

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
DOCKET NO. 5:10CV124
DOCKET NO. 5:06CR41-14-RLV

| | | |
|---------------------------------|---|--------------|
| |) | |
| UNITED STATES OF AMERICA |) | |
| |) | |
| v. |) | ORDER |
| |) | |
| JUAN LOPEZ |) | |
| |) | |

THIS MATTER is before the Court on its own Motion.

Petitioner was convicted in this district on one count of conspiracy to possess with intent to distribute methamphetamine, cocaine and cocaine base, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(A), and a separate count of possessing with intent to distribute methamphetamine and aiding and abetting the same, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A) and 18 U.S.C. § 2. After his criminal judgment became final Petitioner filed a timely motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. The Government filed a motion for summary judgment as to all claims in the § 2255 motion and this Court granted the motion on August 27, 2013 and dismissed the § 2255 motion and Petitioner appealed.

On April 30, 2014, the Fourth Circuit filed an unpublished per curiam opinion finding that Petitioner was entitled to an evidentiary hearing on the issue of whether his trial counsel failed to pursue plea negotiations with the Government even though Petitioner, as he contends, specifically instructed him to do so.¹

Further, on June 18, 2014, pursuant to the remand from the Fourth Circuit, the Court ordered that an Evidentiary Hearing be scheduled in this matter. (Doc. #25) Consequently, an order was filed scheduling the hearing for September 2, 2014. (Doc. #26) However, after the hearing was scheduled the Government informed the Court that they filed a Petition For Panel Rehearing with the Fourth Circuit. Consequently, the Fourth Circuit stayed the Mandate until they can rule on the Petition For Rehearing. Therefore, the Court will stay its Order instructing the Clerk's Office to schedule an Evidentiary Hearing until the Fourth Circuit rules on the Government's Petition.

IT IS, THEREFORE, ORDERED that:

1. Order filed on June 19, 2014, (Doc. #26) will be **STAYED**.
2. The Clerk's Office cancel the Evidentiary Hearing scheduled for September 2, 2014.
(Doc.#26)

Signed: June 23, 2014



Richard L. Voorhees
United States District Judge



¹ See United States v. Lopez, No. 13-7953, 2014 U.S. App. LEXIS 8149 (4th Cir. 2014) (unpublished)