

EXHIBIT

FINAL REPLY TO GOVERNMENT ANSWER TO § 2255
DATED SEPTEMBER 19, 2014 (DOC. 206)

C

U. S. DISTRICT COURT
WESTERN DISTRICT ARKANSAS
FILED

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

SEP 19 2014

UNITED STATES OF AMERICA

PLAINTIFF/RESPONDENT

V.

CRIMINAL No. 10-CR-50067-1

DEPUTY CLERK

JAMES B. MITCHELL

DEFENDANT/MOVANT

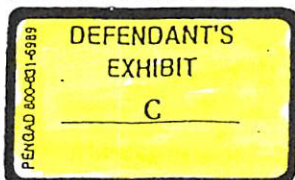
FINAL REPLY TO GOVERNMENT ANSWER TO § 2255 IN RE: DOC 204

I. GROUNDS ONE AND TWO IN MITCHELL'S AMENDED § 2255 MOTION ARE PROCEDURALLY BARRED AND BARRED BY APPLICABLE STATUTE OF LIMITATIONS

SEE PP 4-11 OF GOVERNMENT'S ANSWER (DOC. 160) WHICH ARE FRIVOLOUS DEFENSES THAT MOVANT IS PROCEDURALLY BARRED AND BARRED BY APPLICABLE STATUTE OF LIMITATIONS FOR GROUNDS ONE AND TWO IN HIS AMENDED § 2255 (DOC. 139) IN THAT MOVANT CAN USE EITHER OR BOTH DOCTRINES OF RELATE-BACK AND EQUITABLE TOLLING ON BOTH CLAIMS ONE AND TWO ON PP 8-14 (DOC. 139) AS SHOWN BELOW. AS A THRESHOLD ISSUE MOVANT ARGUES THAT THE GOVERNMENT WAIVED AND OR FORFEITED EVEN RAISING THESE FRIVOLOUS DEFENSES AS THE GOVERNMENT KNOWINGLY AND INTENTIONALLY FAILED TO FILE ITS ANSWER WHEN DUE THE FIRST TIME ON OR BEFORE JANUARY 7, 2013 AS ORDERED BY THE COURT ON 12/04/12 (DOC. 140) AFTER MOVANT FILED HIS AMENDED § 2255 ON 11/27/12 (DOC. 139). THE COURT SHOULD HAVE RULED ON MOVANT'S § 2255 AFTER THE GOVERNMENT ELECTED NOT TO FILE AN ANSWER DUE ON OR BEFORE 01/07/13. IF MOVANT INTENTIONALLY IGNORED ANY OF THIS COURT'S ORDERS TO COMPLY WITH A SPECIFIC DEADLINE TO FILE A PLEADING ON HIS § 2255, WOULD THE COURT GIVE MOVANT A SECOND OPPORTUNITY (ALMOST A YEAR LATER) SO WHY IS THE COURT SHOWING SUCH FAVORITISM TO THE GOVERNMENT TO GET A SECOND BITE AT THE APPLE?

A. PROCEDURAL DEFAULT

SEE PP 5-7 OF GOVERNMENTS' ANSWER (DOC. 160) IN WHICH IT IS ARGUED THAT MOVANT FAILED TO RAISE HIS SIXTH AMENDMENT RIGHT TO COUNSEL (CLAIM ONE) AND FIFTH AMENDMENT RIGHT TO DUE PROCESS (CLAIM TWO) ON DIRECT APPEAL AND THEREFORE HAS PROCEDURALLY DEFAULTED. MOVANT COULD NOT HAVE RAISED EITHER OR BOTH CLAIMS ON DIRECT APPEAL BECAUSE HIS ATTORNEY FAILED TO RECOGNIZE AND ARGUE EITHER CLAIM AT THE TRIAL COURT LEVEL AND CLAIMS CAN NOT BE RAISED FOR THE FIRST TIME ON DIRECT APPEAL AS COUNSEL FOR THE GOVERNMENT AND THE COURT ARE WELL AWARE AND THIS IS A FRIVOLOUS DEFENSE BY COUNSEL FOR THE GOVERNMENT. MOVANT'S TWO ATTORNEYS WERE GROSSLY INEFFECTIVE IN FAILING TO RECOGNIZE AND OR ARGUE EITHER OR BOTH CLAIMS ONE AND TWO IN MOVANT'S AMENDED § 2255.



A TRUE COPY I CERTIFY
DOUGLAS F. YOUNG, CLERK
U.S. DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
By: *Douglas F. Young*

CERTIFICATE OF SERVICE

I, JAMES B. MITCHELL, DO HEREBY DECLARE THAT I HAVE MAILED THE ORIGINAL OF THE FOREGOING WITH APPENDICES #1-#21 STYLED AS FINAL REPLY TO GOVERNMENT ANSWER TO § 2255 IN RE: DOC. 204 TO THE CLERK FOR FILING VIA CERTIFIED MAIL ON THIS 17th DAY OF SEPTEMBER, 2014, ANNO DOMINI, IN COMPLIANCE WITH WITH THE COURT'S ORDER (DOC. 204) TO FILE A FINAL REPLY ON OR BEFORE SEPTEMBER 19, 2014. I FURTHER DECLARE THAT I HAVE MAILED A TRUE COPY OF THE SAME TO THE UNITED STATES ATTORNEY AT THE ADDRESS SHOWN BELOW VIA REGULAR USPS MAIL WITH FIRST-CLASS POSTAGE AFFIXED IN C/O ASSISTANT U.S. ATTORNEY CLAY FOWLKES.

7013 2630 0000 4411 5984



7013 2630 0000 4411 5984

JAMES B. MITCHELL, PRO SE MOVANT

James B. Mitchell

JAMES B. MITCHELL #47109-080
P.O. Box 5000 - VERNON 2 UNIT
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F.C.I. OAKDALE
OAKDALE, LOUISIANA 71463

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
35 EAST MOUNTAIN, ROOM 510
FAYETTEVILLE, ARKANSAS 72701

AUSA CLAY FOWLKES, ESQUIRE
UNITED STATES ATTORNEY
WESTERN DISTRICT OF ARKANSAS
414 PARKER AVENUE
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PS Form 3800, August 2006 See Reverse for Instructions

A TRUE COPY I CERTIFY
DOUGLAS F. YOUNG, CLERK
U.S. DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
By: *Will Bauer, Jr.*