

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN A. RADERMACHER,

Defendant.  
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ORDER

06-C-0741-C

05-CR-0039-C-01

The government has responded to defendant John A. Radermacher's motion for postconviction relief pursuant to 28 U.S.C. § 2255. In response to defendant's claim that he was denied the effective assistance of counsel when his attorney failed to pursue an appeal, the government requests an evidentiary hearing. In response to defendant's claim that his attorney was ineffective in failing to interview family members and teachers to obtain facts in mitigation of his sentence, the government asks the court to deny the claim on the ground that defendant has not satisfied his obligation to set forth a description of the facts that counsel could have expected to find had he conducted an investigation. Hardamon v. United States, 319 F.3d 943, 951 (7th Cir. 2003) ("a petitioner alleging that counsel's

ineffectiveness was centered on a supposed failure to investigate has the burden of providing the court sufficiently precise information, that is, ‘a comprehensive showing as to what the investigation would have produced’”) (quoting United States ex rel. Simmons v. Gramley, 915 F.2d 1128, 1133 (7th Cir. 1990)).

I agree with the government that an evidentiary hearing is necessary on defendant’s first claim. Therefore, an evidentiary hearing will be held on Thursday, May 24, 2007 at 9:00 a.m. Counsel will be appointed to represent defendant. As to defendant’s second claim, I will reserve a ruling to give defendant an opportunity to submit an affidavit setting forth the precise information that an investigation would have produced had his trial counsel undertaken it.

#### ORDER

IT IS ORDERED that an evidentiary hearing is to be held in this case on May 24, 2007, at 9:00 a.m. to consider defendant’s claim that his trial counsel failed or refused to take an appeal on his behalf. Counsel will be appointed to represent defendant. FURTHER, IT IS ORDERED that defendant may have until April 20, 2007, in which to file and serve an affidavit setting forth the information his trial counsel would have learned had he

interviewed defendant's family and teachers prior to the sentencing hearing.

Entered this 29th day of March, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge