

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
3:75-CR-26-3
5:06-CV-24-F

UNITED STATES OF AMERICA)
)
v.)
)
JEFFREY R. MacDONALD)
Defendant)

**MOTION FOR LEAVE TO FILE A
REPLY TO GOVERNMENT’S POST-HEARING MEMORANDUM**

NOW COMES defendant, Jeffrey R. MacDonald, by and through his undersigned counsel, and moves this Court to grant him leave to file a reply to the government’s post-hearing memorandum [DE 344], which was filed on 1 July 2013. In further support of this request, defendant shows the following:

1. This matter is before the Court on remand from the United States Court of Appeals for the Fourth Circuit for determination of defendant’s motion to vacate under 28 U.S.C. § 2255, a determination of the issues in the motion that must be assessed on the basis of the “evidence as a whole” under 28 U.S.C. § 2255(h)(1). *United States v. MacDonald*, 641 F.3d 596, 610-17 (4th Cir. 2011). This Court conducted a hearing from September 17 through September 25. This Court allowed the parties to file post-hearing memoranda, directing defendant to file his memorandum and then the government to files its memorandum sixty days after the defense memorandum was filed. [DE 305] Defendant filed his memorandum

on 1 April 2013, followed by a corrected substitute memorandum filed on 19 June 2013. [DE 343] The government filed its memorandum on 1 July 2013. [DE 344] The government's memorandum is approximately 200 pages accompanied by two notebooks of exhibits.

2. Defendant seeks leave of this Court to file a reply to the government's memorandum. The undersigned has communicated with opposing counsel, First Assistant United States Attorney John S. Bruce, who has stated he opposes this request. The government's opposition appears to be based on this Court not having included a reply memorandum in its order allowing supplemental briefing [DE 305], the government's belief that a reply is not necessary, and the government's position that the post-hearing filings were each party's summary of its view of the "evidence as a whole."

3. With respect to the government's position, it ignores the fact that the government had the defense memorandum before it submitted its memorandum and, thus, was able to tailor its filing to respond to what defendant had submitted. In fairness, defendant ought to be given an opportunity to reply to the government's memorandum, particularly since he bears the ultimate burden of proof in this matter. Although defendant has only been able to peruse the government's memorandum, it includes information and arguments that can fairly be described as responding to materials contained in defendant's memorandum. Defendant should have an opportunity to reply to the government's memorandum in presenting his position regarding the "evidence as a whole."

4. Allowing this reply will not unnecessarily delay the proceedings. This Court has consistently afforded both parties whatever time was reasonably necessary to prepare

pleadings. Defendant requests only thirty (30) days in which to file a reply. A thirty-day period in which to file a reply will not unduly delay this Court's disposition of this matter.

5. As this Court has consistently explained, because this matter is important and complicated, it has endeavored to provide both parties with every opportunity to present its materials and arguments in the fullest manner. The undersigned believes allowing him to file a reply to the government's memorandum within thirty days of the Court's ruling on this request will not unduly burden this Court, will allow for the fullest and most complete inquiry into the "evidence as a whole," and will assure the most appropriate resolution of the matter that was remanded by the Fourth Circuit. The interests of justice would best be served by granting this request.

6. Based on these considerations, defendant respectfully requests that he be granted leave to file a reply to the government's supplemental memorandum within thirty days from the entry of the order allowing this motion. A proposed order is attached.

WHEREFORE, Jeffrey R. MacDonald respectfully requests that this Court grant him leave to file a reply to the government's supplemental memorandum within five days of the granting of this motion.

This the 8th day of July, 2013.

RUDOLF WIDENHOUSE & FIALKO

/s/ M. Gordon Widenhouse, Jr.

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Attorney for Jeffrey R. MacDonald

CERTIFICATE OF SERVICE

I hereby certify that on 8 July 2013, I electronically filed the foregoing Motion for Leave to File a Reply to Government's Post-Hearing Memorandum with the Clerk of Court using the CM/ECF system which will send notification of such filing to counsel of record in this matter.

RUDOLF WIDENHOUSE & FIALKO

/s/ M. Gordon Widenhouse, Jr._____

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