

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 09 C 3030
)	(07 CR 632)
ALBERTO ELLIS,)	
)	
Defendant.)	

MEMORANDUM OPINION AND ORDER

This Court has previously issued two memorandum opinions and orders--respectively "Opinion I" issued May 26, 2009 and "Opinion II" issued June 11--to address the recent pro se 28 U.S.C. §2255 ("Section 2255") motion by which Alberto Ellis ("Ellis") seeks to attack the 8 month sentence that he is now serving. Although Opinion II commented that "Ellis really dodged a bullet when this Court concluded by selecting the 8 month sentence, a period just below the mid-level of the unenhanced Sentencing Guideline recommended range of 6 to 12 months," this Court nonetheless directed both the government and Ellis' defense counsel to provide written responses to the then single unresolved ground advanced by Ellis--that of potential relief based on our Court of Appeals' opinion in Osagiede v. United States, 543 F.3d 399, 408 (7th Cir. 2008).

Both the United States and Ellis' defense counsel have complied with this Court's directive, and the United States' Response to Defendant's Petition appears to demonstrate beyond

any question that the second requirement articulated in Strickland v. Washington, 466 U.S. 668 (1984) as a prerequisite to Section 2255 relief--a showing that there is a reasonable probability that the outcome of Ellis' criminal proceeding would have been different--could not conceivably be satisfied. Even so, Rule 5(d) of the Rules Governing Section 2255 Proceedings for the United States District Courts might be read in light of Opinion II's having required a response from the government, as requiring that Ellis also be given an opportunity to file a reply.

Accordingly Ellis is granted until July 15, 2009 to file such a reply or, alternatively, to file a statement declining to do so. This Court will then determine what if any further proceedings are called for.



Milton I. Shadur
Senior United States District Judge

Date: June 29, 2009