

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

TIMOTHY EUGENE KELLY,

Plaintiff,

v.

Case No: 8:14-cv-3017-T-24AEP

UNITED STATES OF AMERICA

Defendant.

ORDER

Pending before the Court is the United States' Motion for an Order Requiring Former Defense Counsel to Disclose Substance of Communications and to Provide Affidavit (CV Doc. No. 11). Petitioner has filed a § 2255 motion, in which he alleges ineffective assistance of counsel as one of his grounds for relief. Specifically he alleges that "defense counsel apparently did not verify whether the statement by the USA about the ATF certification was accurate or supported by evidence. The defense counsel apparently did not determine whether there was evidence to support the statement that the weapon met the definition of a firearm within the statute and that it had been designed to expel a projectile by the action of an explosive." The Court directed the Government to file a response to Petitioner's § 2255 motion.

Upon due consideration, the Court finds that, with respect to the ineffective assistance of counsel claim raised by Petitioner in his motion pursuant to 28 U.S.C. § 2255, the attorney-client privilege has been waived. *See Johnson v. Alabama*, 256 F.3d 1156 (11th Cir. 2001) (holding that a party waives its attorney-client privilege when it injects into the litigation an issue that requires testimony from its attorneys or testimony concerning the reasonableness of its attorneys' conduct).

Accordingly, it is **ORDERED AND ADJUDGED** that the motion is **GRANTED**. Petitioner's trial counsel, Assistant Federal Public Defender Mary A. Mills, is directed to respond to the Government's requests for records, including correspondence, relevant to the ineffective assistance of counsel claim. In addition AFPD Mary A. Mills shall provide an affidavit, if necessary, to fully respond to Petitioner's ineffective assistance of counsel claim..

Ms. Mills shall produce the materials and the affidavit outlined in this order to the Government by May 14, 2015.

The Government's Response time is extended to June 29, 2015.

Petitioner then has thirty days to reply to the response if he wishes to do so.

DONE AND ORDERED at Tampa, Florida, this 30th day of April, 2015.


SUSAN C. BUCKLEW
United States District Judge

Copies To: Counsel of Record and pro-se Petitioner