

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
v.)	Civil No. 04-3067-KHV
)	
RALPH MERCADO,)	Criminal No. 01-20147-01-KHV
)	
Defendant.)	
_____)	

ORDER TO SHOW CAUSE

Plaintiff seeks relief under 28 U.S.C. § 2255 based on ineffective assistance of counsel. On March 16, 2005, the Court appointed counsel, Brian L. Leininger, to assist defendant in obtaining affidavits from alleged witnesses. See Order (Doc. #102). On May 20, 2005, the Court extended to May 31, 2005, the time for Mr. Leininger to file a response to defendant's Motion [Regarding Counsel] (Doc. #107) and to June 13, 2005, the time for defendant to provide affidavits from alleged witnesses. See Order (Doc. #114). On June 1, 2005, Mr. Leininger filed a response which advised the Court of his unsuccessful efforts to obtain affidavits from alleged witnesses. See Response To Motion And Notice To Advise Court Of Status (Doc. #116). On June 13, 2005, counsel delivered a letter to the Court which states that he has attempted to contact certain witnesses but they have not responded to his efforts. See Doc. #117 filed June 13, 2005.

It its prior ruling, the Court found that defendant had not provided a sufficient factual basis to require an evidentiary hearing on his Section 2255 claims. See Memorandum And Order (Doc. #97) filed February 8, 2005 at 4-5. Based on information provided by court-appointed counsel, it appears that defendant cannot produce evidence sufficient to warrant a hearing. The Court therefore orders that on or

before **July 18, 2005**, defendant show cause in writing why the Court should not overrule his Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence By A Person In Custody (Doc. #54) filed February 25, 2004, based on insufficient evidence. Unless defendant provides a sufficient factual basis to warrant a hearing under Section 2255, see Memorandum And Order (Doc. 97) at 4, the Court will overrule his Section 2255 motion without further notice.

On May 31, 2005, defendant filed *pro se* a Motion For Clarification (Doc. #115). In the motion, defendant expresses confusion as to his responsibility regarding obtaining affidavits from alleged witnesses. Mr. Leininger is responsible for assisting defendant in this regard, and for all other matters in the prosecution of defendant's petition for relief under Section 2255.

IT IS THEREFORE ORDERED that on or before **July 18, 2005**, defendant shall show cause in writing why the Court should not overrule his Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence By A Person In Custody (Doc. #54) filed February 25, 2004, based on insufficient evidence.

IT IS FURTHER ORDERED that defendant's Motion For Clarification (Doc. #115) filed May 31, 2005 be and hereby is **OVERRULED as moot**.

Dated this 16th day of June, 2005 at Kansas City, Kansas.

s/ Kathryn H. Vratil _____
Kathryn H. Vratil
United States District Judge