

CPS-289

UNREPORTED - NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 03-1588

UNITED STATES OF AMERICA

v.

KEENE COURTNEY QUEENSBOROUGH

Keene C. Queensborough,

Appellant

On Appeal From the District Court
of the Virgin Islands
(D.C. Crim. No. 96-CR-00090)
District Judge: Honorable Thomas K. Moore

Submitted For Possible Summary Action Under Third Circuit LAR 27.4 and I.O.P. 10.6
August 14, 2003

BEFORE: NYGAARD, FUENTES and GREENBERG, CIRCUIT JUDGES

(Filed September 19, 2003)

OPINION

PER CURIAM

Keene Queensborough appeals from an order of the District Court of the Virgin Islands, denying his “Motion to Suspend the Imposition or Execution of Sentence and Placed him on Probation Pursuant to V.I.C.A. Title 5 § 3711.” We will affirm.

Queensborough pleaded guilty in 1998 to aggravated rape in violation of Title 14 V.I.C. §§ 1701(2) and 1700(c) and 18 U.S.C. §§ 13 and 2 (the Assimilative Crimes Act, hereinafter “ACA”);¹ and carrying a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. §§ 924(c)(1) and 2. He was sentenced to 240 months imprisonment on the rape charge and a consecutive 60 months term on the firearm charge, to be followed by a term of supervised release. Queensborough raised a sentencing issue on direct appeal, and this Court affirmed. U.S. v. Queensborough, 227 F.3d 149 (3d Cir. 2000). The United States Supreme Court denied Queensborough’s petition for a writ of certiorari on January 22, 2001. Queensborough v. U.S., 531 U.S. 1131 (2001).

The motion in question here, dated December 21, 2002, asks the Court for “an order suspending the imposition or execution of sentence and placing him on probation pursuant to VICA Title 5 § 3711,” and quotes § 3711, which states in pertinent part:

Upon entering a judgment of conviction of any offense against the laws of the Virgin Islands not punishable by life imprisonment, the district court or a territorial court, when satisfied that the ends of justice and the best interest of the public as well as the defendant will be served thereby, may suspend

¹ The crime took place at a national park, and thus the rape charge was assimilated into federal law under the ACA. U.S. v. Queensborough, 227 F.3d 149, 151-52 (3d Cir. 2000).

the imposition or execution of sentence and place the defendant on probation for such period and upon such terms and conditions as the court deems best.

5 V.I.C. § 3711. Section 3711 by its terms applies only to judgments concerning “offense[s] against the laws of the Virgin Islands.” It is not clear that an offense assimilated under the ACA is an “offense against the laws of the Virgin Islands.” It is clear, however, that § 3711 would not apply to Queensborough’s conviction for the federal firearms offense.

However, even assuming that § 3711 is applicable, the phrase “upon *entering a judgment*” implies that this provision applies when the sentence is initially imposed. The Virgin Island’s District Court Rules of Criminal Procedure do provide for a motion for reduction of sentence, and we assume that this is what Queensborough seeks. Rule 35.1 provides in part that “the Court may reduce a sentence upon motion filed within 120 days after the sentence is imposed or probation is revoked, or within 120 days after entry or any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgement of conviction or probation revocation.” Queensborough’s motion was not filed within 120 days of the Supreme Court’s disposition of his petition for a writ of certiorari, and was thus untimely.

For the foregoing reasons, it appears that the District Court lacked jurisdiction to consider Queensborough’s motion, and we accordingly lack jurisdiction to consider the merits. However, even if we could reach the merits, Queensborough did not show that the District Court abused its discretion in denying his motion. See Government of Virgin

Islands v. Lans, 1995 WL 450470, *1 (D. V.I. 1995) (“Motions to reduce sentence are essentially pleas for leniency addressed to the sound discretion of the sentencing court.”).

For the foregoing reasons, we will affirm.²

² We find that a certificate of appealability is not necessary for this appeal. Queensborough’s motion in the District Court did not attack his conviction or sentence, but merely requested that the Court exercise its discretion in reducing his sentence. See 28 U.S.C. § 2253(c)(1) (requiring a certificate of appealability in § 2255 proceedings and where the detention complained of arises out of “process issued by a State court”).