

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

JASON DAVID LINGO,)	
)	
Petitioner/Defendant,)	
)	CIVIL NO. 09-cv-847-JPG
vs.)	
)	CRIMINAL NO. 07-cr-30189
UNITED STATES of AMERICA ,)	
)	
Respondent/Plaintiff.)	

MEMORANDUM AND ORDER

GILBERT, District Judge:

This matter is before the Court on Petitioner Jason Lingo’s motion for relief pursuant to 28 U.S.C. § 2255. In an open plea, Lingo pleaded guilty to (Count 1) possession of unauthorized access devices, (Count 2) mail fraud, and (Count 3) aggravated identity theft. Lingo was sentenced to 60 months imprisonment on Count 1 and 2 (concurrent sentences), and 24 months imprisonment on Count 3 to run consecutively to the 60-month sentence, followed by three years supervised release; he also was ordered to pay \$3612.31 in restitution, as well as a special assessment of \$300. Lingo did not file a direct appeal, but later he filed the instant motion under § 2255, along with a motion for leave to proceed *in forma pauperis* (Doc. 2). The Court finds that Lingo is, in fact, indigent; thus the motion to proceed *in forma pauperis* is **GRANTED**.

In his motion, Lingo challenges just one aspect of his sentence. He asserts that a two-level enhancement was applied wrongly under U.S.S.G. § 2B1.1(b)(1)(A)(ii), as no government authority was the “issuing authority” for any authentication feature. Due to the improper application of this enhancement, Lingo states that his criminal offense level was set at 19, rather than 17; thus, the

sentencing range was improperly determined as 33-41 months, rather than 27-33 months. Lingo further asserts that trial counsel was ineffective in failing to raise this issue on direct appeal.

The Court **ORDERS** the Government to file a response to Lingo's motion within **THIRTY (30) DAYS** of the date of this Order. The Government shall, as part of its response, attach all relevant portions of the record.

IT IS SO ORDERED.

Dated: April 26, 2010.

s/ J. Phil Gilbert

U. S. District Judge