

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

ROBERT W. MARION, III,	)	
	)	
	)	
v.	)	Criminal No. 04-94-P-H
	)	
	)	Civil No. 08-60-P-H
UNITED STATES OF AMERICA,	)	
	)	
	)	

**ORDER TO SUPPLEMENT**

Robert Marion has filed a 28 U.S.C. § 2255 motion and one of his modes of attack on his federal sentence is his contention that he should not be serving a career offender sentence. Since his sentencing Marion has challenged one of his three predicate offenses and, according to his documentation, the charges against him have been dismissed. Prior to the submission of the United States' responsive memorandum, Marion filed a motion to supplement which represents that Marion had no counsel for yet another of his predicate offenses, that which appears in Paragraph 33 of the Presentence Investigation Report. ( See Doc. No. 9; PSI ¶ 33.) I granted the motion to supplement.<sup>1</sup> This PSI represents that the state court records indicate that Marion was represented by counsel with regards to the assault and battery charges.

It seems that Marion intends here to set the stage for a Gideon v. Wainwright, 372 U.S. 335 (1963)/ Daniels v. United States, 532 U.S. 374 (2001) premised hearing on this conviction in the context of his 28 U.S.C. § 2255 proceeding. See Johnson v. United States, 544 U.S. 295, 300-01 ns.1&3 (2005). Marion is right in noting in his reply that the United States has not addressed this issue in its responsive memorandum; it is Marion's word against that of the PSI

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<sup>1</sup> In granting this motion to supplement I in no way passed judgment on the ultimate procedural or substantive viability of the claim.

preparers, neither of which has independent substantiation for purposes of this 28 U.S.C. § 2255 proceeding.

Pursuant to Rule Governing Section 2255 Proceedings 7, I now order the United States to supplement the record with a certified copy of the state court record upon which Paragraph 33 is predicated no later than **October 24, 2008**.

CERTIFICATE

Any objections to this Order shall be filed in accordance with Federal Rule of Civil Procedure 72.

***So Ordered.***

September 19, 2008

/s/ Margaret J. Kravchuk  
U.S. Magistrate Judge