

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

FILED

JUL 28 2008

FRANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

\_\_\_\_\_  
Luis Armando Rosario-Delgado,

Plaintiff,

v.

Harley G. Lappin, Director, Bureau  
of Prisons, et al.

\_\_\_\_\_  
Defendants  
\_\_\_\_\_

Civil Action No. 08 1291

MEMORANDUM OPINION

The plaintiff, a prisoner in federal custody, has filed a *pro se* complaint and an application to proceed *in forma pauperis*. The Court will grant the application to proceed *in forma pauperis*, but will dismiss the complaint for lack of subject matter jurisdiction.

Plaintiff was sentenced in a federal court in 1998 after a trial and conviction on charges of armed bank robbery and other crimes. (Compl. at 2.) This is his first appeal from that conviction and sentence. (*Id.* at 3.) He now asserts that the government did not offer evidence of use of a firearm during a crime of violence, rendering his conviction and sentence invalid. (Attachment to Compl. at 1.) He states that the reason he did not take an earlier appeal is because he is a non-English speaker layman who did not understand the rules of procedure and the court. (Compl. at 4.)

Federal law provides that a prisoner in custody under sentence imposed by a federal court may appeal that conviction and sentence by motion to the court that imposed the sentence. 28 U.S.C. § 2255(a). *See Taylor v. United States Board of Parole*, 194 F.2d 882, 883 (D.C. Cir.

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1952) (attack on the constitutionality of the statute under which defendant was convicted and sentenced is properly pursued by motion under 28 U.S.C. § 2255); *Ojo v. Immigration & Naturalization Service*, 106 F.3d 680, 683 (5<sup>th</sup> Cir. 1997) (the sentencing court is the only court with jurisdiction to hear defendant's complaint regarding errors that occurred before or during sentencing). This court is not the court that imposed the sentence, and therefore has no jurisdiction of this matter. Accordingly, this appeal will be dismissed without prejudice for lack of subject matter jurisdiction.

A separate order accompanies this memorandum opinion.

Date: 1/22/08

  
United States District Judge