

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

JAMES T. WASHINGTON,

Petitioner,

v.

Civil Action No: 2:14-13603
Criminal Action No: 2:12-00187-1

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

Pending before the court is petitioner's motion to vacate, set aside or correct sentence by a person in federal custody pursuant to 28 U.S.C. § 2255. (Doc. No. 52). By Standing Order, this matter was referred to United States Magistrate Judge Cheryl A. Eifert for submission of findings and recommendations regarding disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). (Doc. No. 53). Magistrate Judge Eifert submitted to the court her Proposed Findings and Recommendation on October 8, 2015, in which she recommended that the district court:

- (1) grant petitioner's § 2255 motion to the extent that petitioner seeks to pursue a direct appeal of his conviction and sentence in the United States Court of Appeals for the Fourth Circuit;
- (2) vacate petitioner's conviction and a new judgment from which petitioner may file a direct appeal be entered;
- (3) dismiss without prejudice petitioner's remaining § 2255

claims; and (4) appoint counsel to represent petitioner throughout his direct appeal. (Doc. No. 71 at 8-9).

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted fourteen days, plus three mailing days, in which to file any objections to Magistrate Judge Eifert's Findings and Recommendation. The failure to file such objections constitutes a waiver of the right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

None of the parties to this action filed objections to the PF&R. Having reviewed the Findings and Recommendation filed by Magistrate Judge Eifert, the court adopts the findings and recommendation contained therein.

Accordingly, the court **ORDERS** as follows:

1. Petitioner's § 2255 motion, (Doc. No. 52), is hereby **GRANTED** to the extent that petitioner seeks to pursue a direct appeal of his conviction and sentence in the United States Court of Appeals for the Fourth Circuit;

2. Petitioner's judgment of conviction is hereby **VACATED** and a new judgment from which petitioner may file a direct appeal shall be entered;


3. Petitioner's remaining § 2255 claims are hereby **DISMISSED** without prejudice; and

4. The court **DIRECTS** the Federal Public Defender to undertake representation of petitioner for the purpose of pursuing his direct appeal or, if the Office is unable to represent defendant, refer the matter to the CJA Supervising Attorney so that counsel may be appointed.

The Clerk is further directed to forward a copy of this Memorandum Opinion and Order to counsel of record, to petitioner, pro se, and the CJA Supervising Attorney.

IT IS SO ORDERED this 23rd day of November, 2015.

ENTER :

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge