

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

LUIS ERNESTO)	
HERNANDEZ-ARELLANO,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 1:12-CV-284-WKW
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER

On May 8, 2012, the Magistrate Judge filed a Recommendation in this case to which no timely objections have been filed. (Doc. # 11.) Upon an independent review of the file in this case and upon consideration of the Recommendation of the Magistrate Judge, it is ORDERED as follows:

(1) The Recommendation of the Magistrate Judge is ADOPTED.

(2) The 28 U.S.C. § 2255 motion (Doc. # 1) is GRANTED to the extent Mr. Hernandez seeks to file an out-of-time appeal based on his meritorious claim that his counsel rendered ineffective assistance by failing to file a direct appeal when asked to do so.

(3) In compliance with *United States v. Phillips*, 225 F.3d 1198, 1201 (11th Cir. 2000), the judgment imposed on March 23, 2011, and entered on April 1, 2011, in Criminal Case No. 1:09-CR-170-01-WKW is VACATED (Doc. # 29).

(4) For the purpose of allowing Mr. Hernandez to pursue his appeal, simultaneous with the entry of this Order, a new judgment will be reentered in the criminal case (1:09-CR-170-01-WKW). This reentered judgment shall reimpose the same sentence, identical in all respects to the original judgment, save only for the date of imposition and entry, which shall reflect today's date.

(5) Mr. Hernandez is advised that he must file any notice of appeal from this reentered judgment within the 14-day period provided by Federal Rule of Appellate Procedure 4(b)(1)(A)(i).

(6) Mr. Hernandez is advised that he has the right to appeal from the reentered judgment in the criminal case.

(7) Mr. Hernandez has filed a motion for appointed counsel to assist him in filing his appeal (Doc. # 12), and that motion is GRANTED. James M. Smith of Edwards, Belser & Smith, Decatur, Alabama, is appointed to represent Mr. Hernandez in his criminal case, 1:09-CR-170-01-WKW.

(8) Mr. Hernandez's remaining claim for relief in his § 2255 motion is DISMISSED without prejudice.

It is further ORDERED that the Clerk of the Court file copies of this Order, the final judgment, and the Magistrate Judge's Recommendation (Doc. # 11) in *United States of America v. Luis Ernesto Hernandez-Arellano*, Criminal Action No. 1:09-CR-170-01-WKW (M.D. Ala.).

DONE this 13th day of June, 2012.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE