

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

UNITED STATES OF AMERICA	:	
	:	CRIMINAL ACTION
v.	:	No. 94-196-01
	:	
MELVIN WILLIAMS	:	
	:	
<b>February 3, 2016</b>		<b>Anita B. Brody, J.</b>

**MEMORANDUM**

Melvin Williams’s successive motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (ECF No. 383)<sup>1</sup> is now before the Court. For the reasons explained below, the motion will be dismissed.

**I. BACKGROUND**

On September 24, 1997, a jury in district court convicted Williams of multiple counts of conspiracy to commit Hobbs Act robbery, attempted murder of federal agents, conspiracy to assault and kill federal agents, and possession of a firearm by a convicted felon during a crime of violence.<sup>2</sup> (ECF No. 287). Williams’s prosecution and arrest related to his involvement in 1993 and 1994 with a group, referred to as “the Squad,” who robbed drug dealers in Philadelphia and who engaged in a shootout with FBI agents on March 16, 1994.

a. 1994 Shootout and 1994 Trial

On March 16, 1994, Williams, Tremaine Jackson, and Jermaine Lipscomb, all members of the Squad, were driving together with Wayne Caldwell, an FBI informant. Caldwell was behind the wheel. The Squad had decided to commit a robbery to obtain bail money for Thurston Cooper, another member of the Squad, who was in police custody for carjacking. As

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<sup>1</sup> All ECF Docket Numbers refer to the docket in Williams’s criminal action, No. 94-196-1.

<sup>2</sup> The Honorable Clifford S. Green of the Eastern District of Pennsylvania presided over Williams’s trial and sentencing. The case was reassigned to me on June 3, 2008. (ECF No. 373).

the Squad members were driving to the robbery, FBI agents attempted to stop their car. Jackson and Lipscomb fired at the agents and a shootout ensued. Williams had two guns in his possession, but never fired them. As a result of the shootout, Lipscomb was killed, Williams and Jackson were injured, and two of the agents were wounded. Unbeknownst to Williams, Jackson, and Lipscomb, Caldwell had alerted the agents to the Squad's robbery plan.

The Government indicted Williams and Jackson on charges of conspiracy to attempt to kill federal agents and gun possession charges. (ECF No. 25). Williams and Jackson were tried in September 1994 before a jury in district court. The Government's theory at trial was that Williams, as the leader of the group, had ordered Jackson and Lipscomb to shoot at the agents, even though he did not fire his weapons. The Government offered the testimony of Caldwell, its informant, to prove that Williams was the leader of the conspiracy. In addition, the Government offered the testimony of Agent Turck, one of the agents present at the car stop and the shooting and who was injured during the shootout. On October 12, 1994, the jury found Williams guilty on all charges. (ECF No. 112). On February 2, 1995, Williams was sentenced to 334 months of imprisonment, followed by three years of supervised release. (ECF No. 121).

On February 8, 1995, Williams and Jackson directly appealed their convictions. (ECF No. 124). While their direct appeals were pending, Williams filed a motion to vacate, set aside, or correct sentence pursuant to § 2255 (ECF No. 161), and Jackson filed a motion for a new trial. (ECF No. 157). Both motions were based on the Government's failure to disclose impeachment information about one of its key witnesses, Agent Turck. Based on this failure, On December 10, 1996, the District Court vacated the Defendants' convictions and sentences and granted them a new trial. *United States v. Williams*, 1996 WL 741886 (E.D. Pa. Dec. 10, 1996), (ECF No. 190). Thereafter, Williams and Jackson withdrew their direct appeals. (ECF Nos. 196, 197).

b. 1997 Superseding Indictment and Trial

After Williams's and Jackson's convictions were vacated, the Government filed a superseding indictment against both Defendants, adding one count of conspiracy to commit Hobbs Act robbery to the original charges stemming from the March 16, 1994 shootout. (ECF No. 205). The trial began on September 15, 1997.

The basis for the conspiracy to commit Hobbs Act robbery charge was new testimony from Cooper. Cooper, who was incarcerated at the time of the 1994 shootout, had refused to testify against his fellow Squad members at the 1994 trial. By the 1997 trial, however, Cooper was serving a twenty-five year sentence for his participation in a string of carjackings and an aggravated assault. As part of his guilty plea, Cooper agreed to cooperate with the Government and provide information to the Government about other criminal activities. Cooper agreed to testify against Williams at the 1997 trial.

At the 1997 trial, Cooper testified that Williams was the leader of the Squad from 1993-1994 and had ordered and participated in hundreds of armed robberies targeting drug dealers. Cooper's testimony was the Government's main proof of the conspiracy to commit Hobbs Act robbery. Cooper also testified that he had spoken with Williams in October 1994, while both Williams and Cooper were incarcerated in the same facility. Cooper testified that he asked Williams if he had ordered the Squad to shoot at the FBI agents during the March 1994 shootout, and that Williams responded, "Bosses give orders." The Government used this testimony to prove that Williams was the leader of the shootout conspiracy. After Cooper testified against Williams at the 1997 trial, the Government secured a reduction in Cooper's sentence. Cooper was released in 2000, having served seven years of his original twenty-five year sentence.

At the 1997 trial, in addition to Cooper, the Government called ten witnesses, including

Jackson, Williams's co-defendant. Jackson had pled guilty before the 1997 trial and agreed to testify against Williams. Jackson testified that Williams had given the order to shoot at the FBI agents during the March 16, 1994 shootout. Jackson explained that he and Williams, along with Lipscomb, had planned to rob a drug dealer and were en route to effectuate their plan when they encountered the FBI agents. Jackson also testified that he was aware that Williams had robbed drug dealers for money, even though Jackson had not directly participated in any of the robberies.

On September 24, 1997, the jury returned a verdict of guilty on all counts. On February 10, 1998, Williams was sentenced to 384 months of imprisonment, followed by three years of supervised release. (ECF No. 320). Williams timely appealed, and the Third Circuit affirmed Williams's sentence and conviction. (ECF No. 340). Williams then filed a timely *pro se* petition for a Federal Writ of Habeas, which was denied. (ECF No. 358).

c. 2007 Affidavit

In 2008, Williams received a copy of a notarized affidavit (the "Affidavit") from 2007 signed by Cooper. *See* Affidavit, Ex. A. According to the Affidavit, Cooper's testimony against Williams was a lie. The Affidavit states that Cooper was coerced by the Government to give false testimony about Williams in exchange for a substantial reduction of his own sentence.

In October 2013, Williams applied to the Third Circuit for certification to file a second or successive habeas petition based on newly discovered evidence pursuant to 28 U.S.C. §§ 2255(h) and 2244(b)(3) of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA").<sup>3</sup> Williams based his application on the Affidavit, which Williams characterized as newly

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<sup>3</sup> 28 U.S.C. § 2255(h) directs a panel of the appropriate court of appeals to certify a second or successive petition only where the petition contains either:

discovered evidence. In December 2013, the Third Circuit panel found that Williams had made the requisite prima facie showing for a second or successive motion, appointed counsel for Williams, and authorized this Court to consider Williams's motion. *In re Melvin Williams*, No. 13-4030, December 5, 2013 Order, (ECF No. 380), Ex. B. The order states:

The foregoing application for an order authorizing the District Court to consider a second or successive motion under 28 U.S.C. § 2255 is granted. Melvin Williams has made a prima facie showing under 28 U.S.C. §§ 2244(b)(3)(C) that he has satisfied the gatekeeping requirements set forth in 28 U.S.C. § 2255(h). *See Goldblum v. Klem*, 510 F.3d 204, 219 (3d Cir. 2007) (“by ‘prima facie showing’ we understand . . . simply a sufficient showing of possible merit to warrant a fuller exploration by the district court”) (quoting *Bennet v. United States*, 119 F.3d 468, 469 (7<sup>th</sup> Cir. 1997)). **We stress, however, that our only determination, based on a limited record, is that Williams has made a prima facie showing, and the District Court must dismiss the § 2255 motion if it finds that the § 2255(h) requirements have not in fact been met.** *See In re Pendleton*, 732 F.3d 280, 283 (3d Cir. 2013). Our determination does not preclude the Government from opposing the petition on procedural or substantive grounds. Furthermore, we emphasize that the District Court will determine *de novo* all issues, including timeliness, procedural questions, and, if reached, the merits of Williams' claims. *See In re Moss*, 703 F. 3d 1301, 1303 (11th Cir. 2013); *Bennett*, 119 F.3d at 470. Williams' motion for appointment of counsel is granted, and Dana L. Bazelon is hereby appointed *nunc pro tunc* to October 9, 2013. *See Tabron v. Grace*, 6 F.3d 1147, 155-56 (3d Cir. 1993); 18 U.S.C. § 3006A.

*Id.* (emphasis added). The order directed the District Court to consider the motion *de novo*. *Id.*

## II. DISCUSSION

Before a district court may consider a second or successive habeas motion under § 2255, the AEDPA requires the defendant to first apply for authorization from the appropriate court of

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- (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that *no reasonable factfinder would have found the movant guilty of the offense*; or
  - (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255(h) (emphasis added). 28 U.S.C. § 2244 sets forth the procedure required for a second or successive application to be certified to the district court by the appropriate court of appeals. *See* 28 U.S.C. § 2244(b)(3).

appeals. 28 U.S.C. §§ 2255(h), 2244(b)(3)(A). A three-judge panel of the appropriate court of appeals then determines whether the applicant has made a “prima facie showing” that it contains either:

- (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
- (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. §§ 2244(b), 2255(h); *Goldblum v. Klem*, 510 F.3d 204, 217 (3d Cir. 2007). A “prima facie showing” is merely a “sufficient showing of possible merit to warrant a fuller exploration by the district court,” *Goldblum*, 510 F.3d at 220, and “does not refer to the merits of the claims asserted in the petition. Rather, it refers to the merits of a petitioner’s showing with respect to the substantive requirements” for second or successive petitions. *Id.* at 219 n.9 (citation omitted). This constitutes the “gatekeeping” mechanism for second or successive motions under the AEDPA. *See id.* at 219 (describing the court of appeals’ “gatekeeping role in authorizing the filing of second or successive petitions under the AEDPA”).

If the court of appeals determines that the applicant has made a prima facie showing, it authorizes the district court to consider the motion. *Id.* The district court, however, must dismiss the motion, without reaching the merits, if it finds that the § 2255(h) requirements have not been met. *Id.* at 220; *see In re Pendleton*, 732 F.3d 280, 283 (3d Cir. 2013) (stressing that the court of appeals’ authorization is “tentative, and the District Court must dismiss the habeas corpus petition for lack of jurisdiction if it finds that the requirements for filing such a petition have not in fact been met”).

### III. FINDINGS

Once the Affidavit surfaced, both Williams's counsel and the Government attempted to locate Cooper. Notwithstanding their diligent efforts, however, neither party was able to locate Cooper for over a year. In October 2015, Cooper was finally found, served a subpoena, and appointed counsel. (ECF No. 400). On November 2, 2015, I held an evidentiary hearing on Williams's § 2255 motion. At the hearing, Williams called three witnesses: Roysha Johnson, the notary whose signature was on the Affidavit; Keisha Jones, a friend of Cooper and Williams; and Cooper. At the conclusion of the hearing, the Affidavit was admitted into evidence. The Government presented no witnesses.

Upon consideration of the evidence presented at the November 2, 2015 hearing, I make the following findings:

a. November 2, 2015 Evidentiary Hearing

At the hearing, Williams's counsel produced a photocopy of the Affidavit. Tr. 9:19-22. This photocopy version was the only version admitted into evidence.<sup>4</sup> 41:17-21. The original version of the Affidavit has not been located. Tr. 41:19-42:4. The Affidavit is a two-page, typed document that contains eight numbered paragraphs and identifies the affiant as "Thurston Cooper." *See* Affidavit, Ex. A. The paragraphs consist of first-person descriptions of what Cooper is purported to have testified to at Williams's trial, along with statements that Cooper lied and was coerced into testifying against Williams by the Government. *Id.*

Roysha Johnson testified at the hearing. Johnson stated that she is currently a notary and was a notary in 2007. Tr. 5:19-21. Johnson's signature and notary seal are on page 2 of the Affidavit. Tr. 6:1-7. Johnson testified that she does not recognize the Affidavit or recall signing and affixing her seal to it. Tr. 6:15-19. Johnson stated that she has no memory of Thurston

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<sup>4</sup> The Affidavit was admitted into evidence without objection from the Government. Tr. 88:3-13.

Cooper and does not have the original Affidavit in her possession. Tr. 8: 1-6; Tr. 9:23-24.

Johnson explained that she kept a log in 2007 of all of the documents she notarized, but she no longer has the log. Tr. 6:20-23. Johnson said that generally, she only signs and affixes her notary seal onto a document after she witnesses a person sign the document in her presence and verifies the person's identity. Tr. 6:24-7:11. Johnson testified that the handwritten date under the notary seal and the signature are in her handwriting. Tr. 10:1-6; 11:6-8.

Keisha Jones also testified at the hearing. She said that she has known both Williams and Cooper since she was young. Tr. 14:17-15:2. Jones has a son with Williams, but they no longer get along and do not have a close relationship. Tr. 15:11-25. Jones grew up with Cooper, but she was not in touch with him from 1993 until around 2007. Tr. 23:3-24:12. Jones testified that she could not remember who initiated the conversations, but in 2007, she spoke with Cooper over the phone numerous times about Williams. Tr. 16:1-12; 21:11-17. Jones testified that during those conversations, Cooper told her that the testimony he gave at Williams's trial was not true. Tr. 17:8-11.

As result of these conversations, Jones testified that she prepared the Affidavit. Tr. 16:18-17:7. Jones could not remember exactly how she obtained the information that she included in the Affidavit, but was certain that she was the one who typed it. Tr. 28:1-29:14; 31:2-32:3. Jones explained that once she finished typing the Affidavit, Jones contacted Cooper and showed him the Affidavit, and then she made changes according to Cooper's corrections. Tr. 18:4-8; 19:3-10; *see also* Tr. 35:6-19. Jones testified that after implementing Cooper's corrections, she drove Cooper to Johnson, the notary, and witnessed him sign the Affidavit in Johnson's presence. Tr. 36:15-37:4. After some time, Jones sent the Affidavit to Williams's mother. Tr. 37:5-13. Jones could not remember if she ever mentioned the Affidavit or its

contents to Williams. Tr. 36:7-14.

Cooper also testified at the hearing. He testified that he had no memory of meeting Jones in August of 2007 or of signing the Affidavit in her presence. Tr. 53:3-6; 69:12-19. Although Cooper positively identified his signature on the Affidavit and remembers signing it, he stated that he does not remember signing it in the presence of a notary. Tr. 47:2-4; 69:9-16. Instead, Cooper testified that he signed the Affidavit after a woman approached him outside, identified herself as “representing Melvin Williams,” and handed him a document to sign. Tr. 47:5-12. Cooper could not remember the specific date this occurred, but remembers that it was cold outside and that the woman was wearing a coat, hat, and scarf, and he was wearing a hoodie. Tr. 86:9-22. When the woman approached Cooper, he was selling drugs. Tr. 47:19-24. Cooper said that he did not recognize the woman, but described her as short, pregnant, and attractive. Tr. 64:19-21. Cooper testified that he did not read the document the woman asked him to sign, and only signed it to get her away from him. Tr. 48:2-3. In fact, Cooper stated that he did not read the Affidavit until he was subpoenaed to testify at the evidentiary hearing. Tr. 53:11-18.

Cooper testified that nothing in the Affidavit is true, and that his testimony at Williams’s trial was the truth. Tr. 53:19-25. Cooper identified parts of the Affidavit that mischaracterized his testimony at Williams’s 1997 trial, as well as parts of the Affidavit that referenced conduct that Cooper never testified about in 1997 and that never occurred. Tr. 75:1-79:18. Cooper also stated that no one had pressured him to testify against Williams or told him what to say at the 1997 trial or at the November 2, 2015 hearing beyond “to tell the truth.” Tr. 54:1-55:4. Cooper also confirmed that at the time of the 1997 trial, Cooper was serving a 25-year sentence for carjacking. Tr. 48:10-14. As a result of Cooper’s testimony against Williams, Cooper stated that his sentence was reduced to seven years and he was released in 2000. Tr. 59:1-18.

Cooper also testified that as a result of his testimony against Williams, he has been labeled a “snitch” in his community. Tr. 66:17-19. He explained that he has received numerous threats over the years as a result of his cooperation, and is constantly worried about violent retaliation, including death. Tr. 66:22-67:12. Cooper was adamant that he wanted nothing to do with Williams’s case or the Affidavit because of the threats he continues to receive as a result of his cooperation, which is why he made himself difficult to find. Tr. 69:20-70:25. Cooper stated that his fear of retaliation was the reason why he quickly signed the Affidavit, without reading it, when the woman approached him on the street and uttered Williams’s name. Tr. 67:9-68:9.

b. Credibility Determinations

At the November 2, 2015 hearing, I had the opportunity to evaluate the credibility of the witnesses. I considered the quality of each witness’s knowledge, understanding, and memory of the events in question; observed each witness’s appearance, behavior, and demeanor while testifying; contemplated the interests of each witness in the outcome of this motion; and evaluated each witness’s testimony for consistency with the other evidence in this case.

After considering all the factors that bear on a witness’s credibility, I find that Cooper’s testimony at the hearing is credible. I find Jones’s testimony, which was inconsistent and at times in direct conflict with Cooper’s testimony, incredible. I considered Jones’s inability to recall when, why, and how she prepared the Affidavit. I also reviewed the Affidavit, and considered that the Affidavit is not an original, contains spelling and formatting errors, and includes factual inaccuracies about Cooper’s 1997 testimony against Williams. In addition, I considered Cooper’s explanation for resisting additional involvement in Williams’s case and his reason for why he signed the Affidavit without reading it. After considering the testimony of each witness and reviewing the Affidavit, I find Cooper’s version of events and explanation for

how and why he signed the Affidavit credible.

c. Williams's § 2255 (h) Motion Based on New Evidence

Williams seeks consideration of his successive § 2255 motion based on the existence of newly discovered evidence pursuant to § 2255(h)(1) – namely, the Affidavit – that he claims establishes his actual innocence.<sup>5</sup> Williams properly applied for certification from the Third Circuit, and the Third Circuit determined that Williams had made a prima facie showing under § 2255(h)(1). *In re Melvin Williams*, December 5, 2013 Order, Ex. B. The Third Circuit certified Williams's motion for consideration by this Court. *Id.*

Williams argues that the Affidavit contradicts Cooper's trial testimony against Williams at the 1997 criminal trial. According to Williams, the Affidavit strongly supports a claim of actual innocence on some, if not all, of the charges against him. Williams argues that Cooper's testimony was necessary to convict him of the robbery and conspiracy charges because Cooper was the only witness with first-hand knowledge about the robberies and the only witness who testified to Williams's admission that he ordered his co-defendants to shoot at FBI agents. Even though Cooper affirmed his original 1997 trial testimony and denied any knowledge of the contents of the Affidavit at the evidentiary hearing, Williams's counsel argues that the Affidavit should be taken as true because Cooper's live testimony is not credible and is contradicted by

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<sup>5</sup> Williams first learned of the Affidavit in 2008. Williams then moved for appointment of counsel in the District Court. (ECF No. 372). Williams requested appointment of counsel based on the Affidavit, which he described as newly discovered evidence pursuant to § 2255. *Id.* This Court appointed Kenneth Edelin as counsel for Williams on June 24, 2008. (ECF No. 374). Mr. Edelin did not file any motions on Williams's behalf for over three years. On December 20, 2012, this Court granted Mr. Edelin's motion to withdraw as Williams's attorney and Williams's motion for appointment of new counsel (ECF No. 377), and appointed Dana Bazelon to represent Williams. (ECF No. 378).

The Government argues that Williams's motion, filed before the Third Circuit in October 2013, is not timely. Williams argues that the motion is timely, and in the alternative, that it is subject to equitable tolling. A prisoner has one year from the date "on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence" to file a petition for habeas corpus under the AEDPA. 28 U.S.C. § 2255(f). The statute of limitations provision of the AEDPA, however, is not jurisdictional and can be subject to equitable tolling. *See Miller v. New Jersey State Dep. of Corrs.*, 145 F. 3d 616, 618, 619 n.1 (3d Cir. 1998). I need not address the timeliness issue because I will dismiss Williams's motion on other grounds.

Cooper's signature on the Affidavit.

Williams asks this Court to credit the contents of the Affidavit over Cooper's testimony at both the 1997 trial and at the evidentiary hearing. Williams's argument hinges on characterizing the Affidavit as new evidence and rejecting Cooper's live testimony as incredible and unreliable. I find, however, Cooper's live testimony at the hearing credible. Cooper's testimony supports and is consistent with his testimony against Williams at the 1997 trial and provides a reasonable explanation for why Cooper's signature is on the Affidavit. Furthermore, Cooper's testimony at the evidentiary hearing directly contradicts statements included in the Affidavit.

Because I find Cooper's testimony credible, Williams has put forth insufficient evidence to constitute "newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense." 28 U.S.C. § 2255(h)(1). Therefore, Williams has not satisfied the requirements for a second or successive motion pursuant to § 2255(h)(1).

#### **IV. CONCLUSION**

For the reasons explained above, Williams's motion does not satisfy the requirements for "newly discovered evidence" pursuant to § 2255(h) and therefore constitutes an impermissible second or successive § 2255 motion. Therefore, Williams's successive § 2255 motion will be dismissed for lack of subject matter jurisdiction.

s/Anita B. Brody

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ANITA B. BRODY, J.

Copies **VIA ECF** on \_\_\_\_\_ to:

Copies **MAILED** on \_\_\_\_\_ to:

# **EXHIBIT**

# **A**

A-1

Affiant, Thurston Cooper, states that the facts contained herein below are true, correct, and complete and is not misleading to the best of the affiant's personal knowledge and beliefs.

Hereby mark affiant own words:

1. I swear under the penalty of perjury at one time or another the U.S. Attorney had coerce me into testifying before a grand jury and a trial jury to certain facts that the government knew I had no actual knowledge of, the government knew this from an initial encounter during the time of the briefing me at courthouse in regards to Melvin Williams, which at this time I made it perfectly clear to the U.S. Attorney that I knew nothing about Melvin Williams.
2. I was told by the U.S. Attorney that if I could place, Melvin Williams being involved into certain type of criminal activities such as 1) Kidnapping and robbery of Drug Dealers for their drug proceeds. 2) And shootings that took place throughout the streets of Philadelphia, and 3) Murders and attempted murders that had also took place within the city of Philadelphia that they would file another motion called rule 35 for me to be able to get my time cut down a lot.
3. For this, I placed myself along with, Melvin Williams, doing several different fictitious Robberies for drugs and drug money to help substantiate the government's case.
4. I remember making a lot of false statements before the grand jury and the jury for the government to be able to bring and superseding indictment against Melvin Williams, and take him to trial.
5. I can recall testifying before the grand jury and jury about a robbery of some fake drug dealers that me an Melvin Williams, supposedly robbed for a large amount of crack cocaine and weapons.
6. I remember also further testifying about me, Melvin Williams, and others supposedly staking out businesses for a period of time then robbing them.
7. I remember making up certain stories about the apartment located at 1509 Rowan Street, where the neighborhood would hang out at. Saying that Melvin Williams invented and rehearsed a shoot out plan with us, that if the police was to ever show up there that we were to kill them.
8. I also can recall making up some type of story with the government testifying before the jury that I had some how passed a message to Melvin Williams, to rob some drug dealer that had been allegedly planned by us before my arrest.

Respectfully,

*[Handwritten signature]*

*[Handwritten signature: ROYER & JOHNSON]*

NOTARIAL SEAL  
ROYER & JOHNSON  
Notary Public  
PHILADELPHIA CITY, PHILADELPHIA COUNTY  
My Commission Expires Mar 18, 2010

7-13-07

# **EXHIBIT**

## **B**

ALD-070

December 5, 2013

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 13-4030

94-cr-196

IN RE: MELVIN WILLIAMS, Petitioner

Present: RENDELL, FISHER and GREENAWAY, JR., Circuit Judges

Submitted are:

- (1) Petitioner's application pursuant to 28 U.S.C. § 2244 and § 2255 to file a second or successive motion under 28 U.S.C. § 2255 and Affidavit of Dana Bazelon and Supplemental Documents submitted on November 15, 2013; and
  - (2) Petitioner's motion for appointment of counsel;
- in the above-captioned case.

Respectfully,

Clerk

MMW/JZ/pdb

ORDER

The foregoing application for an order authorizing the District Court to consider a second or successive motion under 28 U.S.C. § 2255 is granted. Melvin Williams has made a prima facie showing under 28 U.S.C. §§ 2244(b)(3)(C) that that he has satisfied the gatekeeping requirements set forth in 28 U.S.C. § 2255(h). See Goldblum v. Klem, 510 F.3d 204, 219 (3d Cir. 2007) ("By 'prima facie showing' we understand . . . simply a sufficient showing of possible merit to warrant a fuller exploration by the district court") (quoting Bennett v. United States, 119 F.3d 468, 469 (7th Cir. 1997)). We stress, however, that our only determination, based on a limited record, is that Williams has made a prima facie showing, and the District Court must dismiss the § 2255 motion if it finds that the § 2255(h) requirements have not in fact been met. See In re Pendleton, 732 F.3d 280, 283 (3d Cir. 2013). Our determination does not preclude the Government from opposing the petition on procedural or substantive grounds. Furthermore, we emphasize

that the District Court will determine *de novo* all issues, including timeliness, procedural questions, and, if reached, the merits of Williams' claims. See *In re Moss*, 703 F.3d 1301, 1303 (11th Cir. 2013); *Bennett*, 119 F.3d at 470. Williams' motion for appointment of counsel is granted, and Dana L. Bazelon is hereby appointed *nunc pro tunc* to October 9, 2013. See *Tabron v. Grace*, 6 F.3d 147, 155–56 (3d Cir. 1993); 18 U.S.C. § 3006A.

The Clerk is directed to transfer the application to the United States District Court for the Eastern District of Pennsylvania for proceedings consistent with this order.

By the Court,

/s/MARJORIE O. RENDELL  
Circuit Judge

Dated: December 27, 2013  
PDB/cc: Dana L. Bazelon, Esq.  
Robert A. Zauzmer, Esq.



*Marcia M. Waldron*

Marcia M. Waldron, Clerk