

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

PATRICK W. BARRETT,

Defendant.

ORDER

04-C-0855-C

02-CR-0101-C-01

In an order dated November 29, 2004, I gave defendant Patrick W. Barrett until December 10, 2004, in which to submit an affidavit setting forth the specific facts about what he said to his trial lawyer about appealing his conviction and the efforts he made to learn the status of his appeal from his conviction and to explain in detail why he could not have learned earlier than November 12, 2003 that his trial lawyer never filed an appeal on his behalf. I told defendant that if he did not file the affidavit by December 10, I would deny his motion for post-conviction relief. Now defendant has moved for an enlargement of time to January 10, 2005, in which to submit the required affidavit. The motion is accompanied by what appears to be a brief and an affidavit dated December 5, 2004.

In support of his motion, defendant states that he is a prisoner at the United States Penitentiary at Leavenworth, Kansas. At the present time, he is being housed in administrative segregation, where he has “only minimum access” to a law library and legal assistance, pending his transfer to another institution. Defendant suggests that while he is in administrative segregation, he does not have access “to proper court documents,” a notary public, and “necessary copies to properly answer this court’s order.”

Although I will grant defendant’s request for more time to respond to this court’s November 29 order, I note the following. First, the affidavit defendant has filed with his motion appears to respond to this court’s directive that plaintiff describe in an affidavit what he said to his trial lawyer about appealing his conviction, what steps he took to learn the status of his appeal from his conviction, and why he could not have learned earlier than November 12, 2003 that his trial lawyer never filed an appeal on his behalf. However, if defendant believed this affidavit was a complete and adequate response to the November 29 order, I would not expect him to be requesting addition time to file a different affidavit. Therefore, I will consider defendant’s December 5 affidavit as responding to the November 29 order only if defendant fails to submit a new affidavit by January 10, 2005.

Defendant should note that no amount of rummaging around the prison library is going to help him furnish the information I have asked him to supply. What plaintiff said to his lawyer and what he did in an effort to insure that his conviction was appealed is

information defendant should have within his own memory. Moreover, defendant does not need a notary public in order to prepare an affidavit. All defendant needs to do is include at the end of his affidavit the following statement followed by a signature: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date) ." See 28 U.S.C. §1746. As for making copies of defendant's affidavit, there is no reason defendant cannot hand-copy the affidavit for plaintiff's counsel and his own records.

ORDER

IT IS ORDERED that defendant Patrick W. Barrett may have an enlargement of time to January 10, 2005, in which to submit an affidavit setting forth the specific facts about what he said to his trial lawyer about appealing his conviction and the efforts he made to learn the status of his appeal from his conviction and to explain in detail why he could not have learned earlier than November 12, 2003 that his trial lawyer never filed an appeal on his behalf. If, by January 10, 2005, defendant does not file the required affidavit, then I will

consider his December 5, 2004 affidavit to be his response to the November 29, 2004 order.
Entered this 13th day of December, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge