

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

FILED
U.S. DISTRICT COURT
2009 JUN -2 A 11:34

DUBLIN DIVISION

McCarthy

JOSE AGUERO,)
)
 Petitioner,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)

CV 308-033
(Formerly CR 305-021)

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**, and Petitioner's judgment in the underlying criminal case is **VACATED**. (CR 305-021, doc. no. 110). 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. 110), 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.

The Court notes that there has been some confusion as to Petitioner's current place of incarceration. While Petitioner has not informed the Court of any change of address, his service copy of the Magistrate Judge's Report and Recommendation that his § 2255 motion be granted was returned as undeliverable, and the Bureau of Prisons website lists Petitioner as currently incarcerated at the United States Penitentiary-Atlanta, P.O. Box 150160, Atlanta, Georgia 30315.¹ In any event, while it appears that Petitioner never received a copy of the Report and Recommendation, his counsel appointed for the November 17, 2008 evidentiary hearing did receive a copy and was given the opportunity to file objections. In an abundance of caution and so that Petitioner may have a complete copy of these proceedings, the Clerk of Court is **DIRECTED** to send a courtesy copy of the Magistrate Judge's Report and Recommendation, along with a copy of this Order and the new J & C, to Petitioner by United States mail the United States Penitentiary in Atlanta, Georgia, at the address listed in this paragraph.

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 by facsimile and by United States mail on attorney George R. Hall, who has been appointed, under the Criminal Justice Act, to represent Petitioner on direct appeal. (See CR 305-021, doc. no. 132).

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


UNITED STATES DISTRICT JUDGE

¹See <http://www.bop.gov/iloc2/LocateInmate.jsp> (search "Register Number" for "12621-021").