontal line. Above the signature, there is a small handwritten mark resembling a checkmark or the number "1".

RICHARD J. LEON  
United States District Judge