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IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	)	Crim No. SI 06 Cr. 911 (AKH)
Respondent,	)	Civ. No. 14 CV-3228)
	)	Judge Alvin K. Hellerstein
vs.	)	
	)	
RODERICK GUNN,	)	
Defendant.	)	

The motion is denied. Submissions to the Court by represented parties must be by their counsel. The Clerk of Court shall terminate ECF 390.

SO ORDERED.

/s/ Alvin K. Hellerstein
February 21, 2023

MOTION TO REOPEN SECTION 2255 TO ADDRESS A VIOLATION UNDER NAPUE V. ILLINOIS PURSUANT TO RULE 60(b), FED. R. CIV. P., AND TO RESET TIMING TO FILE NOTICE OF APPEAL IN CASE NO. 14 CV-3228

COMES NOW, Roderick Gunn, pro se, and respectfully moves this Court on Motion pursuant to Rule 60(b)(6), to reopen his section 2255 case relating to United States v. Gunn, 14 CV-3228 (WHP), to address Gunn's Napue violation that the district court did not address before it denied the Ineffective Assistance portion of said § 2255.

I. Procedural facts of 14-CV-3228

After Gunn's direct appeal was final in SI 06 Cr. 911, he filed a habeas motion pursuant to 28 U.S.C. § 2255. In this motion, Gunn raised numerous claims, including ineffective

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assistance claims.

Gunn also filed a Motion for Leave to Supplement his § 2255 with newly discovered evidence in the form of §3500 materials that proved that a Napue violation occurred. The Court granted the Motion for Leave, and Gunn filed his Supplement, with exhibits in the form of § 3500 materials and trial transcripts.

After the Supreme Court pronounced its rule in Johnson, 135 S. Ct. 2551 (2015), Gunn filed an Amendment under Rule 15, Fed. R. Civ. P., arguing that § 924(c) residual clause is unconstitutional, and his §§ 924(c) and 924(j) convictions and sentences were therefore unconstitutional. Counsel was appointed to Gunn's Johnson claim, and the case was placed on hold. Then on March 7, 2017, the former Judge William H. Pauley denied Gunn's ineffective assistance of counsel claims made in 14-CV-3228. However, the Court reserved judgment on Gunn's arguments pursuant to Johnson v. United States, 135 S. Ct. 2551 (2015). The Court ordered the Clerk to close Case Number 14-CV-3228, and open 16-CV-4887 with the Johnson claims, pending further briefing from the Federal Defenders of New York. Thus, Case No. 14-CV-3228 was marked closed. See Civil Docket, No. 4.

In denying Gunn's ineffective assistance of counsel claims, the district court did not address his Napue claims adequately--even though the Government did not state there were no due process violation under Napue v. Illinois, as Gunn argued. Thus, the Napue claim was never adjudicated according to the standards established by the Second Circuit or United States v. Agurs, 427 U.S. 97 (1976).

After the court denied the ineffective assistance of counsel section of 14-CV-3228, Gunn filed a Notice of Appeal, and a request to file a Certificate of Appealability ("COA"). However, the Second Circuit held that Gunn's request for a COA was not ripe and therefore his Notice To Appeal was moot because the entire § 2255 case was not final. The Second Circuit arrived at this conclusion because Gunn's Johnson claim was still pending in the new Case No. 16-CV-4887. Therefore, Gunn did not get an opportunity to seek a COA to appeal the denial of his ineffective assistance of counsel claims, nor the other claims the court denied in 14-CV-3228.

II. Grounds For Relief

This Court has inherent authority to reopen Gunn's § 2255 in Case No. 14-CV-3228 to adjudicate his Napue violation claim and Impermissible Bolstering claim that the district court had granted leave for him to file in a Supplemental Brief. In addition, this Court has authority to reopen the §2255 in Case No. 14-CV-3228 to reset Gunn's time to file a Notice Of Appeal to seek a COA to appeal the denial of his ineffective assistance of counsel claims. Because the Johnson claim that was preserved in Case No. 16-CV-4887 resulted in a vacatur of Counts Six and Seven, and a Resentencing Hearing scheduled for March 23, 2023, Gunn respectfully request that the Court enter an Order to reopen 14-CV-3228 [before] it enter a final judgment in 16-CV-4887 ("The resentencing hearing"). Gunn request that the Court enter an Order to reopen the § 2255 in Case No. 14-CV-3228, namely, Gunn's Napue claim so

that he can seek the appropriate judicial relief before the resentencing is done.

For all the foregoing reasons, Roderick Gunn respectfully request that the relief sought be granted. Gunn also request to join in on any Napue violation Motions codefendant Alton Davis files.

Dated: January 30 2023

Respectfully Submitted,

R. Gunn

Roderick Gunns

CAPTION:

UNITED STATES OF AMERICA

v.

RODERICK GUNN

CERTIFICATE OF SERVICE*

Docket Number: 14 CV 3228

I, Roderick Gunn (print name), hereby certify under penalty of perjury that on January 30, 2023 (date), I served a copy of Motion to Reopen § 2255 To Address a Neque Violation Claim in Case No. 14 CV 3228 (list all documents)

by (select all applicable)**

___ Personal Delivery ✓ United States Mail ___ Federal Express or other Overnight Courier

___ Commercial Carrier ___ E-Mail (on consent)

on the following parties: U.S. Attorney's Office

Name	Address	City	State	Zip Code
Kedah Bhatia,	One Saint Andrews Plz,	New York,	N.Y	10007

*A party must serve a copy of each paper on the other parties, or their counsel, to the appeal or proceeding. The Court will reject papers for filing if a certificate of service is not simultaneously filed.

**If different methods of service have been used on different parties, please complete a separate certificate of service for each party.

1/30/2023
Today's Date

R. Gunn
Signature

Certificate of Service Form (Last Revised 12/2015)

Roderick Gunn
Reg. No. 55254-054
United States Penitentiary
P.O. Box 079001
Atwater, CA 95301

SACRAMENTO CA 957
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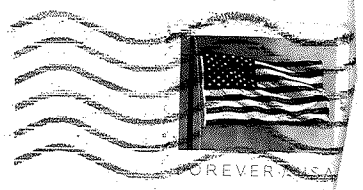

Pro se

The Clerk of Court
United States District Court
Southern District of New York
500 Pearl Street
New York, N.Y. 10007

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