

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION**

CRAIG ANTHONY JAMES,)
)
Petitioner,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
Respondent.)

Case No. 13-cv-1396

ORDER & OPINION

This matter is before the Court on Petitioner’s Motion to Vacate Conviction and Sentence under 28 U.S.C. § 2255. (Doc. 1). Pursuant to Rule 4 of the Rules Governing Section 2255 Proceedings for the United States District Courts, the Court must “promptly examine” the Motion and determine whether it is proper to order Respondent to file a response to it.

Petitioner entered a blind plea of guilty in this Court on September 15, 2010, to three counts of distribution of crack in violation of 21 U.S.C. § 841, to possession with intent to distribute crack in violation of 21 U.S.C. § 841, to possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c), and to possession of a firearm by a felon in violation of 18 U.S.C. § 922(g). (09-cr-10128: 9/15/13 Minute Entry & Doc. 33). He was sentenced on January 28, 2011 to 120 months imprisonment on Counts 1-4 and 6, served concurrently, and 60 months imprisonment on Count 5 to be served consecutively, for a total term of 180 months imprisonment. (09-cr-10128: Doc. 33). Petitioner was subsequently resentenced on October 17, 2012, pursuant to *Dorsey v. United States*, 132 S.Ct. 2321 (2012) and

the Fair Sentencing Act, to 60 months imprisonment on Counts 1-4 and 6, served concurrently, and 60 months imprisonment on Count 5 to be served consecutively, for a total term of 120 months imprisonment. (09-cr-10128: Docs. 46 & 50).

In his § 2255 Motion, Petitioner argues that he is innocent of the crime charged in Count 5 of the indictment, possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c), and that his Sixth Amendment right to counsel was violated by his attorney's erroneous advice to plead guilty to that charge. (Doc. 1 at 11-13). He argues that the government's evidence of "constructive possession" and of the firearm's use "in furtherance of" the drug crime was insufficient, but that he relied on his attorney's advice to plead guilty. (Doc. 1 at 11-13, 27-31). He claims that, absent that advice, he would not have pled guilty to Count 5, and therefore asks the Court to allow him to withdraw that portion of his guilty plea and go to trial, or to simply vacate his conviction and sentence as to Count 5. Having reviewed Petitioner's § 2255 Motion, the Court cannot say that it is without merit, and so will require Respondent to file a response to it.

IT IS THEREFORE ORDERED:

1. The Clerk SHALL serve a copy of the Motion (Doc. 1) upon Respondent pursuant to Rule 3(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts.
2. Respondent SHALL file an answer, motion, or other responsive pleading within 56 days after service of this Order. Respondent should address any facts

which would establish whether Petitioner's claims are untimely or procedurally barred. In addition, Respondent should address the merits of Petitioner's constitutional claims and otherwise fully comply with Rule 5 of the Rules Governing Section 2255 Proceedings for the United States District Courts.

3. Petitioner MAY file a reply to Respondent's response within 28 days of being served with the response.

4. Petitioner SHALL serve upon the United States Attorney's office a copy of every further pleading or other document submitted for consideration by the Court.

Entered this 10th day of September, 2013.

s/ Joe B. McDade

JOE BILLY McDADE
United States Senior District Judge