

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
AUGUSTA DIVISION

FILED  
U.S. DISTRICT COURT  
AUGUSTA DIV.

2009 APR -2 PM 4: 28

CLERK *B. McCarty*  
SO. DIST. OF GA.

TREMAYNE CLARK,	)	
	)	
Petitioner,	)	
	)	
v.	)	CV 108-116
	)	(Formerly CR 106-140)
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

\_\_\_\_\_  
**ORDER**  
\_\_\_\_\_

After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge's Report and Recommendation, to which no objections have been filed. Accordingly, the Report and Recommendation of the Magistrate Judge is **ADOPTED** as the opinion of the Court. Therefore, Petitioner's § 2255 motion is **GRANTED** as to the out-of-time appeal, and **DISMISSED** without prejudice as to all other claims. Petitioner's judgment in the underlying criminal case is **VACATED**. (CR 106-140, doc. no. 78). Simultaneous with the entry of this Order, the Court is entering a new Judgment and Commitment Order ("J & C") that reimposes the same sentence, identical in all respects to the original J & C (*id.*, doc. no. 78), save only for the date of entry.

Petitioner is **HEREBY ADVISED** that with the entry of the new J & C, he shall have all the rights associated with an appeal from any criminal sentence. The Court also specifically advises Petitioner that the entry of the new J & C creates a ten-day period within

which Petitioner may prosecute a direct appeal of his criminal conviction. Thus, Petitioner shall have **ten (10) days** from the date of entry of the J & C to file a notice of appeal.

Finally, the Clerk of Court is **DIRECTED** to **CLOSE** this civil action and **ENTER** an appropriate final judgment in this civil case in favor of Petitioner. This Order and the new J & C shall be served on counsel of record by facsimile and by United States mail.<sup>1</sup>

SO ORDERED this 2nd day of April, 2009, at Augusta, Georgia.

  
UNITED STATES DISTRICT JUDGE

---

<sup>1</sup>The Court notes that Attorney Laurel Landon has been appointed, under the Criminal Justice Act, to represent Petitioner on direct appeal. (CR 106-140, doc. no. 94).