

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

JUDSON MARSHALL COX,)	
)	
Petitioner,)	
)	
v.)	CASE NO. 3:09-CV-448-WKW
)	
UNITED STATES OF AMERICA)	
)	
Respondent.)	

ORDER

This matter was heard in open court on January 31, 2013.

The Government conceded that Petitioner is capable of proving that his original trial counsel failed to inform him prior to his guilty plea of the Government’s Notice of Information to Establish Conviction Pursuant to 21 U.S.C. § 851. The Government further conceded that under the specific facts of this case, this failure constituted ineffective assistance of counsel and that the proper relief is for Petitioner’s original sentence to be vacated and him to be re-sentenced.

Accordingly, it is ORDERED as follows:

1. Petitioner’s motion is GRANTED to the extent he moves the court to vacate his sentence. It is otherwise DENIED.

2. Pursuant to 28 U.S.C. § 2255(b), Petitioner’s original sentence, imposed on June 19, 2008, in case number 3:07-cr-106-WKW-WC-1, is VACATED. The court

will re-sentence Petitioner and will file an amended judgment in the underlying criminal case, 3:07-cr-106-WKW-WC-1.

3. The parties' pending motions (Docs. # 73, 86) are DENIED as moot.
4. The Recommendation of the Magistrate Judge is REJECTED as moot.
5. The Clerk of the Court is DIRECTED to file this order in both the above-captioned case and the underlying criminal case, 3:07-cr-106-WKW-WC-1.
6. The Clerk of the Court is DIRECTED to close this case.

DONE this 1st day of February, 2013.

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