

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

JUAN ESTEBAN NUNEZ-PAULINO)
)
 v.)
)
UNITED STATES OF AMERICA)
)

C.A. No. 96-734L

MEMORANDUM AND ORDER

Ronald R. Lagueux, Chief Judge.

Petitioner's motion to modify sentence is denied essentially for the reasons set forth in the government's objection.

The Court will explicate briefly. On September 8, 1994, petitioner was sentenced by this writer to 46 months in federal prison for unlawful reentry into the United States after deportation. U.S.A. v. Juan Nunez-Paulino, CR No. 93-117L. Petitioner now claims that this sentence was intended to be concurrent with a state sentence of 6 years that he is now serving at the Adult Correctional Institution in Rhode Island. Petitioner is thoroughly confused. This Court did not intend to make the 46 month sentence concurrent to any other sentence. All the papers in the case, including the judgment of conviction which was executed on September 16, 1994, are silent as to whether this federal sentence was to be concurrent or consecutive to the state sentence. There is a good reason for that. Petitioner's 6 year state sentence was not imposed until December 6, 1995. Therefore, there was no state sentence in existence when this Court imposed the federal sentence.

Only the state Superior Court judge, who imposed the state

sentence, can determine whether that state sentence was intended to be concurrent or consecutive to this federal sentence.

It is evident, therefore, that petitioner's motion to modify the federal sentence of 46 months in prison must be denied.

It is so ordered.

Ronald R. Lagueux
Chief Judge
February 25, 1997