

FILED
 Page 2
JAN 17 2006
 FRED L. BORCH III, CLERK
 US DISTRICT COURT, EDNC
 DEP. CLK

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
 SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District East Dist. North Carolina	
Name (under which you were convicted): Jeffrey R. MacDonald		Docket or Case No.: 75-26-CR-3	
Place of Confinement: FCI, Unit C-2, Cumberland, MD 21501		Prisoner No.: 00131-177	
UNITED STATES OF AMERICA		Movant (include name under which you were convicted) Jeffrey R. MacDonald	

MOTION

- (a) Name and location of court that entered the judgment of conviction you are challenging: United States District Court, Eastern District of North Carolina, Raleigh, North Carolina
- (b) Criminal docket or case number (if you know): 75-26-CR-3
- (a) Date of the judgment of conviction (if you know): 8/29/79
- (b) Date of sentencing: 8/29/79
- Length of sentence: 3 consecutive life terms
- Nature of crime (all counts): 1 count first degree murder; 2 counts second degree murder
- (a) What was your plea? (Check one)
 (1) Not guilty (2) Guilty (3) Nolo contendere (no contest)
 (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? _____
- If you went to trial, what kind of trial did you have? (Check one) Jury Judge only

- 7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes No
- 8. Did you appeal from the judgment of conviction? Yes No

9. If you did appeal, answer the following:

- (a) Name of court: U.S. Court of Appeals Fourth Circuit
- (b) Docket or case number (if you know): 79-5253
- (c) Result: Reversed (speedy trial), reversed by the Sup.Ct.; judgment
- (d) Date of result (if you know): affirmed. 1983** (see attachment/supplement #9.)
- (e) Citation to the case (if you know): 632 F. 2d 258; 456 U.S. 1; 688 F.2d 224
- (f) Grounds raised: denial of speedy trial.

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If "Yes," answer the following:

- (1) Docket or case number (if you know): _____
- (2) Result: _____
- (3) Date of result (if you know): _____
- (4) Citation to the case (if you know): 459 U.S. 1103 (1983)
- (5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes No

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: U.S. Dist. Ct., Eastern District of N.C.
- (2) Docket or case number (if you know): 75-26-CR-3
- (3) Date of filing (if you know): 4/3/84

****Question #9 Supplement:** The court of appeals reversed the conviction on speedy trial grounds, 632 F.2d 258 (4th Cir. 1980); the Supreme Ct. reversed [456 U.S. 1 (1982)] and remanded the case to the court of appeals for disposition of the remaining issues. Thereafter, the court of appeals affirmed. U.S. v. MacDonald, 688 F.2d 224 (4th Cir.), cert. denied, 459 U.S. 1103 (1983).

(4) Nature of the proceeding: Motion for New Trial; Motion to Vacate Sentence;

(5) Grounds raised: Motion to Set Aside Conviction; and Motion for Recusal.

Newly discovered evidence that was exculpatory; govt. misconduct in suppressing exculpatory evidence tending to prove that others had committed the murders; government misconduct in violating defendant's right to counsel, and a relationship with the judge and prior government prosecutor who worked on the case.

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes No

(7) Result: Motions were denied.

(8) Date of result (if you know): March 1, 1985

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: U.S. Dist. Ct. for Eastern Dist. N.C.

(2) Docket or case number (if you know): 75-26-CR-3; 90-104-CIV-3-D

(3) Date of filing (if you know): 10/19/90

(4) Nature of the proceeding: Petition of Habeas Corpus to Vacate Sentence

(5) Grounds raised: The government suppressed exculpatory evidence, newly discovered by the defense per a FOIA request, including a blond wig hair and black fibers on the murder weapon that could not be matched with any fabric in the MacDonald home, which would have corroborated MacDonald's claim that intruders killed his family and were responsible for the crime.

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes No Oral argument only, no evidentiary hearing.

(7) Result: Motion was denied.

(8) Date of result (if you know): 7/8/91

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes No

(2) Second petition: Yes No

** Please see attached supplement to this answer 11 (c).

****Question # 11(c) Supplement:** On 10/19/90, Petitioner filed a Motion to Vacate His Sentence based on newly discovered evidence, suppressed by the government. That motion was denied by the trial court on 7/8/91. U.S. v. MacDonald, 778 F. Supp. 1342 (E.D.N.C.). The order was affirmed on appeal, U.S. v. MacDonald, 966 F.2d 854 (4th Cir. 1992), cert. denied, 506 U.S. 1002 (1992).

In April, 1997, Petitioner filed a motion to reopen his previous 1990 Motion to Vacate, based on government fraud in responding to the pr&pr motion. That 1997 motion also contained a request to have DNA tests run on certain evidence taken from the crime scene. On September 2, 1997, the district court denied the motion to reopen the prior motion, and transferred the remaining matters to the court of appeals as a petition for leave to file a successive habeas corpus petition. U.S. v. MacDonald, 979 F. Supp. 1057 (E.D.N.C. 1997). The court of appeals denied leave to file a successive habeas petition, but granted petitioner's motion to have DNA testing. In Re MacDonald, No. 97-713 (4th Cir. 1998, unpublished.) Per that order, the case was remanded to the United States District Court for the Eastern District of North Carolina, which has been supervising such DNA testing.

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: _____

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: ** Please see the attached supplementary answer to Ground One.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
** Please see the attached supplementary statement to Ground One.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

This newly discovered evidence was not made known by the government officials to the defense until January 27, 2005.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

**** Ground One and Basis for Ground One Supplement:**

The Petitioner states, as required by 28 U.S.C. 2244, 2255, and 2241, *et seq.*, and as more specifically set forth in the supporting "Memorandum in Support of Jeffrey R. MacDonald's Motion Under 28 U.S.C. Section 2255 to Vacate His Sentence," filed herewith, (which he respectfully incorporates herein by reference along with its exhibits), that the Petitioner has newly discovered evidence that could not have been discovered previously through the exercise of due diligence which proves the existence of a constitutional error, and the newly discovered facts, viewed in light of the evidence taken as a whole, are sufficient to establish by clear and convincing evidence that, but for the constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense. This newly discovered evidence was, in fact, discovered January 27, 2005, less than one year from the filing of this motion, such that this motion is timely filed. This occurred as follows:

In January of 2005, counsel for Jeffrey MacDonald, Wade Smith, Esq., was first contacted by a former deputy United States Marshal, Jim Britt. Jim Britt provided information to the defense establishing that the federal prosecutor who led the prosecution of Jeffrey MacDonald in 1979, James Blackburn, violated the defendant's constitutional rights by secreting critical exculpatory evidence during defendant's trial, and committed a fraud on the court and on the jury by intimidating the key defense witness—a witness who was prepared to admit to the jury that she and others were involved in the murder for which the defendant was convicted—into changing her testimony the day before she appeared as a witness called by the defense. The prosecutor, Blackburn, then, at a critical juncture, misrepresented to the court and to the defense what the witness had told him during his interview of her, and then the same prosecutor elicited before the jury testimony from such key defense witness that he knew to be false and knew to be contrary to what she had told him during his interview of her the day before.

James Blackburn, the prosecutor involved, was later convicted in 1993 in the Superior Court of Wade County, North Carolina, in an unrelated matter following a guilty plea, of obstruction of justice and embezzlement. [See, Judgment and Commitment Order of James L. Blackburn, attached as Exhibit 10 to Petitioner's Memorandum in Support of this Motion, filed herewith.]

Jim Britt is the most reliable of sources. He served for twenty-two years with distinction as a deputy United States Marshal, assigned (for most of his tenure) to the courthouse of the United States District Court for the Eastern District of North Carolina. He is a retired government official who was present in James Blackburn's office when Blackburn interviewed the key defense witness in the case the day before she was to testify. [The sworn affidavit of Jim Britt is attached as Exhibit 1 to Petitioner's Memorandum in support of this Motion, filed herewith.]

Jim Britt, at the request of defense counsel, subjected himself to a polygraph examination, conducted on May 24, 2005, by Steve Davenport of Davenport Associates. The examiner concluded that Britt was truthful. [A copy of the c.v. of Davenport, and of

the results of his examination are attached as Exhibit 2 to Petitioner's Memorandum in support of this Motion.]

The defendant, Dr. MacDonald, since the early morning hours of February 17, 1970, when his pregnant wife and two young daughters were brutally murdered, has consistently maintained that a group of strangers including a woman with long blond hair and a floppy hat had invaded his home and attacked him and his family the night of the crime. Within days of the murders, Helena Stoeckley was identified by police as a woman local to area, heavy into the drug scene, who routinely wore a long blond wig, a floppy hat, and was very likely to be the person MacDonald identified. Stoeckley, in fact, from early on developed a morbid fascination with the killings. She bought wreaths and hung them on a fence on the day the MacDonald family members were buried. She burned her blond wig, admitting she was afraid it might connect her to the crime. And over the nine years that passed before Jeffrey MacDonald was brought to trial, she made numerous incriminating statements to many neighbors, suggesting that she and her boyfriend, Greg Mitchell, had taken part in the killings.

After many weeks of trial the defense had convinced the trial judge to order that the government, which knew where Stoeckley was living, to produce her on a material witness warrant. Deputy Jim Britt received the assignment to fetch her. He traveled to Greenville, South Carolina to pick her up, and brought her back to Raleigh. During the ride to Raleigh, Stoeckley told Britt that she had been in the MacDonald house with others on the night of the MacDonald murders. She told him details that convinced him that she had, indeed, been there. The next day, Stoeckley was interviewed first by the defense attorneys. After her meeting with the defense lawyers, Deputy Marshal Britt escorted Stoeckley to the office of James Blackburn. Blackburn invited Britt into his office with Stoeckley to be a witness to the interview. Jim Britt witnessed Helena Stoeckley admit to James Blackburn that she had been in the MacDonald home with others the night of the murders, and that they had gone there to steal drugs, an admission that clearly she was prepared to testify to on the witness stand. Britt then specifically heard James Blackburn threaten Helena Stoeckley. He heard James Blackburn tell her that if she so testified, he would indict her for first-degree murder. The next morning in court, before the jury, called as a defense witness, Stoeckley denied knowing anything about the MacDonald murders or the MacDonald house and claimed to have amnesia as to her whereabouts or actions during the night of the MacDonald murders. During her testimony, Bernie Segal went to the bench and claimed surprise. He told the court that her testimony was contrary to what she had told him the day before during his interview of her, and that he was being spun. He provided to the court a detailed proffer of what Stoeckley had told him the day before. [Excerpt of Trial Transcript, August 17, 1979, pp. 5614-5618 attached as Exhibit 4 to Petitioner's Memorandum.]

The court then inquired of James Blackburn as to what she had told him the day before. Blackburn misrepresented to the court what had occurred, telling the judge that in his office she had denied having any knowledge of the MacDonalds. [See, Exhibit 4]. Blackburn, then on cross-examination, using leading questions, had Stoeckley affirm

before the jury that she knew nothing of the MacDonald murders or the MacDonald house or family. Importantly, the very next day, Helena Stoeckley reiterated to Wendy Rouder, Esq., who was a young lawyer assisting with the MacDonald defense, that she had, in fact, been in the MacDonald home with others on the night of the murders, that she had lied to the jury because she was afraid, and that the people she was afraid of were the prosecutors. [See, Affidavit of Wendy Rouder, attached as Exhibit 5 to Petitioner's Memorandum.]

This newly discovered evidence, as it was concealed by government officials, could not have been discovered previously through due diligence. It consists of facts that unquestionably demonstrate egregious government misconduct of the most profoundly disturbing sort, actions that amount to a clear constitutional violation. Finally, and particularly when viewed in the context of the assortment of evidence that has been revealed since the trial, much of which was unknown to the defense during the trial, evidence such as a blond wig hair found inside the MacDonald house the night of the murders, black wool fibers on the murder weapon that do not match any fabric in the MacDonald home, and the numerous confessions before he died of Greg Mitchell to the MacDonald murders, these new facts, when taken in light of all of the facts that have now come to light, establish by clear and convincing evidence not just that there is a reasonable doubt as to MacDonald's guilt, not just that no fact-finder would find him guilty, but that Jeffrey MacDonald is actually innocent. Clearly, had Helena Stoeckley not been threatened and intimidated by James Blackburn, had she freely told the truth to the jury—that she had been inside the MacDonald house with others to steal drugs—there would never have been a verdict finding Jeffrey MacDonald guilty.

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND TWO: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND THREE: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND FOUR: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not presenting them: The grounds in this motion have never before been presented to a court because they were unknown to the defense until January 27, 2005. They were solely in the purview of government officials, and the information was wrongly withheld until revealed by a former deputy United States Marshal this past January.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. United States District Ct. for the Eastern District of North Carolina, No. 75-26-CR-3; 90-104-CIV-3-D; the case is on remand from the Fourth Circuit with an order to have certain evidentiary items from the crime scene tested for DNA analysis to determine whether there is corroboration for defendant's claim that intruders murdered his family.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Bernard Segal, 88 Kearny Street, Suite 1475 San Francisco, CA 94109

(b) At arraignment and plea: Same as above.

(c) At trial: Bernard Segal, and Wade M. Smith, Tharrington, Smith & Hargrove, 209 Fayetteville St., Mall, Raleigh, N.C. 27601.

(d) At sentencing: Same as above.

(e) On appeal: Bernard L. Segal, same address as above.

(f) In any post-conviction proceeding: (First) Brian J. O'Neill, 100 Wilshire Blvd., Santa Monica, CA 90401 ** (Second) See attached supplement to question 15,

(g) On appeal from any ruling against you in a post-conviction proceeding: Dennis H. Eisman, Robinson Bldg., Suite 1420, Philadelphia, PA. 19102
** See attached supplement to question 15.

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes No
17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No
- (a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____
- (b) Give the date the other sentence was imposed: _____
- (c) Give the length of the other sentence: _____
- (d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes No

****Question 15 Supplement:** Counsel representing the Petitioner on his 1990 Motion to Vacate were as follows:

Norman B. Smith
Smith, Patterson, Follin,
Curtis, James, Harkavy
& Lawrence
BB&T Building
101 South Elm Street
Greensboro, NC 27401

Anthony P. Bisceglie
Bisceglie & Walsh
1130 17th St., N.W.
Suite 400
Washington, D.C. 20036

Harvey Silverglate
Philip G. Cormier
Andrew Good
Thomas C. Viles
Silverglate & Good
83 Atlantic Ave.
Boston, MA. 02110

Alan M. Dershowitz
26 Reservoir St.
Cambridge, MA. 02138

Roger C. Spaeder
David A. Hickerson
Zuckerman, Spaeder, Goldstein,
Taylor & Kolker
1201 Connecticut Ave., N.W.
Washington, D.C. 20036

Of Counsel:

John J. E. Markham, II
One Sansome Street, suite 2000
San Francisco, CA 94104

Counsel to represent Petitioner in his 1997 Motion to Reopen were as follows:

Wade M. Smith
Melissa Hill
Tharrington, Smith L.L.P.
209 Fayetteville Station Mall
P.O. Box 1151
Raleigh, N.C. 27602-1151

Harvey Silvergate
Philip G. Cormier
Andrew Good
Thomas C. Viles
Silvergate & Good
83 Atlantic Ave.
Boston, MA. 02110

Alan M. Dershowitz
26 Reservoir St.
Cambridge, MA. 02138

Roger C. Spaeder
Bonnie Robin-Vergeere
Zuckerman, Spaeder, Goldstein,
Taylor & Kolker
1201 Connecticut Ave., N.W.
Washington, D.C. 20036

John J. E. Markham, II
One Sansome Street, suite 2000
San Francisco, CA 94104

Of Counsel:

Anthony P. Bisceglie
Bisceglie & Walsh
1130 17th St., N.W.
Suite 400
Washington, D.C. 20036

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.* As described previously, the newly discovered evidence on which this motion is based was suppressed by government officials until January 27, 2005 when it first came to light, and could not have been discovered previously through the exercise of due diligence. It was known only to the prosecuting authority, the deputy U.S. Marshal who witnessed the occurrence, and the key defense witness who was allegedly threatened into silence and who is now deceased. It came to the attention of the defense for the first time in January 2005 when the former deputy U.S. Marshal who witnessed the conduct that deprived petitioner of a fair trial, in violation of the U.S. Constitution, and which prevented the jury from hearing evidence that would have proven that petitioner is factually innocent came forward.

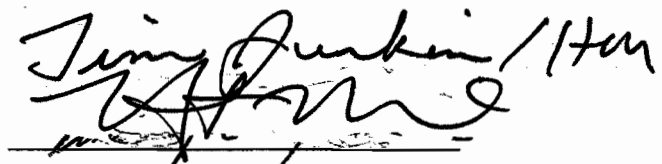
* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

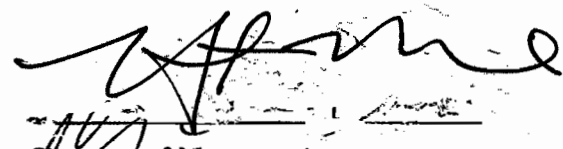
Therefore, movant asks that the Court grant the following relief: To Vacate and Set
Aside His Conviction. Movant requests a hearing on this motion.

or any other relief to which movant may be entitled.


Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on _____
_____ (month, date, year).

Executed (signed) on 1/17/06 (date).


Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not
signing this motion. Attorney for movant, movant is
in Cumberland, MD and motion needs
to be filed immediately.

IN FORMA PAUPERIS DECLARATION

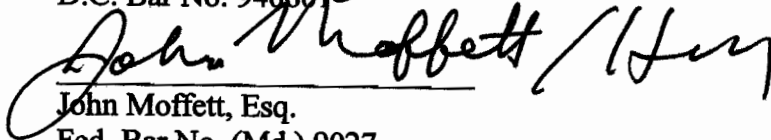
[Insert appropriate court]

***Petitioner respectfully incorporates herein by reference the attached
Memorandum in Support of Jeffrey R. MacDonald's Motion Under 28 USC
Section 2255 To Vacate His Sentence, and the accompanying exhibits.

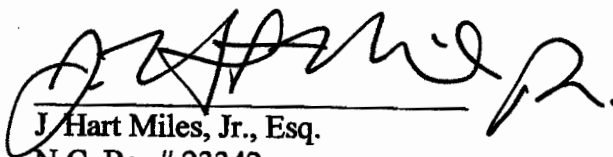
Respectfully submitted,



Timothy D. Junkin, Esq.
D.C. Bar No. 940601



John Moffett, Esq.
Fed. Bar No. (Md.) 9027
Moffett & Junkin
800 S. Frederick Ave., Suite 203
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J. Hart Miles, Jr., Esq.
N.C. Bar # 23342
Hart Miles Attorney at Law, P.A.
19 W. Hargett Street, Suite 805
Raleigh, N.C. 27601
Tel: (919) 834-8650
Fax. (919) 834-9105

Counsel for Jeffrey MacDonald

CERTIFICATE OF SERVICE

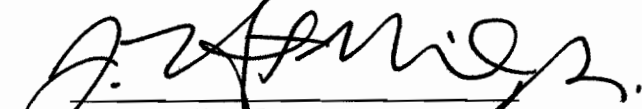
I hereby certify that a copy of petitioner's U.S.C. § 2255 motion and memorandum, appendices and exhibits were hand-delivered to the United States Attorney for the Eastern District of North Carolina at the following address:

Honorable Frank D. Whitney
United States Attorney
310 New Bern Ave., Suite 800
Raleigh, N.C. 27601

And mailed to the U.S. Justice Department counsel of record at the following address:

Brian Murtaugh, Esq.
U.S. Department of Justice
Domestic Security Section, Room 6746
Criminal Division
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

This the 17 day of January, 2006.



J. Hart Miles, Jr.