

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

DONTA BETTS

*

v.

*

Criminal No. CCB-15-0557

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Civil No. CCB -17-1748

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UNITED STATES OF AMERICA

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MEMORANDUM

Petitioner Donta Betts filed a motion to vacate under 28 U.S.C. § 2255 asserting several grounds, including ineffective assistance of counsel for failing to file a direct appeal. Ground Two of the petition was denied in a prior opinion (ECF No. 62, 63). The government has now agreed to permit Betts to file a direct appeal, waiving any argument that the appeal is untimely while reserving its right to argue for dismissal on other grounds (ECF No. 68). Betts agrees this would eliminate the need for an evidentiary hearing on Grounds One, Three, and Four. (ECF No. 67). Betts argues, however, that he should be entitled to an evidentiary hearing on a claim that he was not competent to enter a guilty plea.

This argument is founded on Betts's handwritten addition to Claim One stating that he is mentally ill and counsel was ineffective for not having him mentally evaluated. Trial counsel, however, did have a thorough evaluation prepared which was provided to the court in connection with sentencing. Nowhere in Betts's § 2255 petition does he raise an issue of competency in connection with counsel's allegedly deficient performance.

Given the government's willingness to allow a late-filed direct appeal, there is no need to address an additional allegation of ineffectiveness of counsel not presently included in Betts's petition. Presumably, Betts's direct appeal will include any due process violation his present counsel believes is warranted.

Accordingly, the petition will be granted as to the right to file a direct appeal, and otherwise dismissed without prejudice.

A separate order follows.

Date: January 12, 2018

_____/S/_____
Catherine C. Blake
United States District Judge