

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SEDAKA DAMON BETTS,)	
)	
Petitioner,)	
)	
vs.)	No. 4:13 CV 2131 RWS
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before me on Petitioner’s amended motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255 and Respondent’s response to the amended motion to vacate. For the reasons explained in my Memorandum and Order of July 24, 2015, see ECF [#12], this matter was set for an evidentiary hearing on Petitioner’s claim that he received ineffective assistance of counsel as a result of his trial counsel’s failure to file a timely requested appeal. In its response to the amended motion to vacate, Respondent concedes that Petitioner was denied effective assistance of counsel for failure to file a timely appeal as requested, and Respondent requests that I (1) grant Petitioner’s motion for post-conviction relief with respect to Petitioner’s claim that he requested his attorney to file a notice of appeal and his attorney failed to do so, (2) deny Petitioner’s remaining claims for post-conviction relief, and (3) cancel the evidentiary hearing that was set for April 25, 2016. In slight contrast, the relief Petitioner requests is that I vacate his sentence and schedule a resentencing hearing.

I would like the parties to file a joint memorandum **no later than April 29, 2016** advising me whether Respondent consents to the relief that Petitioner requests (vacating Petitioner’s sentence and resentencing him), and whether Petitioner’s personal appearance is

required at any resentencing to enable him to file a timely appeal. If the parties agree on an appropriate procedure to resolve Petitioner's claim, they shall set out their proposed procedure in the joint memorandum. Additionally, because an evidentiary hearing is likely no longer necessary, I will vacate the April 25, 2016 evidentiary hearing at this time.

Accordingly,

IT IS HEREBY ORDERED that the evidentiary hearing that was set for April 25, 2016 at 9:30 a.m. is **VACATED**.

IT IS FURTHER ORDERED that the parties shall file the joint memorandum in compliance with this Memorandum and Order **no later than April 29, 2016.**



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 18th day of April, 2016.