

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

GREGORY P. VIOLETTE,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil no. 04-135-P-S
	)	Crim. No. 00-26-B-S
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

**ORDER ON MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE**

SINGAL, Chief District Judge

Before the Court is Petitioner Violette’s Motion to Vacate, Set Aside or Correct Sentence (Civil Docket # 1). For the reasons stated below, the motion is DENIED.

On October 31, 2002, this Court sentenced Petitioner to 87 months imprisonment after he plead guilty to bankruptcy fraud, mail fraud, wire fraud, money laundering, and making false statements to a financial institution. Petitioner brings this habeas petition pursuant to 28 U.S.C. § 2255, requesting relief on two grounds: (1) that new evidence **impugning the credibility of the psychologist who examined Defendant** to determine his competency to stand trial requires that his conviction be vacated; and (2) the Supreme Court’s decision in Blakey v. Washington, 124 S.Ct. 2531 (2004), renders Petitioner’s sentence unconstitutional, requiring it to be vacated. Given the “emerging complexity” of the issues involved in this habeas petition, the Magistrate Judge appointed counsel to the Petitioner (Civil Docket # 12). Appointed Counsel conducted an examination of the issues involved in the case, and filed a Response to the Government’s Opposition (Civil Docket # 22) in which he stated that he was “unable to find any non-frivolous issues to

raise in this Petition relating to either Dr. Patenaude’s evaluation of Mr. Violette, Mr. Violette’s competency during the proceedings below, or Mr. Violette’s sentencing hearing.”<sup>1</sup> (Resp. to Gov’t’s Opp’n (Civil Docket # 22) at 3.)

#### **A. Misconduct of the Psychological Examiner**

The basis for the first ground of Petitioner’s motion is the recent finding by the Office of Internal Affairs of the U.S. Bureau of Prisons that the psychiatrist who evaluated Petitioner prior to his guilty plea, Dr. Thomas Patenaude, falsified the records of four federal inmates “to make it appear he met with inmates when in fact he had not.” (Gov’t’s Opp’n to Mot. to Vacate, Set Aside or Correct Sentence (Civil Docket # 16) at 23.) Petitioner received a psychological examination from Dr. Patenaude at the order of the Court after announcing his intent to pursue an insanity defense at trial. After receiving the results of the examination, Petitioner withdrew his Motion for a Competency Hearing. Presumably, Petitioner believes that the recent revelations regarding Dr. Patenaude’s misconduct casts doubt upon the reliability of Dr. Patenaude’s finding that Petitioner was competent to stand trial.

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<sup>1</sup> Counsel cites Anders v. California, 386 U.S. 738 (1967) for the proposition that a court-appointed attorney is not required to press an appeal if he can find no non-frivolous issues. Anders allows a court-appointed attorney to withdraw from a case on appeal if, after a “conscientious examination,” he “finds his case to be wholly frivolous.” Id. at 744. The request for withdrawal must be accompanied by “a brief referring to anything in the record that might arguably support the appeal.” Id. The court must then undertake “a full examination of all the proceedings” and decide whether the appeal is indeed frivolous. Id.

It is not clear to the Court that Anders, which involved a direct appeal, is applicable to habeas proceedings even if the Court has appointed counsel to the petitioner. See Pennsylvania v. Finley, 481 U.S. 551 (1987) (holding that a court-appointed attorney need not comply with Anders in withdrawing from a case involving the collateral appeal of a conviction in state court). Since there is no constitutional right to representation for prisoners mounting collateral attacks on their sentences, the constitutional concerns underlying the Anders holding would appear to be inapplicable. Id. at 554–555. However, finding that there is no harm in following the Anders procedure in light of the particular facts of this case, the Court follows counsel’s lead without expressing any opinion on whether the Anders procedure must or even should be followed in future habeas cases where there is court-appointed counsel.