

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

ANTONIO T. FOULKS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. 14-cv-01237-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on petitioner Antonio T. Foulks' Motion (Doc. 1) to Vacate, Set Aside or Correct her sentence pursuant to 28 U.S.C. § 2255. For the following reasons, Foulks' motion survives this threshold review and the Court orders the government to file its response.

On March 5, 2009, Antonio T. Foulks' plead guilty to three counts of distribution of crack cocaine and one count of possession with intent to distribute crack cocaine pursuant to a plea agreement. He was sentenced on June 4, 2009, to custody of the Bureau of Prisons for 77 months on all counts to run concurrent. He was further sentenced to 3 years of supervised release on Counts 1, 2, and 3 and 5 years of supervised release on Court 4, to run concurrent.

Petitioner began his supervised released on June 6, 2013, and a Motion for Revocation of Supervised Release was filed on August 21, 2013. An Amended Motion for Revocation of Supervised Release was filed on August 30, 2013, alleging that petitioner violated the terms of supervised release by committing domestic battery; unlawful restraint; obstructing a peace officer; unlawfully possessing a controlled substance on two occasions; failing to make payments; failing to notify his probation officer with regard to his change of address; failing to report that he had

contact with law enforcement; and failing to file his monthly written report. At the hearing on November 1, 2013, petitioner admitted the allegations (for the purposes of the hearing only) and the Court revoked petitioner's supervised release. The Court sentenced him to 24 months on Counts 1, 2 and 3 and 33 months on Count 4, all counts to run concurrent.

Petitioner filed his 28 U.S.C. § 2255 Petition on October 31, 2014, alleging ineffective assistance of counsel at the revocation hearing. The Court has reviewed the petition and has identified the following claim:

1. Whether Petitioner was denied due process by ineffective assistance of counsel for failing to appeal the revocation decision.

The Court **ORDERS** the Government to file a response to Foulks' petition (Doc. 1) by **February 9th, 2015**. The Government shall, as part of its response, attach all relevant portions of the record. Petitioner may file a reply brief (no longer than 5 pages) by **February 23rd, 2015**. If review of the briefs indicates that an evidentiary hearing is warranted, the court will set the hearing by separate notice.

IT IS SO ORDERED.

DATED: 1/7/2015

s/J. Phil Gilbert _____
J. PHIL GILBERT
DISTRICT JUDGE