

EXHIBIT

"UNFINISHED" REPLY TO GOVERNMENT ANSWER TO § 2255
DATED NOVEMBER 12, 2013 (DOC. 164)

E

U.S. DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FILED 11/12/13

NOV 12 2013

CHRIS R. JOHNSON, CLERK

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DEFENDANT'S
EXHIBIT
E

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

JAMES B. MITCHELL

V.

UNITED STATES OF AMERICA

Criminal No. 10-50067-1

Civil Number 12-05120

PETITIONER'S RESPONSE TO GOVERNMENT ANSWER

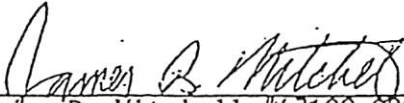
On September 24, 2013, the Hon. Erin L. Setser, United States Magistrate Judge, issued an order (Doc. 152) which states as follows:

Currently before the Court is Defendant's Motion For Leave to File a Second Amended 28 U.S.C. § 2255 Motion (Doc. 148). The motion is GRANTED to the extent that the letter Defendant references from Mr. Erwin Davis in response to Defendant's ethics complaint will be considered as an exhibit in support of Claim One and Claim Two of Defendant's Memorandum of Law in Support of Amended Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 (Doc. 139). The Clerk of Court is directed to file the letter (which is attached as pages 18 through 29 of Exhibit 1 to Document 147) as an Exhibit to Document 139. While the Government previously filed a Response to Defendant's § 2255 motion (Doc. 103), it would be helpful to the Court for the Government to file a response addressing each of Defendant's claims for § 2255 relief in the order presented in his Memorandum of Law (Doc. 139), including the letter the Court has directed to be filed as an exhibit in support of Claim One and Claim Two. The Government is directed to file such a response by October 23, 2013. (emphasis added)

The Clerk thereafter did file the above mentioned letter from Erwin Davis in response to Petitioner's ethics complaint (Doc. 153). Mr. Erwin Davis who was Petitioner's former criminal defense attorney on the instant case, had filed a Motion to Withdraw (Doc. 43) on September 30, 2010 just weeks after being paid a \$25,000 retainer to represent Petitioner and refused to refund any or all of the retainer which, in part, was the basis for the ethics complaint Petitioner had filed against him with Arkansas Supreme Court's Office of Professional Conduct which had directed Attorney Davis to file such a response that Petitioner did not receive a copy of until after filing his amended § 2255 (Doc. 139):

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

Respectfully submitted on this 6th day of November, 2013, anno domini.

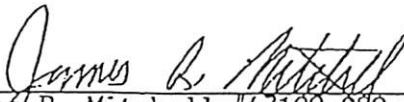


James B. Mitchell #47109-080
P.O. Box 5000 - Vernon 2 Unit
Federal Correctional Institution
F.C.I. Oakdale
Oakdale, Louisiana 71463

Petitioner in pro per

DECLARATION OF PETITIONER

I hereby declare, under penalty of perjury and the provisions of 28 USC § 1746; that I have "placed in the hands of prison officials" for mailing the foregoing, with attached Exhibits #1 - #4 to the clerk of the court on this 6th day of November, 2013, anno domini with first class USPS postage affixed via priority rate and Certified No. 7012 3460 0001 7213 5336; and that I mailed a copy via regular USPS on the same date to AUSA Glen Bay Hines, Arkansas Bar No. 94199 in c/o U.S. Attorney Conner Eldridge located at 414 Parker Avenue in Ft. Smith, Arkansas 72901. I further declare that I have had only six (6) days to prepare the foregoing response to AUSA Hines' answer to my "amended" § 2255 motion because I never received a copy of his answer (from his office) and only received a copy on November 1, 2013 from my sister who obtained the copy off PACER and mailed to me priority mail after she confirmed that AUSA Hines' answer had been filed on October 23, 2013 (Doc. 160) by the clerk's office. I filed a request for an extension of time also on November 1, 2013 (Doc. 163) however my sister checked PACER late in the afternoon on this 6th day of November, 2013 and confirmed the court has not ruled on the request and consequently I am submitting my response unfinished to comply with a due date of November 6, 2013 which the Court had allowed me two (2) weeks from when AUSA Hines's due date to file his answer on behalf of the Government. I have placed both of the above in the inmate mail box in Vernon 2 housing unit before midnight on this 6th day of November, 2013, anno domini.



James B. Mitchell #47109-080
P.O. Box 5000 - Vernon 2 Unit
Federal Correctional institution
F.C.I. Oakdale
Oakdale, Louisiana 71463

Petitioner in pro per

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