

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

UNITED STATES OF AMERICA : CIVIL ACTION NO. 17-4605  
: :  
: :  
v. : :  
: :  
MARK MILLER : CRIMINAL ACTION NO. 10-663-6

**MEMORANDUM**

**Padova, J.**

**April 16, 2019**

Before the Court are Defendant Mark Miller’s Motion for “Leave to Supplement/Amend Motion Previously Filed Under 28 U.S.C. § 2255” (“Motion to Supplement/Amend”) and Motion for Evidentiary Hearing. For the following reasons, we grant in part and deny in part the Motion for Leave to Supplement/Amend and grant the Motion for Evidentiary Hearing.

**I. BACKGROUND**

On March 14, 2012, Defendant Mark Miller and his co-Defendant Jaquel Crews were convicted by a jury of one count of conspiracy to distribute five kilograms or more of cocaine and 50 grams or more of cocaine base (“crack”) between 1986 and November 17, 2007, in violation of 21 U.S.C. § 846 (Count Five of Second Superseding Indictment No. 10-663). Miller was also convicted of six counts of laundering of monetary instruments in violation of 18 U.S.C. § 1956 (Counts 21-26 of Second Superseding Indictment No. 10-663). On October 13, 2017, Miller filed a Motion under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence (the “§2255 Motion”), in which he challenges his convictions on all Counts. The § 2255 Motion asserts eleven grounds for relief, nine of which are based on the alleged ineffective assistance provided by Miller’s attorneys: (1) trial counsel provided ineffective assistance in that he failed to file a motion to dismiss the Second Superseding Indictment based on violations of the Fourth Amendment; (2) trial

counsel provided ineffective assistance in that he failed to file a motion to dismiss the Second Superseding Indictment based on a violation of the Speedy Trial Act; (3) trial counsel provided ineffective assistance in that he failed to investigate possible defenses; (4) trial counsel provided ineffective assistance in that he failed to negotiate a plea agreement with the Government; (5) trial counsel provided ineffective assistance in that he failed to move to dismiss the Second Superseding Indictment on the ground that the prosecutor improperly influenced the grand jury's decision to indict Miller in violation of the Fifth Amendment; (6) and (7) trial counsel provided ineffective assistance in that he failed to file a motion to dismiss the Second Superseding Indictment based on multiplicity of counts; (8) the prosecutor withheld evidence favorable to the defense in violation of the Fifth Amendment; (9) sentencing counsel provided ineffective assistance by failing to make certain objections to the presentence investigation report; (10) appellate counsel was ineffective in that he failed to make certain arguments on appeal related to Alleyne v. United States, 570 U.S. 99 (2013); and (11) the forfeiture money judgment entered against Miller is unconstitutional pursuant to the Honeycutt v. United States, 137 S. Ct. 1626 (2017) .

Miller seeks to supplement and/or amend the § 2255 Motion by adding claims related to the Affidavit of Jeffrey Walker, a former police officer who was involved in an arrest of Miller on September 22, 2005 for possession of cocaine with the intent to distribute. Miller was prosecuted on charges arising from that arrest and, on December 1, 2008, he pled guilty to Count One of Indictment No. 07-663, which charged him with possession of 500 grams or more of cocaine with the intent to distribute on September 22, 2005, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B). Miller was subsequently sentenced to 33 months' imprisonment, three years of supervised release, a special assessment of \$100, and a fine of \$1000 in connection with that conviction.

Evidence regarding Miller's September 22, 2005 arrest was presented to the jury at Miller's trial in this proceeding. Miller entered into the following stipulation with the Government regarding Count One of Indictment No. 07-663, which was entered into evidence on the second day of Miller's trial in this case:

Defendant Mark Miller has admitted that on September 22, 2005, he possessed with intent to distribute a total of . . . 499.38 grams of cocaine in a gold Chevrolet Malibu, Pennsylvania license FWC3389, and in a closet, Apartment 186, Timber [Cove] Apartments at 8529 Rising Sun Avenue in Philadelphia, Pennsylvania.

United States v. Miller, Crim. No. 10-663-6, 2012 WL 2094068, at \*2 (E.D. Pa. June 11, 2012) (quotation omitted). In addition, three witnesses for the Government testified during Miller's trial in this proceeding regarding the September 22, 2005 arrest: Michael Tucker, Police Officer Shawn Carey, and Police Officer Bradford Mitchell. Id. Michael Tucker testified that, in September 2005, Miller kept cocaine in an apartment on Rising Sun Avenue. Id. (citation omitted). "Police Officer Carey testified that he stopped Miller on September 22, 2005, while Miller was driving a gold colored Chevrolet Malibu." Id. (citation omitted). Police Officer Mitchell testified that, on September 22, 2005, he "conduct[ed] surveillance of Apartment 186 of the Timber Cove Apartments, that he observed Miller drive up to Apartment 186 in a gold colored Chevrolet Malibu, and that Miller entered the apartment using a key." Id. (citation omitted). Officer Mitchell also testified that, when Miller left the apartment, he was carrying a tennis ball-sized object that Mitchell suspected was cocaine. (3/1/12 N.T. at 100.) Police Office Mitchell further testified that he searched Apartment 186 later that day, pursuant to a search warrant, and that he found cocaine residue in the apartment. Miller, 2012 WL 2094068, at \*2 (citation omitted).

In his Affidavit, Walker states that he was a Philadelphia Police Officer from June 1989 until May 21, 2013, when he was arrested for robbery. (Walker Aff. ¶¶ 4, 34.) He began working with the Narcotics Bureau in 1999 in the Narcotics Field Unit. (Id. ¶¶ 5-6.) Walker admits that,

while he was working in the Narcotics Bureau, he and other officers engaged in the following misconduct:

We falsified probable cause; we misused confidential sources and confidential informants; we performed illegal searches and seizures, sometimes we would apply for warrants for searches that had occurred. At other times, we would use physical force to extract information from the people we were arresting. We would illegally detain people so that we could go into certain locations to steal drugs, money and other items. We planted evidence; other times, we would lie about the amount and type of evidence that we actually did recover.

(Id. ¶ 7.) After his arrest, Walker cooperated with the FBI and the United States Attorney's Office in Philadelphia. (Id. ¶ 34.) He claims that he told the FBI and Assistant United States Attorneys about all of his misconduct in the Narcotic Field Unit. (Id. ¶ 36.) He also testified as a government witness against other police officers he worked with in the Narcotics Bureau. (Id. ¶ 37.) Walker was convicted of attempted robbery which interferes with interstate commerce in violation of 18 U.S.C. § 1951(a) and carrying a firearm during and in relation to a crime of violence in violation of 18 U.S.C. § 924(c)(1), and he was sentenced to 42 months of imprisonment, three years of supervised release, a \$5000.00 fine and a \$200.00 special assessment. (See Crim. A. No. 13-331 (E.D. Pa.)).

In his Affidavit, Walker describes police misconduct related to Miller's September 22, 2005 arrest and specifically mentions Police Officers Mitchell and Carey. Walker states that "Officer Mitchell lied about seeing a 'white tennis-ball size object' in Mark Miller's hand (Saying we see 'a white tennis ball size object' was one of the ways we 'articulate/fabricate' to show drug activity giving us probable cause to stop Mark Miller." (Walker Aff. ¶ 21.) Walker also states in his Affidavit that Police Officer Carey participated in the stop of Miller's car, "punch[ed] the driver side window out with his fist and dragged Mark Miller through the window and commenced to assaulting Mark Miller with other uniform officers." (Id.) Walker also states that, before obtaining

a warrant to search Miller's car, he and other police officers (not including Casey or Mitchell) illegally searched the car, uncovering drugs that had been secreted inside. (Id.) Walker further states in his Affidavit that Officer Mitchell participated in a warrantless search of Miller's apartment before a warrant was obtained for a search, and that the drugs found inside the apartment were found during that warrantless search. (Id. ¶ 22.)

Miller explains in the Motion to Supplement/Amend that he seeks to rely on the Walker Affidavit to support his claims in his First and Third Grounds for relief that his trial counsel was ineffective in failing to file a motion to suppress evidence with respect to the September 22, 2005 stop, arrest and searches. Specifically, he states that evidence and statements obtained by the police arising from the September 22, 2005 stop, arrest, and searches were obtained in violation of the Fourth Amendment because the police officers did not have probable cause to stop him, arrest him, or search his vehicle and apartment. Miller further asserts that he seeks to rely on the Walker Affidavit to support his claims in his Fifth and Eighth Grounds for relief that the Government engaged in prosecutorial misconduct in connection with the Grand Jury's decision to indict him and that the Government withheld favorable evidence from the defense, i.e., that Walker and other police officers falsified reports and conducted illegal searches. Miller further states that Walker was arrested and began to cooperate with the FBI and the United States Attorney's Office in Philadelphia before he, Miller, was sentenced, but the Government did not inform him, or this Court, of Walker's arrest and cooperation. Miller also seeks to supplement his Tenth Ground for Relief by adding a claim of ineffective assistance of appellate counsel arising from the Walker Affidavit. Specifically, Miller states that if his appellate attorney "had researched the case more thoroughly and followed this Defendant's directives the outcome would probably have been different on Appeal." (Motion to Supplement/Amend at 19.) Miller explains that, "[o]n February

12, 2016, [he] informed Appellate Counsel, by detailed letter, about the FBI's interest in having [Miller] assist them in the prosecution of the Police Officers who had fabricated the Stop, Arrest, Search and Seizure" but his Appellate Counsel "chose not to get involved." (Id.)

The Government opposes the Motion to Supplement/Amend on three grounds. First, it argues that the Motion to Supplement/Amend is untimely, as it was filed more than one year after Miller's conviction became final. Second, it argues that the new and newly supplemented and/or amended claims that Miller seeks to assert would lack merit because Miller has admitted to his possession of cocaine on September 22, 2005 and because "no evidence concerning Miller's arrest on that date was introduced during his trial in this case." (Gov't Resp. at 4.) Third, the Government claims that there is no evidence that it was aware of the allegations made by Walker before it received the Motion to Supplement/Amend.

## **II. MOTION TO SUPPLEMENT/AMEND**

Federal Rule of Civil Procedure 15 applies to motions to amend § 2255 Motions. See United States v. Rivera, Crim. A. No. 10-0003, 2018 WL 1693437, at \*3 (E.D. Pa. Apr. 5, 2018) (citing United States v. Kraeger, Crim. A. No. 11-84, 2017 WL 635115, at \*1 (M.D. Pa. Feb. 16, 2017)). Rule 15 provides that after a responsive pleading has been filed, a pleading may be amended "with the opposing party's written leave or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). "[A] court may deny such leave based on 'undue delay, bad faith, dilatory motive, prejudice, and futility.'" United States v. Pierce, Civ. A. No. 12-3923, Crim. A. No. 08-245, 2013 WL 4501060, at \*4 (E.D. Pa. Aug. 23, 2013) (quoting Shane v. Fauver, 213 F.3d 113, 115 (3d Cir. 2000)). "Futility means that, even if the pleading were amended, it would fail to state a claim upon which relief could be granted." Id. (citing Shane, 213 F.3d at 115).

Moreover, ““a one year limitations period . . . applies to § 2255 motions.”” Rivera, 2018 WL 1693437, at \*3 (quoting Kraeger, 2017 WL 635115, at \*1). The instant Motion for Leave to Supplement/Amend was filed more than one year after Miller’s conviction became final. ““When a petitioner seeks to file an untimely amendment to a timely filed § 2255 motion, generally the court may permit such an amendment only when the amendment “relates back” to the original motion under Federal Rule of Civil Procedure 15(c).”” Id. (quoting Kraeger, 2017 WL 635115, at \*1). Rule 15 provides that an amendment will relate back to the filing of the original pleading if it “asserts a claim . . . that arose out of the conduct, transaction, or occurrence set out – or attempted to be set out – in the original pleading.” Fed. R. Civ. P. 15(c)(1)(B). The Supreme Court has instructed that this means that the original and amended habeas claims must be “tied to a common core of operative facts.” Mayle v. Felix, 545 U.S. 644, 656, 664 (2005). Thus, an amendment that seeks ““to add a new claim or to insert a new theory into the case”” or which ““asserts a new ground for relief supported by facts that differ in both time and type from those [set forth in] the original pleading”” will not relate back. Rivera, 2018 WL 1693437, at \*3 (quoting United States v. Rashid, Crim. A. No. 08-493, 2017 WL 2875378, at \*6 (E.D. Pa. June 20, 2017)).

A. Relation Back

The Government argues that we should deny the Motion to Supplement/Amend because the Motion was filed outside of the one-year statute of limitations for § 2255 motions and the claims discussed in the Motion to Supplement/Amend do not relate back to the claims asserted in the § 2255 Motion. The Government first argues that Miller seeks to add a claim related to the assistance provided by his appellate counsel that does not relate back to the claims for relief asserted in the § 2255 Motion. Miller contends, in the Motion to Supplement/Amend, that his appellate counsel was ineffective for failing to investigate the prosecution of the police officers

involved in his September 22, 2005 arrest. The Government maintains that this claim does not relate back to the § 2255 Motion because the § 2255 Motion did not assert a claim for ineffective assistance of appellate counsel related to Miller's September 22, 2005 arrest or the police officers involved in that arrest. As we mentioned above, Miller argues in his Tenth Ground for Relief that his appellate counsel was ineffective for failing to make arguments on appeal with respect to Alleyne v. United States, 570 U.S. 99 (2013). Neither the §2255 Motion nor Miller's Reply to the Government's Response to the § 2255 Motion (the "Reply") assert that Miller's appellate counsel provided ineffective assistance in connection with a failure to investigate Miller's September 22, 2005 arrest or the police officers involved in that arrest. We conclude, accordingly, that Miller's new claim that his appellate counsel was constitutionally ineffective for failing to investigate the prosecution of the police officers involved in his September 22, 2005 arrest does not relate back to the filing of his §2255 Motion because it does not arise from the "same conduct, transaction, or occurrence" as the claim of ineffective assistance of appellate counsel that Miller made in his Tenth Ground for Relief. Mayle, 545 U.S. at 664. Consequently, we deny Miller's Motion to Supplement/Amend with respect to his request to supplement and/or amend his claim that his appellate counsel rendered constitutionally ineffective assistance.

The Government further argues that Miller's request to supplement and/or amend his claims of ineffective assistance of trial counsel and prosecutorial misconduct asserted in Grounds for Relief One, Three, Five, and Eight of his § 2255 Motion should be denied as untimely because the claims asserted in the Motion to Supplement/Amend do not relate back to the claims described in Grounds One, Three, Five, and Eight. However, Miller's discussion of the factual basis of Grounds One, Three, Five, and Eight in the Reply specifically mentions misconduct by Walker and the effect of that misconduct on Miller's prosecution and conviction in this case. (See Reply

at 4, 6, 9, 14.) We thus conclude that the claims asserted in the Motion to Supplement/Amend are “tied to a common core of operative facts” with the claims asserted in Grounds for Relief One, Three, Five and Eight of Miller’s § 2255 Motion so that they arise from the “same conduct, transaction, or occurrence,” relate back to the filing of the § 2255 Motion, and are not barred by the one-year statute of limitations for § 2255 motions. Mayle, 545 U.S. at 664.

B. Futility

1. Grounds for Relief One and Three

The Government argues that we should deny the Motion to Supplement/Amend as to Grounds One and Three because supplementation and/or amendment of these claims would be futile. The Government initially asserts that supplementation or amendment would be futile because there is no evidence that Miller instructed his trial counsel to investigate Fourth Amendment defenses or that trial counsel would have learned anything regarding Walker if he had investigated, because Walker was not arrested until after Miller’s trial. Miller maintains that he instructed his trial counsel that the NFU used Michael Tucker to set him up to be robbed, but trial counsel did not follow-up on this instruction. Miller contends that, if his trial counsel had followed his instruction, the outcome of his prosecution in this case would have been different. We cannot determine, on the limited evidence available to us in connection with the Motion to Supplement/Amend, if Miller gave that instruction to trial counsel, if trial counsel complied with that instruction, and what evidence would have been available to trial counsel regarding the actions of Walker and the other police officers on September 22, 2005. Consequently, we cannot conclude, on the basis of the record before us, that supplementation or amendment of Grounds One and Three would be futile on this basis.

The Government also contends that supplementation and/or amendment of these claims would be futile because it “did not introduce at trial any testimony from any Philadelphia police officers relating Miller’s September 22, 2005 arrest at his trial before this Court” and because Miller has admitted to his possession of cocaine on that date. (Gov’t Resp. to Mot. to Supplement/Amend at 7.) This assertion is, at best, misleading. While police officers Carey and Mitchell may not have explicitly testified that they arrested Miller on that date, they testified regarding the surveillance and stop that preceded that arrest and the search that followed it.

On March 1, 2012, the second day of Miller’s trial, Assistant United States Attorney (“AUSA”) K.T. Newton questioned Police Officer Shawn Carey on direct examination about the September 22, 2005 stop of Mark Miller, while Mr. Miller was driving the gold colored Chevrolet Malibu. (See 3/1/12 N.T. at 53-57.) Officer Carey testified in response to AUSA Newton’s questions that on September 22, 2005, he was assigned to the Narcotic Strike Force and he and his partner pulled over a gold colored Malibu being driven by Miller. (Id. at 54-55.) Officer Carey further testified that, when he approached the car, “[t]he driver looked at me, put his hand down, put the car in reverse, and started going in reverse. At which time I punched the driver’s side window out. And, then my partner pulled him through the window.” (Id. at 55-56.)

AUSA Newton also called Police Officer Bradford Mitchell as a witness during the second day of Miller’s trial. AUSA Newtown questioned Officer Mitchell on direct examination about his surveillance of Miller and his search of Apartment 186 of the Timber Cove Apartments. (Id. at 98-102.) Officer Mitchell testified that his role on September 22, 2005 “was to set up a surveillance of Apartment 186 of the Timber Cove Apartments.” (Id. at 98.) He was given the description of a gold colored Chevrolet and “[a] few minutes after [he] set up [the] surveillance, [he] observed this gold colored Chevy come to and park near Apartment 186. Operating that

vehicle was a black male. And, I observed this male exit that vehicle, go to and using a key, enter[] 186.” (Id. at 99.) Officer Mitchell identified Miller in court as the man he saw exiting the gold colored Chevy. (Id. at 99-100.) Officer Mitchell testified that he subsequently observed Miller exit the apartment while talking on a cell phone. (Id. at 100.) Officer Mitchell further stated that, when Miller exited the apartment, he was holding “a white object about the size of a fist, a tennis ball. It appeared to be alleged cocaine, to – to me, in my experience.” (Id.) Officer Mitchell also testified that he later entered Apartment 186 without a warrant. (Id. at 101.) Officer Mitchell claimed that he participated in a search of that apartment after a warrant was obtained. (Id.) He told the jury that he searched the apartment’s kitchen and “confiscated a spoon[,] a pot. And, both contained cocaine residue – alleged cocaine residue.” (Id.)

We find that Walker’s statements under oath in the Affidavit, which we summarized above, describe misconduct by police officers, including Police Officers Carey and Mitchell, in connection with Miller’s September 22, 2005 arrest and the search of Apartment 186 subsequent to his arrest. We further find that Walker’s statements in his Affidavit regarding the actions of Police Officers Carey and Mitchell are inconsistent with the sworn trial testimony of those two police officers regarding the same incidents and that these statements appear to be material to Miller’s claims in his First and Third Grounds for Relief. At this stage, we cannot conclude that any argument that Miller may make regarding these inconsistencies would be rendered futile because he admitted to possessing cocaine on September 22, 2005. We therefore cannot conclude that Miller’s proposed supplementation and/or amendment of Grounds for Relief One and Three would be futile.

2. Grounds for Relief Five and Eight

The Government further argues that we should deny the instant Motion for futility with respect to Miller's request to supplement and/or amend Grounds Five and Eight of the § 2255 Motion, in which Miller argues that his trial counsel was constitutionally ineffective for failing to argue that the prosecutor improperly influenced the grand jury's decision to indict Miller in violation of the Fifth Amendment (Ground Five) and that the prosecutor withheld evidence favorable to the defense in violation of the Fifth Amendment (Ground Eight). Miller contends that the proposed supplementation and/or amendment of Ground Five based on the Walker Affidavit is material to his claims for relief because the Government knew or should have known that Walker and other police officers falsified information that had they presented to various courts and, notwithstanding this knowledge, the Government presented the testimony of these police officers to the grand jury that indicted Miller. Miller further argues that the proposed supplementation and/or amendment of Ground Eight based on the Walker Affidavit is material to his claim for relief because the Government knew prior to his July 24, 2013 sentencing that Walker had been arrested and was cooperating with the FBI and the United States Attorney's Office for the Eastern District of Pennsylvania, but did not inform Miller or the Court of that information.

The Government argues that such supplementation and/or amendment would be futile because Miller has no evidence to support his claim that the Government knew that Walker and other police officers had falsified reports and presented misleading testimony because Walker was not arrested until 2013, after Miller's trial in this case. The Government also argues that Miller cannot "point to any evidence that the government was aware of the allegations made by Jeffrey Walker prior to its receipt of" the Motion to Supplement/Amend. Given the seriousness of the averments of police misconduct related to Miller's September 22, 2005 arrest made in the Walker

Affidavit, we cannot conclude that supplementation and/or amendment of Grounds for Relief Five and Eight would be futile because Miller has not yet established when the Government was aware of the conduct of Walker and the other police officers who participated in Miller's September 22, 2005 arrest. Accordingly, we grant Miller's Motion to Amend/Supplement his § 2255 Motion with respect to the claims of ineffective assistance of trial counsel and prosecutorial misconduct asserted in Grounds One, Three, Five and Eight of the § 2255 Motion.

### **III. MOTION FOR EVIDENTIARY HEARING**

Miller asks that we hold an evidentiary hearing with respect to his § 2255 Motion. Section 2255 requires that we hold an evidentiary hearing “[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief.” 28 U.S.C. § 2255(b). The Third Circuit has instructed that, while the district courts have “discretion whether to order a hearing when a defendant brings a motion to vacate sentence pursuant to 28 U.S.C. § 2255, our caselaw has imposed limitations on the exercise of that discretion.” United States v. Booth, 432 F.3d 542, 545 (3d Cir. 2005). Thus, we are “required to hold an evidentiary hearing unless the motion and files and records of the case show conclusively that the movant is not entitled to relief.” Id. at 545-46 (quotation omitted). This standard creates “a ‘reasonably low threshold for habeas petitioners to meet.’” Id. (quoting United States v. McCoy, 410 F.3d 124, 134 (3d Cir. 2005)). We conclude that Miller has met this “reasonably low threshold” and grant the Motion for Evidentiary Hearing. The Hearing will be held on May 22, 2019. Rule 8(c) of the Rules Governing

Section 2255 Cases provides that “[i]f an evidentiary hearing is warranted, the judge must appoint an attorney to represent a moving party who qualifies to have counsel appointed under 18 U.S.C. § 3006A.” We will, accordingly, appoint counsel to represent Miller in connection with the § 2255 Motion and the May 22, 2019 Hearing.

BY THE COURT:

/s/ John R. Padova

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John R. Padova, J.

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

UNITED STATES OF AMERICA	:	CIVIL ACTION NO. 17-4605
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	:	
v.	:	
	:	
MARK MILLER	:	CRIMINAL ACTION NO. 10-663-6

**ORDER**

**AND NOW**, this 16th day of April, 2019, upon consideration of Defendant Mark Miller=s Motion for “Leave to Supplement/Amend Motion Previously Filed Under 28 U.S.C. § 2255” (“Motion to Supplement/Amend”) (Docket No. 624) and Defendant’s Motion for Evidentiary Hearing (Docket No. 626), and all documents filed in connection with the Motions, **IT IS HEREBY ORDERED** as follows:

1. The Motion to Supplement/Amend is **DENIED** with respect to Miller’s request to supplement/amend his claim of ineffective assistance of appellate counsel in Ground 10 of the § 2255 Motion;
2. The Motion to Supplement/Amend is **GRANTED** with respect to Miller’s request to supplement/amend his claims of ineffective assistance of trial counsel and prosecutorial misconduct in Grounds 1, 3, 5, and 8 of the § 2255 Motion;
3. The Motion for Evidentiary Hearing is **GRANTED**;
4. A **HEARING** shall be held with respect to Mr. Miller’s Amended § 2255 Motion on May 22, 2019 at 10:00 am in Courtroom 17B, United States Courthouse, 601 Market Street, Philadelphia, PA 19106;

5. Counsel will be appointed to represent Miller pursuant to Rule 8(c) of the Rules Governing § 2255 Cases.

BY THE COURT:

/s/ John R. Padova

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John R. Padova, J.