

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**WO**

**RP**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

United States of America,	)	No. CV 09-2034-PHX-MHM (MHB)
Plaintiff,	)	No. CR 01-486-PHX-MHM
v.	)	<b>ORDER</b>
Lloyd George Sinclair,	)	
Defendant/Movant.	)	

On September 28, 2009, Movant Lloyd George Sinclair, who is confined in the United States Penitentiary in Tucson, Arizona, filed a *pro se* "Motion For Permission To File Oversized Brief" (Doc. #1 in CV 09-2034-PHX-MHM (MHB)). Movant's Motion for Permission was accompanied by a "Court Form AO-243 Motion To Vacate Sentence Pursuant To 28 U.S.C. § 2255" (Doc. #2 in CV 09-2034-PHX-MHM (MHB)) and a "Memorandum In Support Of Motion To Vacate Sentence Pursuant To 28 U.S.C. § 2255" (Doc. #3 in CV 09-2034-PHX-MHM (MHB)). The Clerk of Court lodged both Movant's § 2255 Motion and his Memorandum.

By Order filed October 20, 2009 (Doc. #5), Movant's Motion for Permission was granted and the Clerk of Court was directed to file Movant's lodged § 2255 Motion and Memorandum in both CV 09-2034-PHX-MHM (MHB) and CR 01-486-PHX-MHM. On October 20, 2009, the Clerk of Court filed Movant's § 2255 Motion (Doc. #6 in CV 09-2034-PHX-MHM (MHB) and Doc. #941 in CR 01-486-PHX-MHM) and Memorandum

1 (Doc. #7 in CV 09-2034-PHX-MHM (MHB) and Doc. #942 in CR 01-486-PHX-MHM).

2 **I. Procedural Background**

3 Following a jury trial, judgment (Doc. #817 in CR-01-486-PHX-MHM) was entered  
4 against Movant on the following counts, as charged in the Fourth Superseding Indictment:  
5 (Count 1) Conspiracy to Commit Money Laundering, in violation of 18 U.S.C. §§ 1956(h)  
6 and 2; (Count 2) Conspiracy to Posses with Intent to Distribute Marijuana, Aid and Abet, in  
7 violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A)(vii), and 846 and 2; and (Counts 3-5)  
8 Possession or Use of a Firearm During and in Relation to a Drug Trafficking Offense  
9 Resulting in Death, in violation of 18 U.S.C. § 924(c)(1)(A)(iii) and (j)(1).

10 On April 29, 2005, the Court sentenced Movant to a term of life imprisonment, which  
11 consisted of a 57-month term of imprisonment on Count 1 and a term of life imprisonment  
12 on Count 2, said terms to be served concurrently. Movant was also sentenced to a term of  
13 life imprisonment on Count 3, a term of life imprisonment on Count 4, and a 25-year term  
14 of imprisonment on Count 5. Each of the sentences imposed on Counts 3, 4, and 5 is  
15 mandatory and each is to be served consecutively to any other term of imprisonment as  
16 required by statute. Upon release from imprisonment, Movant is to be placed on supervised  
17 release for a term of five years, consisting of three years on Count I and five years on Counts  
18 2, 3, 4 and 5, said terms to run concurrently.

19 On May 9, 2005, Movant filed a Notice of Appeal (Doc. #818 in CR 01-486-PHX-  
20 MHM) to the United States Court of Appeals for the Ninth Circuit from the judgment of  
21 conviction and sentence. On July 18, 2008, the Ninth Circuit filed its Mandate (Doc. #929  
22 in CR 01-486-PHX-MHM) affirming this Court’s decision.

23 **II. § 2255 Motion**

24 Movant seeks to have his conviction vacated and his indictment dismissed, or to have  
25 his sentence vacated and to be resentenced.

26 In his § 2255 Motion, Movant alleges seven grounds:

27 (1) “Mr. Sinclair’s conviction and/or sentence is violative of his Sixth Amendment  
28 constitutional right to effective assistance of counsel in the trial process”;

1 (2) “Mr. Sinclair’s conviction and/or sentence is violative of his Sixth Amendment  
2 constitutional right to effective assistance of counsel in the pretrial process”;

3 (3) “Mr. Sinclair’s conviction and/or sentence is violative of his Sixth Amendment  
4 constitutional right to effective assistance of counsel”;

5 (4) “Mr. Sinclair was denied effective assistance of counsel in the direct appeal  
6 process of his case”;

7 (5) “Counsel unprofessionally failed to advise Mr. Sinclair as to all facts and law  
8 relevant to his decision to plead not guilty and proceed to trial”;

9 (6) “Mr. Sinclair’s conviction and sentence under 18 U.S.C. § 1956(h), 18 U.S.C.  
10 § 1956(a)(1)(B)(ii) and (Conspiracy to Commit Money Laundering Beginning in November  
11 1997 and up to and Including July 5, 2000) (Count 1ssss) is violative of his Fifth Amendment  
12 constitutional right to due process of law because no evidence was presented at trial that Mr.  
13 Sinclair conducted monetary transactions ‘with intent to conceal’ the funds”; and

14 (7) “Mr. Sinclair’s sentences under 18 U.S.C. § 924(c)(1) [are] violative of the  
15 Fifth Amendment because the sentencing Court was not aware of the scope of it[is]  
16 sentencing discretion under 18 U.S.C. § 924(c)(1) and applicable law.”

17 A response to the § 2255 Motion will be required.

18 **III. Warnings**

19 **A. Address Changes**

20 Movant must file and serve a notice of a change of address in accordance with  
21 Rule 83.3(d) of the Local Rules of Civil Procedure. Movant must not include a motion for  
22 other relief with a notice of change of address. Failure to comply may result in dismissal of  
23 this § 2255 action.

24 **B. Copies**

25 Movant must serve the United States Attorney for the District of Arizona a copy of  
26 every document that he files. Fed. R. Civ. P. 5(a). Each filing must be accompanied by a  
27 certificate stating that a copy of the filing was served. Fed. R. Civ. P. 5(d). Also, Movant  
28 must submit an additional copy of every filing for use by the Court. LRCiv 5.4. The Court

1 may strike any filing that fails to comply with these requirements.

2 **C. Possible dismissal**

3 Movant is warned that failure to timely comply with every provision of this Order,  
4 including these warnings, may result in dismissal of this action without further notice. See  
5 Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss  
6 action for failure to comply with any order of the Court).

7 **IT IS ORDERED:**

8 (1) The Clerk of Court **must deliver** copies of the “Court Form AO-243 Motion  
9 To Vacate Sentence Pursuant To 28 U.S.C. § 2255” (Doc. #6 in CV 09-2034-PHX-MHM  
10 (MHB) and Doc. #941 in CR 01-486-PHX-MHM), “Memorandum In Support Of Motion To  
11 Vacate Sentence Pursuant To 28 U.S.C. § 2255” (Doc. #7 in CV 09-2034-PHX-MHM  
12 (MHB) and Doc. #942 in CR 01-486-PHX-MHM), and this Order to the United States  
13 Attorney for the District of Arizona.

14 (2) Within 60 days from the date of service of the § 2255 Motion, the United States  
15 Attorney for the District of Arizona **must answer** the Motion. The United States Attorney  
16 **may file** an answer limited to relevant affirmative defenses, including but not limited to,  
17 statute of limitations, procedural bar, or non-retroactivity. If the answer is limited to  
18 affirmative defenses, only those portions of the record relevant to those defenses need be  
19 attached to the answer. Failure to set forth an affirmative defense in an answer may be  
20 treated as a waiver of the defense. Day v. McDonough, 126 S.Ct. 1675, 1684 (2006). If not  
21 limited to affirmative defenses, the answer must fully comply with all of the requirements  
22 of Rule 5 of the Rules Governing Section 2255 Cases.

23 (3) Movant **may file** a reply within 30 days from the date of service of the answer.

24 //

25 //

26 //

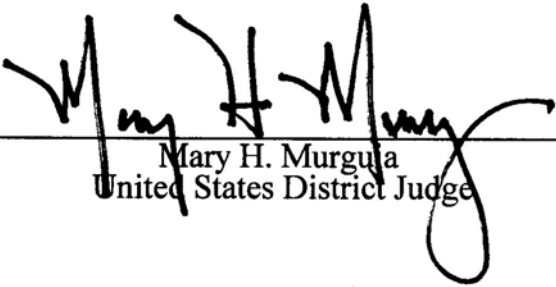
27 //

28 //

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

(4) The matter is **referred** to Magistrate Judge Michelle H. Burns pursuant to Rules 72.1 and 72.2 of the Local Rules of Civil Procedure for further proceedings and a report and recommendation.

DATED this 21<sup>st</sup> day of February, 2010.



---

Mary H. Murgula  
United States District Judge