

ORIGINAL

FILED
U.S. DISTRICT COURT
AUGUSTA DIV.

2011 DEC 19 A 10 3

CLERK *S. McCarthy*
SO. DIST. OF GA.

SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

JOHN ROSS SILVA)
)
v.)
)
UNITED STATES OF AMERICA)

Case No. CV411-003
CR409-110

ORDER

After a careful *de novo* review of the record in this case, 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.

Movant may pursue an out-of-time direct appeal, as governed by the procedures set forth in *United States v. Phillips*, 225 F.3d 1198, 1201 (11th Cir. 2000). Pursuant to *Phillips*, the Court hereby re-imposes the same sentence set forth in the original judgment in *United States v. Silva*, No. CR409-110. The probation office is **DIRECTED** to prepare *instanter* a new judgment and commitment order identical in all respects to the original judgment and commitment order except for the date of the

imposition of the judgment. As it is clear that movant desires to take an appeal, the Court **DIRECTS** the Clerk to file a notice of appeal on movant's behalf immediately upon the entry of the reimposed judgment and commitment order.¹

Movant is entitled to the assistance of counsel on direct appeal. As movant appears to be indigent, the Court **DIRECTS** that the attorney appointed to represent movant during the § 2255 evidentiary hearing shall continue to represent movant on appeal.

SO ORDERED this 19th day of December, 2011.


DUDLEY H. BOWEN, JR.
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF GEORGIA

¹ Pursuant to *Phillips*, movant is advised that he has the right to appeal the re-imposed conviction and sentence, that he is entitled to representation by counsel on appeal, and that the notice of appeal must be filed within 14 days of the entry of the re-imposed judgment. 225 F.3d at 1201.