

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

**ERIC BURNETT,**

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)

**Petitioner/Defendant,**

)

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vs.

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**Civil No. 10-CV-164-JPG**

)

**UNITED STATES OF AMERICA,**

)

**Criminal No. 01-CR-40017-JPG**

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**Respondent/Plaintiff.**

)

**MEMORANDUM AND ORDER**

This matter comes before the Court on petitioner Eric Burnett's motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. §2255 (Doc. 1). One of Burnett's arguments in support of relief is that his counsel was constitutionally ineffective for failing to file a notice of appeal of the Court's revocation of his supervised release and imposition of sentence after Burnett timely requested that he do so. The United States has responded (Doc. 6) that Burnett's counsel claims Burnett never made such a request.

Burnett's original motion contained insufficient facts to entitle him to a hearing on this matter, but the Court allowed him an opportunity to file a supplemental affidavit setting forth more facts. Burnett responded with an unsworn statement that is still weak on specifics. Nevertheless, the government asks the Court to hold an evidentiary hearing on the matter, allowing Burnett to attend by teleconference from the Federal Correctional Institute at Elkton, Ohio, where he is incarcerated.

The Court believes an evidentiary hearing would expedite the resolution of this particular alleged basis for § 2255 relief and accordingly **ORDERS** a hearing to be held on November 4, 2010, at 1:30 p.m. at Benton, Illinois. Burnett shall be allowed to participate by videoconference. The Court further finds that the interests of justice require that Burnett be represented by counsel at the

hearing but that he is unable to afford counsel. Accordingly, the Court hereby **ORDERS** that, pursuant to Rule 8(c) of the Rules Governing Section 2255 Proceedings and 18 U.S.C. § 3006A, the Federal Public Defender's Office is **APPOINTED** to represent Burnett for the purposes of this hearing only. Should it become apparent after the hearing that further briefing on Burnett's § 2255 motion is necessary, the Court will enter an appropriate order at that time.

**IT IS SO ORDERED.**

**DATED: October 1, 2010**

s/ J. Phil Gilbert  
**J. PHIL GILBERT**  
**U.S. DISTRICT JUDGE**