

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

UNITED STATES OF AMERICA,)	
)	
)	Case No. 1:01CR00058
)	
v.)	OPINION
)	
CHRIS KETRON,)	By: James P. Jones
)	United States District Judge
Defendant.)	

Chris Ketron, Pro Se Defendant.

The defendant, Chris Ketron, has filed a pro se Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C.A. § 2255 (West Supp. 2011), asserting that the sentence of imprisonment I imposed on February 25, 2011, after revoking his supervised release, is excessive and that counsel failed to file a notice of appeal from that sentence, although he instructed her to do so. In fact, counsel did file a timely notice of appeal, and the appeal is currently pending before the United States Court of Appeals for the Fourth Circuit. Therefore, I find that Ketron's § 2255 motion must be dismissed without prejudice.

The well established general rule is that, absent extraordinary circumstances, the district court should not consider § 2255 motions while a direct appeal is pending. *See United States v. Weaver*, No. 97-6443, 121 WL 468277, at *1 (4th Cir. Aug. 18, 1997) (unpublished) (citing *Bowen v. Johnston*, 306 U.S. 19, 26-27

(1939)). Ketron's motion fails to present extraordinary circumstances compelling this court to address his claims under § 2255 during the pendency of his direct appeal. Moreover, dismissal of the § 2255 motion without prejudice will not prevent Ketron from pursuing relief under § 2255 after appeal proceedings are completed. *Villaneuva v. United States*, 346 F.3d 55, 60 (2d Cir. 2003) (finding that prior § 2255 motion dismissed as premature did not trigger successive petition bar).

For these reasons, I will dismiss the § 2255 motion without prejudice as premature and dismiss the defendant's motion to proceed in forma pauperis as moot. A separate Final Order will be entered herewith.

DATED: July 29, 2011

/s/ James P. Jones
United States District Judge