UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Bruce Belton

v. Civil No. 09-cv-345-JD

United States of America

O R D E R

Bruce Belton filed a pro se petition, pursuant to 28 U.S.C. § 2255, to set aside his conviction and sentence. He asserts that his defense attorney, Paul Garrity, provided ineffective assistance of counsel. In order to answer Belton's petition, the government moved for an order directing him to sign a release of his attorney-client privilege so that Attorney Garrity could respond to the government's questions concerning Belton's allegations.

In response to the government's motion, the court ordered Belton to choose one of three options: 1) withdraw his § 2255 petition and preserve his attorney-client privilege; 2) proceed with his § 2255 petition and give up his attorney-client privilege as to matters he raised in his petition and memorandum; or 3) proceed with his § 2255 petition but preserve his attorney-client privilege. Belton was informed in the order that if he elected to proceed under option 3, the court would address his petition based on the existing record, and there would be a

presumption that Attorney Garrity's representation was not ineffective.

In response to the order, Belton did not explicitly choose one of the three options. Instead, he filed a notice stating that "[t]he petition stands on its merits and should be answered as is." This response certainly does not constitute a waiver of the attorney-client privilege. The court interprets Belton's response as implicitly choosing to proceed under option 3, meaning that Belton will proceed with his § 2255 petition and not waive his attorney-client privilege.

Because Belton has not waived the attorney-client privilege, the privilege remains in effect. The government shall file a response to the petition based on the record as it stands, including the record in the underlying criminal case, United States v. Bruce Belton, 04-cr-192-01-JD.

Conclusion

The government shall file an answer within sixty (60) days of the date of this order, which answer shall provide a detailed response to each claim asserted by the movant, to the extent

possible under the existing record, with appropriate references to the record when necessary.

SO ORDERED.

Joseph A. DiClerico, Jr.
United States District Judge

March 25, 2010

cc: Bruce Belton, pro se
Aixa Maldonado-Quinones, Esquire
Paul Garrity, Esquire