

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

| | | |
|---------------------------|---|---------------------------------|
| RONRICUEZ BERNARD PAYNE, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Civil Action No. 2:09cv1040-MHT |
| |) | (WO) |
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Respondent. |) | |

ORDER

In a 28 U.S.C. § 2255 motion filed on November 9, 2009 (Doc. No. 1), the petitioner claims, among other things, that his trial counsel was ineffective for failing to file a requested notice of appeal on his behalf. Pursuant to this court’s orders, the petitioner’s former counsel has filed an affidavit in which he avers that the petitioner did not request that he pursue an appeal on his behalf (Doc. No. 6). After considering the submissions pertinent to this issue, the undersigned has determined that an evidentiary hearing is required for resolution of this claim of ineffectiveness of counsel presented in the petitioner’s § 2255 motion. See Rule 8, Rules Governing Section 2255 Proceedings for the United States District Court.

Rule 8(c) of the Rules Governing Section 2255 Proceedings for the United States District Courts provides, in relevant part, that counsel must be appointed for a movant who qualifies for appointment of counsel under 18 U.S.C. § 3006A whenever the court determines that an evidentiary hearing is required to resolve one or more issues raised in a

§ 2255 motion. Title 18, § 3006A of the United States Code allows for the appointment of counsel when the interests of justice so require and the movant is financially unable to obtain representation.¹ It is therefore necessary for the petitioner to complete a financial affidavit for this court to use in determining his eligibility for appointment of the Federal Defender to represent him on his claim requiring an evidentiary hearing. Accordingly, it is

ORDERED that the petitioner shall complete the attached Financial Affidavit and return it to this court **on or before November 10, 2011**. The petitioner is advised that if he fails to complete and return the attached Financial Affidavit in compliance with this court's orders, he will be deemed to have waived court-appointed counsel.

The Clerk of Court is **DIRECTED** to mail with this order a Financial Affidavit that shall be completed by the petitioner.

Done this 26th day of October, 2011.

/s/Wallace Capel, Jr.
WALLACE CAPEL, JR.
UNITED STATES MAGISTRATE JUDGE

¹The petitioner had retained counsel during the proceedings in his underlying criminal case (Case No. 2:08cr136-MHT).