

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES : CRIMINAL ACTION
 : NO. 01-379
 v. :
 : CIVIL ACTION
 HECTOR SANTIAGO : No. 04-3886
 :

M E M O R A N D U M

EDUARDO C. ROBRENO, J.

February 9, 2007

Before the Court are defendant Hector Santiago's petition to vacate his conviction and/or sentence pursuant to 28 U.S.C. § 2255 (doc. nos. 50, 52), motion to stay proceedings pending the United States Supreme Court's decision in Shepard v. USA (doc. no. 54) and motion to supplement pursuant to Rule 15(a) (doc. no. 58).

I. PROCEDURAL HISTORY

On July 10, 2001, a federal grand jury in the Eastern District of Pennsylvania returned an eight-count indictment against Santiago for his alleged involvement in drug distribution activity and the use of a firearm in furtherance of that drug distribution. The indictment served on Santiago included a notice of prior convictions that cited four prior felony drug

convictions that Santiago had sustained.¹

On September 20, 2001, pursuant to a written guilty plea agreement (doc. no. 25), Santiago pled guilty to Counts Four through Eight of the indictment. Those counts included possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1) (Counts Four and Eight), distribution of cocaine, in violation of 21 U.S.C. § 841(a)(1) (Count Five), possession with intent to distribute cocaine, in violation of 21 U.S.C. § 841(a)(1) (Count Six), and possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A) (Count Seven).

Before signing the plea agreement, Santiago crossed out proposed paragraphs 9 and 10(a) through 10(c). Those paragraphs stipulated that Santiago committed the crimes contained in the first three counts of the indictment² and had been convicted of four prior felony drug convictions. The plea agreement also stated, however, in a provision that Santiago did not cross out, that the parties were "free to argue the applicability of any other provision of the Sentencing Guidelines" at sentencing,

¹ These four prior convictions all occurred in the Philadelphia Court of Common Pleas under docket numbers CP 8906-2172, CP 8906-3842, CP 8906-2604, and CP 8910-3352.

² The first three counts of the indictment included: distribution of cocaine base, in violation of 21 U.S.C. § 841(a)(1) (Counts One and Two); and possession with intent to distribute cocaine base, in violation of 21 U.S.C. § 841(a)(1) (Count Three).

including "criminal history." Pl. Agr. ¶ 10.

Santiago was advised on several occasions that he faced a twenty-year minimum sentence of imprisonment as a result of his prior felony drug convictions and his use of a firearm in furtherance of the drug trafficking crime to which he was pleading guilty.³ The written plea agreement itself so advised. Pl. Agr. ¶ 7. Santiago was also advised at his plea hearing that he faced a twenty-year minimum sentence of imprisonment.

Following the plea hearing, the Probation Office prepared a Presentence Investigative Report ("PSR"). The PSR stated that the statutory maximum sentence for the crimes of conviction was life imprisonment, with a mandatory minimum sentence of twenty years imprisonment. PSR ¶¶ 73, 75. Santiago objected to the PSR on the grounds that, inter alia, it classified him as an "armed career criminal" based on the four prior convictions that had been "deleted" in the written plea agreement. Dft.'s Obj. to PSR at 2-3 (doc. no. 36).

On February 15, 2002, the Court sentenced Santiago to a

³ The twenty-year minimum period of incarceration was calculated as the sum of two mandatory minimum sentences. The Armed Career Criminal Act provides that a defendant convicted of a drug felony who already has three previous drug felony convictions shall be imprisoned not less than fifteen years. 18 U.S.C. § 1924(e). Furthermore, 18 U.S.C. § 1924(g) provides that any person who uses or carries a firearm in furtherance of a drug trafficking crime shall, in addition to the punishment provided for the drug trafficking crime, be sentenced to a term of imprisonment of not less than five years. Santiago was subject to both of these mandatory minimum sentences.

total of 240 months imprisonment (equivalent to the mandatory minimum sentence of 20 years imprisonment),⁴ six years supervised release, a fine of \$1,000, and a \$500 special assessment.

On February 22, 2002, Santiago filed an appeal with the United Court of Appeals for the Third Circuit. The Third Circuit affirmed Santiago's conviction and sentence on September 2, 2003. Santiago's motion to vacate, set aside, or correct sentence, filed in August 2004, follows the appellate court's affirmation of the conviction and sentence.

II. SANTIAGO'S SECTION 2255 PETITION

Santiago relies on three separate grounds in support of his petition. First, he argues that the Court abused its discretion in allowing his base offense level to be enhanced based on his classification as an armed career criminal. Second, Santiago maintains that his defense counsel was ineffective during plea negotiations and sentencing because counsel failed to fully inform Santiago that it was the Government's burden of proof to prove the "guideline enhancements" beyond a reasonable doubt, and Santiago's plea was therefore involuntary and unintelligent. Third, Santiago contends that the federal

⁴ The Court sentenced Santiago to 180 months of imprisonment on Counts 4, 5, 6, and 8 to be served concurrently, the mandatory minimum under 18 U.S.C. § 1924(e). The Court also sentenced Santiago to 60 months imprisonment to be served consecutively, the mandatory minimum under 18 U.S.C. § 1924(g).

Sentencing Guidelines are unconstitutional because they allow a judge to make findings of fact which increase punishment beyond the relevant statutory maximum for which an accused may not have been indicted or admitted to within a plea of guilty.

Santiago has also moved to supplement his petition to include a fourth ground: that Santiago's counsel was representing a government informant who provided information about Santiago in the investigation of his case (doc. no. 58).

A. Santiago's Booker Claim⁵

The first and third grounds of Santiago's petition involve Santiago's allegations that, under Blakely v. Washington, 542 U.S. 296 (2004), the Court improperly considered his prior convictions in determining the appropriate sentence following his guilty plea.

1. Legal Standards

In Almendarez-Torres v. United States, the Supreme Court held that a judge may determine the existence of a prior conviction that increases the sentence faced by the defendant, and prior convictions need not be alleged in the indictment or

⁵ Although Santiago relies on Blakely for his claims, the Third Circuit has held that Second 2255 petitions under Apprendi and Blakely are governed by the Supreme Court's intervening decision in United States v. Booker, 543 U.S. 220 (2005). See Lloyd v. United States, 407 F.3d 608, 611 (3d Cir. 2005). Therefore, Santiago's claims are governed by the Third Circuit's Booker analysis.

established as an element of the offense. 523 U.S. 224 (1998). Recent Supreme Court precedent, however, has explored in greater depth what factual findings a judge may make to enhance a defendant's sentence, and what factual findings may only be made by a jury, thus calling into question the precise scope of the rule set forth in Almendarez-Torres. For example, in Blakely, upon which Santiago relies, the Supreme Court struck down a maximum sentence imposed by a state court that was enhanced based on judicial factfinding because the "statutory maximum" that a judge may impose must be solely based on "the facts reflected in the jury verdict or admitted by the defendant." 542 U.S. at 303.

In August of 2004, when Santiago originally filed this petition, the Supreme Court had not yet decided the landmark case of United States v. Booker, 543 U.S. 220 (2005). Of course, since then, Santiago's forecast that Blakely would apply to the federal sentencing guidelines has been validated by the Supreme Court. See id. at 227. Specifically, the Supreme Court held in Booker that:

Any fact (other than a prior conviction) which is necessary to support a sentence exceeding the maximum authorized by the facts established by a plea of guilty or a jury verdict must be admitted by the defendant or proved to a jury beyond a reasonable doubt.

Booker, 543 U.S. at 244 (emphasis added). Booker's clear language appeared to leave intact, however, Almendarez-Torres's holding that a judge could enhance a sentence based on a finding

of a prior conviction.

The Third Circuit later addressed whether Almendarez-Torres is still good law in light of Booker. See United States v. Ordaz, 398 F.3d 236 (3d Cir. 2005). In Ordaz, the defendant, who had been convicted for conspiring to distribute cocaine, challenged his thirty-year sentence on the grounds that it was the result of improper judicial fact-finding. Although the conspiracy charge ordinarily carried a twenty-year maximum sentence, a related statute provided that "if any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 30 years" See 21 U.S.C. § 841(b)(1)(C). The district court found that the defendant had been convicted of a felony drug offense and, applying section 841(b)(1)(C), sentenced the defendant to the enhanced thirty-year prison term. On appeal, the defendant in Ordaz argued that the fact of his prior conviction should have been submitted to the jury. The Third Circuit squarely rejected this argument, finding that the "holding in Almendarez-Torres remains binding law, and nothing in Blakely or Booker holds otherwise." Ordaz, 398 F.3d at 240-41.

Santiago brings to the Court's attention the case of

Shepard v. United States, 544 U.S. 13 (2005).⁶ In Shepard, a district court refused to use petitioner's prior convictions to enhance the mandatory minimum component of his sentence because the defendant's prior convictions were entered upon guilty pleas. The Supreme Court reversed, holding that prior guilty pleas may establish Armed Career Criminal Act ("ACCA") predicate offenses just as effectively as prior jury verdicts. 544 U.S. at 19. The ACCA "drops no hint that Congress contemplated different standards for establishing the fact of prior convictions, turning on the basis of trial or plea." Id. at 26.⁷ Even to the extent Santiago's convictions were entered on guilty pleas, Shepard does not help Santiago.

⁶ Santiago has also filed a motion to stay proceedings pending the United States Supreme Court's decision in Shepard v. USA (doc. no. 54). The Supreme Court has now decided Shepard v. United States, 544 U.S. 13 (2005), and this Court has considered its holding. Accordingly, Santiago's motion to stay will be denied as moot.

⁷ In Shepard, the Supreme Court also provided guidance restricting the scope of a court's inquiry on remand to determine whether a prior plea of guilty should enhance a defendant's sentence under the ACCA. Santiago has not disputed the finding that his prior convictions constitute felony drug convictions for the purposes of the ACAA. He contends that the Court should not have considered them at all. Thus, the Court need not further inquire whether his prior convictions were drug felonies. Cf. Shepard, 544 U.S. at 26 (advising that the inquiry to determine whether a prior plea of guilty should enhance sentence under the ACAA is "limited to the terms of the charging document, the terms of a plea agreement or transcript of colloquy between judge and defendant in which the factual basis for the plea was confirmed by the defendant, or to some comparable judicial record of this information").

Moreover, in United States v. Coleman, 451 F.3d 154 (3d Cir. 2006), the Third Circuit considered the impact, if any, of Shepard upon the rule set forth in Almendarez-Torres. In Coleman, the defendant was convicted of several firearm possession violations. At sentencing, the district court determined that Coleman had five prior convictions, qualifying him as an armed career criminal under 18 U.S.C. § 924(e). This determination increased the statutory minimum for his firearm possession offenses to at least fifteen years in prison.

On appeal, the defendant argued that because his prior convictions increased the statutory minimum penalty, those offenses should have been charged in the indictment and proved to the jury beyond a reasonable doubt and that the government's failure to do so violated the Sixth Amendment. Coleman, 451 F.3d at 161. The Third Circuit rejected the argument that Shepard had implicitly overruled Almendarez-Torres: "The various opinions in Shepard appear to agree on one thing: the door is open for the Court one day to limit or overrule Almendarez-Torres. But that day has not yet come." Id. Accordingly, the Third Circuit affirmed the enhancement of the defendant's mandatory minimum sentence. Id.

In the most recent Supreme Court case begat by Blakely and its progeny, the Supreme Court declared California's determinate sentencing law to be unconstitutional because it

required greater terms of imprisonment if a judge found the presence of aggravating circumstances established by a preponderance of the evidence. Cunningham v. California, 127 S. Ct. 856 (2006). Although none of the aggravating circumstances in Cunningham involved prior convictions, in crafting the relevant rule of law to apply, the Supreme Court was careful to exclude "prior convictions" as one of the facts that must be either found by a jury or admitted by the defendant for sentence enhancement purposes. Id. at 860.

1. Application

As the Supreme Court and the Third Circuit have made abundantly clear, this Court was free to determine Santiago's criminal history category on its own based on his prior convictions. Here, it is undisputed that Santiago had four felony drug convictions in the Philadelphia County Court of Common Pleas. Accordingly, a mandatory minimum sentence of 180 months based on Santiago's status as an armed career criminal was appropriate. Furthermore, Santiago's pleading guilty to possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A), necessitated the imposition of an additional mandatory minimum sentence of 60 months. Santiago's Booker claims under the first and third grounds of his petition must be denied.

B. Retroactivity

Santiago's Booker claim fails for a second reason: Booker cannot be applied retroactively. Lloyd v. United States, 407 F.3d 608, 611 (3d Cir. 2005). The Third Circuit affirmed Santiago's sentence on September 2, 2003, and ninety days from that date is December 1, 2003, the date Santiago waived his rights to further appeal. The Supreme Court issued Booker on January 12, 2005. Thus, Santiago cannot assert a Booker claim. See also United States v. Chernyak, No. 04-4243, 2005 U.S. Dist. LEXIS 16766, at *7 (E.D. Pa. Aug. 15, 2003) (following Lloyd to hold that "Defendant cannot claim that his plea was 'constitutionally invalid' based upon Blakely and Booker" because those cases cannot be applied retroactively).

C. Ineffective Assistance of Counsel and Involuntary Plea

Santiago's second ground in support of his Section 2255 petition is that he received ineffective assistance of counsel and his guilty plea was thus made involuntarily and unintelligently. In support of this allegation, Santiago alleges that his counsel failed to inform him that the Government had to prove his guideline enhancements beyond a reasonable doubt.

As discussed exhaustively above, this proposition is not true. Had Santiago's counsel advised Santiago that the Government was required to prove his prior convictions beyond a

reasonable doubt to enhance Santiago's mandatory minimum sentence, counsel would have been wrong. Santiago's counsel did not provide ineffective assistance for this reason.

Santiago has also failed to prove that his plea was made involuntarily and unintelligently. A guilty plea operates as a waiver of important rights, and is valid only if done voluntarily, knowingly, and intelligently, "with sufficient awareness of the relevant circumstances and likely consequences." Bradshaw v. Stumpf, 545 U.S. 175, 183 (2005) (quoting Brady v. United States, 397 U.S. 742, 748 (1970)). Where a defendant pleads guilty to a crime without having been informed of the crime's elements, this standard is not met and the plea is invalid. Id. (citing Henderson v. Morgan, 426 U.S. 637 (1976)).

Santiago was advised that he was pleading guilty to the drug charges contained in Counts Five and Six and to the gun charges contained in Counts Four, Seven, and Eight of the indictment. He was advised as to the elements of those charges. He was also advised that the maximum sentence he faced was life imprisonment, a 20-year mandatory minimum sentence of imprisonment, a maximum term of lifetime supervised release with a mandatory term of six years supervised release, a fine of \$4,750,000, and a \$500 special assessment. The Government summarized the facts which formed the basis for Santiago's plea, which included Santiago's distribution of cocaine base and

cocaine and his possession of two firearms. Santiago acknowledged his understanding of the mandatory minimum sentence and agreed with the Government's summary of the facts.

The sentence imposed by the Court was the same mandatory minimum sentence that Santiago was informed he would receive at the time he entered his plea. He has no basis to argue that his plea was involuntarily and unintelligently made.

III. MOTION TO SUPPLEMENT PURSUANT TO RULE 15(a)

Santiago has filed a motion to supplement pursuant to Rule 15(a) to add a fourth ground in support of his Second 2255 Petition (doc. no. 58). Santiago seeks to further allege that his counsel, Louis T. Savino, "had a clear conflict of interest which was not disclosed" to Santiago. Namely, Mr. Savino "also represented an informant (Mr. James Ellis), on the petitioner's case." Santiago claims that "[b]y failing to inform petitioner that another client was providing information against petitioner[,] Counsel's actions clearly did not meet the minimum standards of effective representation." Santiago requests that, if this amendment is allowed, an evidentiary hearing be held on this matter.

A. Amendment of Petition

The Court must first determine whether Santiago may

supplement his petition. By statute, Congress has provided that a habeas petition "may be amended . . . as provided in the rules of procedure applicable to civil actions." 28 U.S.C. § 2242. The civil rule on amended pleadings, Rule 15 of the Federal Rules of Civil Procedure, allows amendments to pleadings with "leave of court" at any time during a proceeding. See Fed. R. Civ. P. 15(a). Because Santiago maintains that the alleged fact of his counsel's representation of a Government informant has just come to his attention, it appears that this new allegation would not be barred by the one-year statute of limitation applicable to Santiago's petition. See 28 U.S.C. § 2255 (the statute begins to run from "the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence").

The Government responds only to the merits of Santiago's new allegation, apparently conceding that the Court may permit the amendment:

While it is true that Louis T. Savino, Esquire represented the petitioner and James Ellis, James Ellis neither acted as an informant nor provided any cooperation with the government regarding the petitioner. Ellis did cooperate with the government, but never provided any information regarding the petitioner. Perhaps he had incriminating information, which the petitioner suggests that he did have. However, Ellis did not share any information he may have had with the government.

Govt's Resp. at 1-2 (doc. no. 59).

Accordingly, the Court will grant Santiago's motion to

amend his petition.

B. Request for an Evidentiary Hearing

If Santiago's new allegation were true, it would implicate Sixth Amendment concerns in two ways, both of which necessitate an evidentiary hearing.

1. Conflict of Interest

The law is clear that a defendant has a Sixth Amendment right not just to counsel, but to "reasonably effective assistance" of counsel. Strickland v. Washington, 466 U.S. 668, 687 (1984). To gain relief for a violation of this right, a defendant must show both unprofessional conduct and resulting prejudice. Id. More precisely, the claimant must show that: (1) his or her attorney's performance was, under all the circumstances, unreasonable under prevailing professional norms, see id. at 687-91; and (2) there is a "reasonable probability that, but for counsel's unprofessional errors, the result would have been different," id. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

If there is a conflict of interest between counsel and the client, prejudice under the Strickland test is presumed. Gov't of the Virgin Islands v. Zepp, 748 F.2d 125, 134 (3d Cir.

1984) (citing Cuyler v. Sullivan, 446 U.S. 335, 350, 348 (1980)). The Third Circuit has defined an actual conflict as follows: "if, during the course of representation, the defendant's interests diverge with respect to a material factual or legal issue or to a course of action." Id. at 136 (citing Sullivan v. Cuyler, 723 F.2d 1077 (3d Cir. 1983)). Following that presumption, the petitioner need only show that the actual conflict "adversely affected counsel's performance" to prove ineffective assistance of counsel. See id. at 134.

In cases involving an alleged conflict of interest based on defense counsel's representation of a prosecution witness by defense counsel, the courts have generally examined the particular circumstances to determine if counsel's "undivided loyalties" lie with his current client. E.g. United States v. Martin, 454 F. Supp. 2d 278, 283 (E.D. Pa. 2006); United States v. FMC Corp., 495 F. Supp. 172 (E.D. Pa. 1980). In particular, courts have examined: (1) whether the lawyer's pecuniary interest in possible future business was likely to cause him to be less vigorous in her cross-examination of the witness who is a former client; and (2) whether any confidential information received by the defense counsel from his former client who is now a government witness will be relevant to the cross-examination of that witness. Id.

In this case, Santiago pled guilty and so his counsel's

performance could not have been affected in either of these manners; Santiago's counsel simply never had the opportunity to cross-examine the informant. Nonetheless, counsel's representation of both Santiago and the informant would present an actual conflict of interest. The informant's interest would be to provide the Government with as much information as possible about Santiago, hopeful of the Government's later seeking a downward departure on the informant's behalf. Santiago's interest, of course, would be to prevent the Government from gaining any additional information about him. Under these particular circumstances, Santiago's counsel's loyalties would be divided between Santiago and the informant.

Although the Government denies that the alleged informant ever provided any information about Santiago, "it is difficult to say here that the files and records of the case conclusively show that [Santiago] is entitled to no relief on this particular claim when [Santiago] has not yet been afforded the opportunity to provide additional 'specific evidence' at an evidentiary hearing." Martin, 454 F. Supp. 2d at 285 (ordering evidentiary hearing as to the merits of the petitioner's claims that counsel provided ineffective assistance through his prior representation of a government witness and by failing to inform defendant of a plea offer made by the government).

2. Government Intrusion into the Defense Camp

The Sixth Amendment is also violated when the government (1) intentionally plants an informer in the defense camp; (2) when confidential defense strategy information is disclosed to the prosecution by a government informer; or (3) when there is no intentional intrusion or disclosure of confidential defense strategy, but a disclosure by a government informer leads to prejudice to the defendant. United States v. Costanzo, 740 F.2d 251, 254 (3d Cir. 1984) (citing Weatherford v. Bursey, 429 U.S. 545 (1977)). Santiago's new allegation also raises concerns of unconstitutional government intrusion.

United States v. Costanzo, 625 F.2d 465, 466 (3d Cir. 1980), presents facts similar to Santiago's claim in the instant case. In Costanzo, a Section 2255 petitioner claimed that his Sixth Amendment rights were violated because an attorney with whom he consulted had allegedly furnished information to FBI agents investigating his case. The district court denied his petition without an evidentiary hearing and the petitioner appealed. On appeal, the Government contended that the petitioner's motion, together with the court files and records, showed that the petitioner did not have an attorney-client relationship with the attorney in question with respect to the pending case. Id. at 468. The Government also denied that any information relating to the petitioner's trial strategy was

conveyed to it by the attorney. Id.

The Third Circuit reversed, finding at least two material issues of fact raised by the allegations of the petition: (1) whether there was an attorney-client relationship between the petitioner and the attorney which extended to the relevant time period, and (2) if so, whether the attorney disclosed to the Government the petitioner's trial strategy told to him in confidence. Costanzo, 625 F.2d at 469. The Third Circuit made this finding notwithstanding the Government's having submitted affidavits from the FBI agents denying the petitioner's allegations. "Government affidavits filed in opposition to a § 2255 motion for postconviction relief are not part of the 'files and records' of the case and are not conclusive against the movant." Id. at 470 (internal citations omitted). Such "denials only serve to make the issues which must be resolved by evidence taken in the usual way." Id. The Third Circuit remanded the case to the district court so that the nature of the relationship and the communications between counsel and the informant could be ascertained in the course of an evidentiary hearing. Id. The Court found that "in the absence of full development of the facts by an evidentiary hearing, we cannot assume that no . . . overstep occurred simply because the Government avers that it did

not." Id. at 469-70.⁸

Santiago does not claim here that his attorney was an informant, but rather that his attorney represented an informant in his case. Although Santiago does not allege the precise facts present in Costanza, Santiago's allegations nonetheless raise the same concerns present in that case, i.e., whether Santiago's attorney may have disclosed confidential information to the Government in the course of his representation of the Government's informant. The Court will hold an evidentiary hearing "so that the nature of the relationship and the communications can be ascertained." See Costanza, 625 F.2d at 470.

An appropriate order will be entered.

⁸ After an evidentiary hearing, it was determined that the petitioner had failed to prove his counsel was subject to an actual conflict of interest or that he was prejudiced. United States v. Costanzo, 740 F.2d 251, 259 (3d Cir 1984).

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ORDER

AND NOW, this **9th** day of **February, 2007**, it is hereby **ORDERED** that Defendant Hector Santiago's Motion to Supplement Pursuant to Rule 15(a) (doc. no. 58) is **GRANTED**.

It is further **ORDERED** that Defendant's Motion to Stay Proceedings Pending the United States Supreme Court's Decision in Shepard v. USA (doc. no. 54) is **DENIED AS MOOT**.

It is further **ORDERED** that Defendant's petition to vacate his conviction and/or sentence pursuant to 28 U.S.C. § 2255 (doc. nos' 50, 52) is **GRANTED IN PART AND DENIED IN PART**. Defendant's motion is granted as to his claim based on the allegation that his counsel was representing a Government informant who provided information about Santiago in the investigation of the case. Defendant's motion is denied as to all other claims.

It is further **ORDERED** that an evidentiary hearing shall be scheduled for **April 9, 2007** at **9:30 a.m.** in Courtroom 11A,

United States Courthouse, 601 Market St., Philadelphia, Pennsylvania. The evidentiary hearing shall be limited in scope to Defendant's claims based on the allegation that his counsel was representing a Government informant who provided information about Defendant in the investigation of the case.

It is **FURTHER ORDERED** that counsel shall be appointed to represent defendant in connection with the evidentiary hearing.

AND IT IS SO ORDERED.

S/Eduardo C. Robreno
EDUARDO C. ROBRENO, J.