

ASH

1
2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 United States of America,
10
11 Plaintiff,

12 v.

13 Marlon Moore,
14 Defendant/Movant.

No. CV 15-1480-PHX-DGC (JZB)
CR 12-1335-PHX-DGC

ORDER

15 Movant Marlon Moore, who is confined in the Federal Correctional Institution in
16 Phoenix, Arizona, has filed a *pro se* Motion Under 28 U.S.C. § 2255 to Vacate, Set
17 Aside, or Correct Sentence by a Person in Federal Custody. The Court will call for an
18 answer to the § 2255 Motion.

19 **I. Procedural History**

20 After a trial by jury, Movant was found guilty of possession with intent to
21 distribute marijuana, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(D). On
22 September 3, 2013, the Court sentenced Movant to a 46-month term of imprisonment
23 followed by three years on supervised release.

24 **II. Section 2255 Motion**

25 In the § 2255 Motion, Movant alleges two counts of ineffective assistance of
26 counsel.

27 The Court will require a response to the § 2255 Motion.

28

TERMPSPREF

1 **III. Warnings**

2 **A. Address Changes**

3 If Movant's address changes, Movant must file and serve a notice of a change of
4 address in accordance with Rule 83.3(d) of the Local Rules of Civil Procedure. Movant
5 must not include a motion for other relief with a notice of change of address. Failure to
6 comply may result in dismissal of this action.

7 **B. Copies**

8 Movant must serve Respondent, or counsel if an appearance has been entered, a
9 copy of every document that Movant files. Fed. R. Civ. P. 5(a). Each filing must include
10 a certificate stating that a copy of the filing was served. Fed. R. Civ. P. 5(d). Also,
11 Movant must submit an additional copy of every filing for use by the Court. LRCiv 5.4.
12 Failure to comply may result in the filing being stricken without further notice to Movant.

13 **C. Possible Dismissal**

14 If Movant fails to timely comply with every provision of this Order, including
15 these warnings, the Court may dismiss this action without further notice. *See Ferdik v.*
16 *Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action
17 for failure to comply with any order of the Court).

18 **IT IS ORDERED:**

19 (1) The Clerk of Court must serve a copy of the § 2255 Motion (Doc. 1 in
20 CV 15-1480-PHX-DGC (JZB)), the Memorandum in Support (Doc. 2), and this Order on
21 the United States Attorney for the District of Arizona.

22 (2) The parties and the Clerk of Court **must file** all documents related to the
23 § 2255 Motion in the **civil case**.

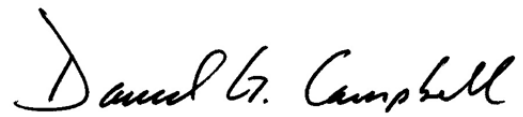
24 (3) The United States Attorney for the District of Arizona has **60 days** from the
25 date of service within which to answer the § 2255 Motion. The United States Attorney
26 may file an answer limited to relevant affirmative defenses, including but not limited to,
27 statute of limitations, procedural bar, or non-retroactivity. If the answer is limited to
28 affirmative defenses, only those portions of the record relevant to those defenses need be

1 attached to the answer. Failure to set forth an affirmative defense in an answer may be
2 treated as a waiver of the defense. *Day v. McDonough*, 547 U.S. 198, 209-11 (2006). If
3 not limited to affirmative defenses, the answer must fully comply with all of the
4 requirements of Rule 5 of the Rules Governing Section 2255 Cases.

5 (4) Movant may file a reply within **30 days** from the date of service of the
6 answer to the § 2255 Motion.

7 (5) The matter is referred to Magistrate Judge John Z. Boyle pursuant to Rules
8 72.1 and 72.2 of the Local Rules of Civil Procedure for further proceedings and a report
9 and recommendation.

10 Dated this 10th day of August, 2015.

11
12
13 

14

David G. Campbell
United States District Judge

15
16
17
18
19
20
21
22
23
24
25
26
27
28