

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

Plaintiff,

:

Case No. 3:04-cr-191
Also Civil Case No. 3:08-cv-442

-vs-

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

:

ANDRE D. GRANT,

Defendant.

DECISION AND ORDER DENYING CERTIFICATE OF FINALITY

This case is before the Court on Defendant's Motion to Certify this Court's Order of January 21, 2009, "as a final and appealable order on the sole issue of jail time credit and immediate release." (Doc. No. 242).

Under Fed. R. Civ. P. 54(b), a court may direct the entry of final judgment as to one or more but fewer than all the claims made only if the court "expressly determines that there is no just cause for delay." In this § 2255 case, the United States has not yet even filed an answer, much less had an opportunity to be heard on the merits. It would be unjust to require the Government to defend on appeal when it has not yet been heard in this Court. Moreover, although this Court was able to consider Petitioner's jail credit claim immediately, it is unlikely the Sixth Circuit would be willing to do so.

The Motion for a certificate of finality is denied.

February 21, 2009.

s/ **Michael R. Merz**
United States Magistrate Judge