

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 Middle District of Penn.	
Name (under which you were convicted): Mark Komoroski		Docket or Case No.: 3:08-cr-00228-EMK	
Place of Confinement: L.S.C.I. Allenwood		Prisoner No.: 14640-067	
UNITED STATES OF AMERICA		Movant (include name under which you were convicted) MARK KOMOROSKI	

FILED
SCRANTON
NOV 04 2010

MOTION

PER M. Z. J.
DEPUTY CLERK

1. (a) Name and location of court that entered the judgment of conviction you are challenging: United States District Court for the Middle District of Pennsylvania, Scranton

(b) Criminal docket or case number (if you know): 3:08-cr-00228-EMK-01

2. (a) Date of the judgment of conviction (if you know): Entered guilty plea on August 4, 2009

(b) Date of sentencing: July 29, 2010

3. Length of sentence: 32 Months

4. Nature of crime (all counts): Violation of Title 18 United States Code, Section 371.

5. (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? N/A

6. 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: N/A
- (b) Docket or case number (if you know): _____
- (c) Result: _____
- (d) Date of result (if you know): _____
- (e) Citation to the case (if you know): _____
- (f) Grounds raised: _____

(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): _____
- (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: N/A
- (2) Docket or case number (if you know): _____
- (3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

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

(7) Result: _____

(8) Date of result (if you know): _____

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

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

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

(7) Result: _____

(8) Date of result (if you know): _____

(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

(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: Ineffective Assistance Of Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
Movant declared to his counsel that he was not guilty of the
criminal offenses charge in the Indictment. At no time prior
did Movant receive notice the items he shipped required an
export license for thier classification as defense articles.
Counsel ineffectively represented Movant by failing to properly
advise him and allowing Movant to enter a guilty plea to an
offense he was actually innocent of committing.

(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: Ineffective
Assistance of counsel

(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: Ineffective assistance of counsel

GROUND TWO: Movant is actually innocent of the charged offense

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

Movant did not willfully export the items he is charged with exporting

(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: Ineffective
assistance of counsel

(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: **Ineffective assistance of counsel**

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: Ground One and Two, Ineffective assistance of counsel

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. _____

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: _____

(b) At arraignment and plea: Frank W. Nocito and Phillip Gelso
63 Pierce Street Kingston, Pennsylvania 18704

(c) At trial: N/A

(d) At sentencing: Same as arraignment

(e) On appeal: N/A

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

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

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. * **Sentenced on July 29, 2010, motion is timely**

Multiple horizontal lines for providing an explanation.

* 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: Vacate sentence and conviction

or any other relief to which movant may be entitled.

N/A Pro-Se

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 10/25/2010 (month, date, year).

Executed (signed) on 10/25/2010 (date).



Mark Komoroski, Pro-se.

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion. _____

IN FORMA PAUPERIS DECLARATION

[Insert appropriate court]

* * * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MARK KOMOROSKI,	:	
MOVANT,	:	
	:	
VS.	:	CIVIL ACTION NUMBER
	:	_____
	:	CRIMINAL ACTION NUMBER
UNITED STATES OF AMERICA,	:	3:08-CR-00228-EMK-1
RESPONDENT.	:	
	:	

MEMORANDUM IN SUPPORT OF TITLE
28 UNITED STATES CODE, SECTION 2255 MOTION

MARK KOMOROSKI, pro-se "Movant" in the above captioned action submitted a form motion for collateral relief on October , 2010, pursuant to Title 28 United States Code. Section "2255." This memorandum is submitted in support of the 2255 form.

Movants claim for relief is based on the ineffective assistance of counsel and his actual innocence of the offense charged by the respondent.

JURISDICTION

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the grounds that the sentence was imposed in violation of the Constitution or laws of the United States or that the Court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence pursuant to Title 28 United States Code, Section 2255.

A one year period of limitations shall apply to a motion under Section 2255. The limitation period shall run from the latest of;

- (1) the date on which the judgment of conviction was 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 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.

Movant was sentenced before this Honorable Court on, July 29, 2010, a notice of appeal was not filed.

Movants request for relief claims the ineffective assistance of counsel in violation of the Sixth Amendment of the United States Constitution, the district court was without jurisdiction to impose the sentence and the sentence is otherwise subject to collateral attack. Movants sentence became final on or about August 8, 2010, one year within the filing of this motion. Thus this Honorable Court retains the jurisdiction to hear and rule upon Movants claims pursuant to Section 2255.

**MOVANT REQUEST THE DISTRICT
COURT CONSTRUE THIS FILING LIBERALLY**

Movant is presently before this Honorable Court pro-se pursuant to Title 28 United States Code, Section 2255. The United States Supreme Court in their per curiam landmark decision of HAINES V. KERNER, 404 U.S. 519, 30 L.Ed 2d 652, 92 S. Ct. 594, rehearing denied at 405 U.S. 948, 30 L.Ed 2d 819, 92 S. Ct 963, declared that a pro-se compliant must be held to less stringent standards than formal pleadings drafted by lawyers. Also see, CASTRO V. UNITED

STATES, 157 L.Ed 2d 789; CITRON/LORENZA V. DEPT. OF DEAUSSO, 312 F.3d 526 (1st Cir.); DESTEFANO V. CORROZI NORTH AMERICA, 286 F.3d 80 (2nd Cir.); UNITED STATES V. ALBISON, 356 F.3d 284 (3d Cir.); IN REF. WILLIAMS, 330 F.3d 283 (4th Cir.); JOHNSON V. DALLAS SCHOOL DIST., 38 F.3d 198 (5th Cir.); MONTGOMERY V. HUNTINGTON, 346 F.3d 698 (6th Cir.); MARTIN V. DEUTH, 298 F.3d 671 (7th Cir.); KENNEDY V. BAXTER HEALTH CARE, 348 F.3d 1073 (8th Cir.); NARDI V. STEWART, 354 F.3d 1140 (9th Cir.); LEDBETTER V. CITY OF TOPEKA KS., 318 F.3d 1185 (10th Cir.) and RICHARDS V. UNITED STATES, 193 F.3d 548. Movant is not an attorney and request the court not hold him to the stringent standards of formal pleading drafted by lawyers. The HAINES court further established that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the Movant can prove no set of facts in support of his claim which would entitle him to relief. Also see ESTELLE V. GAMBLE, 50 L.Ed 2d 261; STREET V. FARE, 918 F.2d 271 (1st Cir.); MITCHELL V. HORN, 318 F.3d 530 (3d Cir.); WEST V. ATKINS, 815 F.2d 996 (4th Cir.); LOSINSKI V. COUNTY OF PREMPERUE, 946 F.2d 452 (6th Cir.); CAMP V. GREGORY, 67 F.3d 1288 (7th Cir.); HAKE V. CLARK, 91 F.3d 1129 (8th Cir.); FERNANDEZ V. DENTON, 861 F.2d 1425 (9th Cir.); HALL V. BELLMOM, 935 F.2d 1110 (10th Cir.) and HAINESWORTH V. MILLER, 820 F.2d 1254. Movant will attempt to present his claims for relief as clear as possible. Movant will provide all of the facts he deems necessary to support his claims which he believes entitles him to relief. Movant would request this Honorable Court infer the application of Statute and law when applicable and that this filing not be dismissed unless it appears beyond doubt Movant can prove no set of facts in support of such claims. Lastly the HAINES court held that a pro-se litigant is entitled to an opportunity to offer

proof under his pro-se allegations. See *McGARTHY C. BRONSON*, 114 L.Ed 2d 202; *SPARKS V. FULLER*, 506 F.2d 1238 (1st Cir.); *DELL ORFAWO V. ROMANO*, 962 F.2d 203 (2d Cir.); *HELMS V. HEWITT*, 655 F.2d 494; *MILLIGAN V. CITY OF NEWPORT*, 743 F.2d 230 (4th Cir.); *PELLEGRINO V. MERATHON BANK*, 640 F.2d 698 (5th Cir.); *MYERS V. STEPHENSON*, 748 F.2d 205 (6th Cir.); *VIEMS V. DANIALS*, 871 F.2d 1333 (7th Cir.); *MOORE V. CLARKE*, 821 F.2d 519 (8th Cir.); *SCHUEMAN V. COLORADO STATE BOARD OF ADULT PAROLE*, 624 F.2d 173 (10th Cir.) and *CHILDS V. UNITED STATES BOARD OF PAROLE*, 511 F.2d 1279 (11th Cir.). In the event Movant does not properly present proof of his pro-se allegation, Movant would request this Honorable Court afford him the opportunity to offer the necessary proof before dismissing a claim for relief.

PROCEDURAL BACKGROUND

On June 4, 2008, a one count Indictment was returned in the Middle District of Pennsylvania against Movant. It charged that beginning in approximately July of 2004 and continuing through approximately January 2008, Movant conspired to export defense articles without obtaining a license or written approval from the Department of State, export articles and objects contrary to law, commit mail fraud, and money laundering in violation of Title 18 United States Code, Section 371. The focus of the conspiracy surrounded the export of riflescopes (Mark 4 CQ/T) manufactured by Leupold & Stevens, Inc., an Oregon State based corporation.

On November 13, 2008, a one-count Superseding Information was filed against Movant. On August 4, 2009, Movant appeared before the Honorable Edwin M. Kosik and entered a plea of guilty to violating Title 19 United States Code, Section 371. The focus of the Superseding Information surrounded the export of defense articles, merchandise and objects contrary to law from the United States.

Movant appeared on July 29, 2010, before the Court. Movant was sentenced to a total Thirty-two (32) months incarceration, Two (2) years of Supervised Release, a One Hundred Dollars (\$100.00) special assesment and Ten Thousand Dollars (\$10,000.00) fine. No direct appeal was taken and this filing follows.

**MOVANT IS ACTUALLY INNOCENT
OF THE CHARGED OFFENSE**

Movant is charged with violating Title 18 United States Code, Section "371" (Conspiracy). The criminal offense is based on Movant and his co-defendant Surgey "Korzniakov" conspiring to export defense articles without a license. The investigation focused on Movants export of Leupold Mark 4 CQ/T riflescopes (made in Oregon State by Leupold and Stevens Inc.).

The object of the conspiracy rests on Title 22 United States Code, Section "2278". The applicable statute 2278, authorizes the President of the United States to control the import and export of "defense articles". The President or his designee is authorized to designate those items considered defense articles; the items so designated constitute the United States Munitions List §2778 (a)(1). Unless otherwise specified by regulations promulgated under subsection (a)(1), no defense article may be exported without a license. §2778 (a)(1)(B)(2). The designation of an item as a defense article by the President or his designee "shall not be subject to judicial review §2778 (h)."

The President has delegated the authority to place items on the United States Munitions List (§2778 (a)) to the State Departments Directorate of Defense Trade Controls. The Munitions List includes riflescopes manufactured to military specifications. Title 22 Code of Federal Regulations, Section 121.1 Category 1 (f). Placement of the Leupold Mark 4 CQ/Triflescope on the Munitions List as a defense art-

icle criminalizes the export of the item without a specific federal license. But, it is not enough for the Leupold Mark 4 CQ/T riflescope to be classified as a defense article under 2778. The word "willfully" in §2778 (c) requires the prosecution not only prove Movant knew the item (Mark 4 CQ/T riflescope) was a defense article, but also Movant knew a license was required for exporting the item. See UNITED STATES V. PULUNGAN, 569 F.3d 326 (7th Cir. 2009), addressing a prosecution involving the same defense article Movant is charged with (Mark 4 CQ/T riflescope).

As evidenced by Movants affidavit at EX-A attached hereto. Movant made it clear to his attorneys that;

"I had no knowledge the items I exported were defense articles requiring an export license" and;

"had I known an export license was required, I would have obtained the necessary items prior to exporting any of the items".

In PULUNGAN, the prosecution argued that such knowledge was inferred. The Court, in referencing the Internet Web Site TELESCOPES.COM, concluded that "no reasonable jury could infer from the presence, or absence, of a U.S.A-only shipping legend on a commercial web site that a would-be buyer would know that the item was, or was not, a 'defense article'". In referencing TELESCOPES.COM the Court further provided that;

"one of the web pages devoted to the Leupold Mark 4 CQ/T riflescope contained this text in bold red type: 'We cannot export this item outside of the U.S.'"

The prosecution claimed a jury could infer from these statements a license was required to export the Leupold Mark 4 CQ/T riflescope. The PULUNGAN Court found a problem with this inference because "TELESCOPE.COM did not say why the available destinations are limited. Its web pages seem to say that the Leupold Mark 4 CQ/T riflescope

cannot be exported (at least not by TELESCOPE.COM) even if the buyer has a license." Leupold provided no notification to their customers the Mark 4 CQ/T riflescope was a restricted defense article, atleast at the time Movant purchased the item. (See Leupold Invoicing attached hereto marked as EX-B). Leupold in fact has changed their procedures and now notifies buyers of the export restriction. (See Leupold Invoicing attached hereto as EX-C). Movants claim to his attorneys that he had no knowledge of the export licensing requirement for shipping Leupold Mark 4 CQ/T riflescopes provided an actual innocence defense.

INEFFECTIVE ASSISTANCE OF COUNSEL

An accused's right to be represented by counsel is a fundamental component of our criminal justice system. Lawyers in criminal cases "are necessities, not luxuries". See GIDEON V. WAINWRIGHT, 372 U.S. 355, 344, 9L.Ed. 2d 799, 83 S. Ct. 792, 93 ALR 2d 733 (1963). Their presence is essential because they are the means through which the other rights of the person on trial are secured. Without counsel, the right to a trial itself would be of little avail. Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other right he may have.

The special value of the right to the assistance of counsel explains why it has long been recognized that the right to counsel is the right to the effective assistance of counsel. McMANN V. RICHARDSON, 374 U.S. 759, 771 N. 14, 25 L. Ed. 2d 763, 90 S.Ct. 1441 (1970). The text of the Sixth Amendment requires not merely the assistance of counsel to the accused, but assistance which is to be for his defense. Thus the core purpose of the counsel quarantees was to assure assistance when an accused is confronted with the intricacies of the law and the advocacy of the public prosecutor. See UNITED STATES V. ASH, 413 U.S.

300, 37 L. Ed 2d 619, 93 S.Ct 2563 (1973). If no actual assistance for the accused defense is presented then the constitutional guarantee is violated. For a Court to hold otherwise could convert the requirement of counsel into a sham and nothing more than a formal compliance with the Constitutions requirement that an accused be given the assistance of counsel. The Constitutions guarantee of assistance of counsel cannot be satisfied by mere formal appearance.

In McMANN, the Court indicated that an accused is entitled to "a reasonably competent attorney", whose advise is "within the range of competence demanded of attorney's in criminal cases". Id., at 771, 25 L.Ed, 2d 763, 90 S.Ct. 1441. In CUYLER V. SULLIVAN, 466 U.S. 335, 64 L.Ed 2d 333, 100 S.Ct. 1708 (1980), the Supreme Court held that the Constitution guarantees an accused "adequate legal assistance", and in EAGLE V. ISAAC, 456 U.S. 107, 71 L.Ed 2d 783, 102 S.Ct. (1982), the Supreme Court referred to a criminal Defendants constitutional guarantee of "a fair trial and competent attorney". Id., at 134, 71 L.Ed 2d 783, 102 S.Ct. 1558.

The substance of the Constitutions guarantee of the effective assistance of counsel is illuminated by reference to its underlying purpose. "[T]ruth," Lord Eldon said, "is best discovered by powerful statements on both sides of the question. Quoted in Kaufman, Does the Judge have the Right to Qualified Counsel, 61 ABAJ 569, 569 (1975). This dictum describes the unique strength of our criminal justice system. The very premise of our criminal justice system is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and innocent go free. It is that very premise that underlies and gives meaning to the Sixth Amendment. It is meant to assure fairness in the adversary criminal process. Unless the defendant recieves the effective assistance of counsel,

a serious risk of injustice infects the proceeding itself. CUYLER, Supra. Petitioner claims his counsel was ineffective in the representation of this case.

In STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984), the United States Supreme Court considered "the standard by which to judge a contention that the Constitution requires that a criminal judgement be overturned because of the actual ineffective assistance of counsel". Id., 466 U.S. at 684,

The Court States:

"The benchmark of judging any claim of ineffective assistance of counsel must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the [procedure] cannot be relied on as having produced a just result." Id., 466 U.S. at 686.

The Court further held that a petitioner would be entitled to relief if his counsel's performance was deficient, that is, if it fell below the wide range of professionally competent assistance and a petitioner suffered prejudice from the deficient performance. By "prejudice", the Supreme Court meant a "reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different... A reasonable probability is a probability sufficient to undermine the confidence in the outcome". STRICKLAND, 466 U.S. at 694. The STRICKLAND test is not universally applied. There are some denials of counsel from which prejudice is presumed, including "actual or constructive denial of assistance of counsel altogether". Id., 466 U.S. at 692.

In UNITED STATES V. JAKE, 281 F.3d 123, 132 N. 7 (3d Cir. 2002) the Court held that Sixth Amendment claims of ineffective assistance of counsel should ordinarily be raised in a collateral proceeding pursuant to 2255 rather than on direct appeal; see also UNITED STATES V. NAHODIL, 36 F. 3d 323, 326 (3d Cir. 1994) (Nahodil's principal

claim was that his counsel was ineffective for improperly advising him to enter a plea of guilty despite his repeated objections to doing so), which is similar to the present case.

When considering a claim of ineffective assistance of counsel the Court is bound by the two-pronged test that the Supreme Court formulated in *STRICKLAND*, 466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984): (i) whether the attorney's performance fell "below an objective standard of reasonableness", thus rendering the assistance so deficient that the attorney did not function as "counsel" as the Sixth Amendment guarantees, see *Id.*, at 687-88, and (ii) whether the attorney's ineffectiveness prejudiced the defense such that "there is a reasonable probability that, but for counsel's unprofessional errors the result of the proceeding would have been different." See *Id.* at 694; see also *DEPUTY V. TAYLOR*, 19 F.3d 1485, 1493 (3d Cir.), cert. denied, 512 U.S. 1230, 114 S. Ct. 2730, 129 L. Ed. 2d 853 (1994). A Movant who pleads guilty upon the advice of counsel may only attach the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within "the range of competence demanded of attorneys in criminal cases." *HILL V. LOCKHART*, 474 U.S. 52, 56-57, 88 L.Ed. 2d 203, 106 S. Ct. 366 (1985) (quoting *McMANN V. RICHARDSON*, 397 U.S. 759, 711, 25 L. Ed. 2d 763, 90 S. Ct. 1441 (1970)).

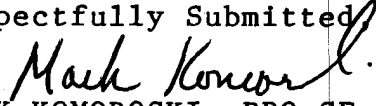
On several occasions prior to trial Movant explained to his attorneys that he was not aware of the export license requirement for shipping the Leupold Mark 4 CQ/T riflescopes. On each occasion Movant's attorneys advised him that his knowledge of this fact made no difference concerning his guilt or innocence. Movant's attorneys were wrong. The knowledge prerequisite of requiring a license to export is synonymous with the required "willfull" prerequisite of Section 2778

(c). Without knowledge or "knowing" an export license was required to internationally ship the Leupold Mark 4 CQ/T riflescope, the elements required for conviction under 2778 cannot be reached. Movants attorneys were so unfamiliar with the basic legal principals of 2778, their advice rose to the level of ineffective assistance of counsel. See GOVERNMENT OF THE VIRGIN ISLANDS V. WEATHERWAX, 20 F.3d 572, 579 (3d Cir. 1994), rev'd on other grounds. Movant has satisfied the first prong of STRICKLAND.

The Second Prong of STRICKLAND (prejudice) is founded on Movants actual innocence of the charged offense. To establish actual innocence, Movant must demonstrate that, "in light of all the evidence, it is more likely than not that no reasonable juror would have convicted him." BOUSLEY V. UNITED STATES, 523 U.S. 614, 623, 140 L. Ed 2d 828, 118 S. Ct. 1604 (1998) (quoting SCHLUP V. DELO, 513 U.S. 298, 327-28, 130 L. Ed 2d 808, 115 S. Ct. 851 (1995)). Movants support for satisfying the Second Prong of STRICKLAND is founded by way of the Seventh Circuits Opinion pronounced in PULUGAN, Supra. Movant could not be convicted in a trial unless he knew the Leupold Mark 4 CQ/T riflescope was in fact a "defense article". Leupold did not provide such a notice until years after Movant stopped exporting the item. (Compare EX-B and EX-C attached hereto).

Having satisfied both Prongs of STRICKLAND and his actual innocence of the offense, Movant moves this Honorable Court to cause to issue an ORDER vacating the sentence and conviction imposed by the Court in Docket Number 3:08-cr-00228-EMK-1.

Respectfully Submitted


MARK KOMOROSKI, PRO-SE
Reg. No. 14640-067
L.S.C.I. ALLENWOOD
P.O. BOX 1000
WHITE DEER, PA 17887

A F F I D A V I T

This Affidavit is prepared and submitted in support of my Title 28 United States Code, Section 2255 motion. I declare pursuant to the penalty of perjury that the following facts are true and correct and correct to the best of my knowledge and belief that;

(A) I retained attorney Frank W. Nocito and Phillip Gelso to represent me in defense of the federal criminal charges filed against me in U.S.A. VS. KOMOROSKI, United States Middle District of Pennsylvania Docket Number 3:08-cr-00228-EMK-01;

(B) During the pre-trial process I met with my attorney's to discuss the pending federal charges;

(C) During the pre-trial meetings with my attorney's I made it clear that (1) I had no knowledge the items I exported were defense articles requiring an export license and (2) had I known an export license was required, I would have obtained the necessary license prior to exporting any of the items;

(D) My attorney's Frank W. Nocito and Phillip Gelso informed me that my knowledge that a license was required to export the items was irrelevant;

(E) Based on the facts presented in this AFFIDAVIT
I changed my plea of not guilty to guilty. Had I
known that my knowledge was require to be found
guilty, I would have proceeded to trial.

SIGNED



Mark Komoroski, Pro-Se.

DATED

10-24-2010



INVOICE

OUTDOOR SPORTS HEADQUARTERS, INC.
 967 WATERTOWER LANE
 DAYTON, OH 45449 (937) 865-5855

0659562
 4/17/07

FFL# 4-31-113-01-8C-36309

PAGE: 1

A SUBSIDIARY OF JSC ENTERPRISES, INC.

SOLD TO: 26228 570-889-5312 SHIP TO:
 YABLONSKYS SPORTING GOODS
 JOSEPH A YABLONSKY
 152 MAIN BLVD
 RINGTOWN PA 17967

AMOUNT PAID: _____

PLEASE DETACH ON PERFORATION AND RETURN TOP PORTION WITH YOUR PAYMENT.

OUTDOOR SPORTS HQ, INC DATE: 4/17/07 INVOICE: 0659562 CUSTOMER: 26228

TERMS: NET-30 SHIP: UPS PO# JSC FFL# 8-23-054-01- 2-12194

TO INSURE PROPER CREDIT, INCLUDE CUSTOMER NUMBER ON CHECKS AND CORRESPONDENCE.

 * PLEASE VERIFY THAT THE ADDRESS PRINTED ABOVE IS THE CORRECT *
 * ADDRESS FOR YOUR BUSINESS. AN INCORRECT ADDRESS WILL RESULT IN A *
 * CHARGEBACK FROM UPS WHICH WE WILL PASS ON TO YOU. *

QUANTITY	ITEM NO	DESCRIPTION	UNIT PRICE	AMOUNT
1	LEU52155	LEUPOLD MK4 CQ/T 1-3X14 CIRCLE	622.11	622.11
1	LEU56820	LEUPOLD VX-II 3-9X40 GER#1 MAT	267.00	267.00

Constant 902.48

MDSE. TOTAL 889.11

FREIGHT, INS. & HANDLING CHG. 13.37

2 UNITS SHIPPED. DISCOUNTS TAKEN. THIS INVOICE TOTAL IS NET 902.48

ALL CLAIMS AND SHORTAGES MUST BE FILED WITHIN 10 DAYS.
 NO UNAUTHORIZED RETURNS. ALL RETURNS SUBJECT TO 10%
 RESTOCKING CHARGE.
 ALL DELINQUENT ACCOUNTS SUBJECT TO SERVICE CHARGE AT
 1.5% PER MONTH -- 18% ANNUAL. (B326)

PAY THIS AMOUNT--> 902.48



INVOICE

JERRY'S SPORT CENTER, INC.
 P.O. BOX 121, MAIN STREET
 FOREST CITY, PA 18421 (570) 785-9400

J798658
 2/02/09

FFL# 8-23-115-01-1C-07586

PAGE: 1

A SUBSIDIARY OF JSC ENTERPRISES, INC.

SOLD TO: 26228 570-889-5312 SHIP TO:
 YABLONSKYS SPORTING GOODS
 JOSEPH A YABLONSKY
 152 MAIN BLVD
 RINGTOWN PA 17967

AMOUNT PAID: _____

DETACH & REMIT TOP PORTION WITH PAYMENT TO JSC, PO BOX 121, FOREST CITY PA 18421

JERRY'S SPORT CTR, INC DATE: 2/02/09 INVOICE: J798658 CUSTOMER: 26228

TERMS: NET-30 SHIP: UPS PO# ADDOK FFL# 8-23-054-01- 2-12194

TO INSURE PROPER CREDIT, INCLUDE CUSTOMER NUMBER ON CHECKS AND CORRESPONDENCE.

 * PLEASE VERIFY THAT THE ADDRESS PRINTED ABOVE IS THE CORRECT *
 * ADDRESS FOR YOUR BUSINESS. AN INCORRECT ADDRESS WILL RESULT IN A *
 * CHARGEBACK FROM UPS WHICH WE WILL PASS ON TO YOU. *

QUANTITY	ITEM NO	DESCRIPTION	UNIT PRICE	AMOUNT
1	LEA57864	LEUPOLD MK4 SCOPE COVER PR	18.06	18.06
1	LEA62880	LEUPOLD MARK4 ARD 40MM	89.44	89.44
1	LEA62885	LEUPOLD MARK4 ARD 50MM	89.44	89.44
1	LEB49933	LEUPOLD QR 30MM RNG HI MAT	25.80	25.80
1	LEB49959	LEUPOLD 30MM RNG HI MAT	24.51	24.51
1	LEB49974	LEUPOLD QR RINGS MED MATTE	17.20	17.20
1	LEB50016	LEUPOLD 2PC BS 700 MATTE	12.90	12.90
1	LEB50215	LEUPOLD QR 2PC BS SAUER 202	35.26	35.26
1	LEB51223	LEUPOLD QR 2PC BS BAR MATTE	35.26	35.26
2	LEB51717	LEUPOLD QR 30MM RNG LOW MATTE	25.80	51.60
1	LEB57506	LEUPOLD MK4 COT THROW LEVR MNT	86.00	86.00
1	LEU52155	LEUPOLD MK4 CQ/T 1-3X14 CIRCLE	672.52	672.52
	LEU52155	<---- PURCHASER AGREES THAT THIS ITEM WILL NOT BE EXPORTED, PROVIDED TO FOREIGN PERSONS IN THE U.S. OR SOLD DOMESTICALLY FOR EXPORT BY A THIRD PARTY. WHEN PURCHASER RESELLS THIS ITEM, PURCHASER WILL ADVISE CUSTOMERS OF THEIR DUTY TO COMPLY WITH U.S. EXPORT REGULATIONS.		
1	LEU53434	LEUPOLD COMP 40X45MM XHAIR RET	859.14	859.14
1	LEU55036	LEUPOLD VX3 1.75-6X32 DUP MATT	304.99	304.99
1	LEU56780	LEUPOLD VX-II 3-9X40 DUP MATTE	249.40	249.40
1	LEU57010	LEUPOLD VX2 6-18X40 A/O FD MAT	393.02	393.02
1	LEU60000	LEU MK4 4.5-14X50 LR/T M1 ILTM	980.40	980.40
1	LEU63080	LEUPOLD VXII 3-9X33 UL LRD MAT	272.62	272.62
		MDSE. TOTAL		4,217.56
		FREIGHT, INS. & HANDLING CHG.		38.74

19 UNITS SHIPPED. CASH DISCOUNTS TAKEN. NET INVOICE TOTAL IS 4,256.30

ALL CLAIMS AND SHORTAGES MUST BE FILED WITHIN 10 DAYS.
 NO UNAUTHORIZED RETURNS. ALL RETURNS SUBJECT TO 10% RESTOCKING CHARGE.
 ALL DELINQUENT ACCOUNTS SUBJECT TO SERVICE CHARGE AT 1.5% PER MONTH -- 18% ANNUAL. (B326)

PAY THIS AMOUNT--> 4,256.30

Clerk of the Court
United States District Court
Middle District of Pennsylvania

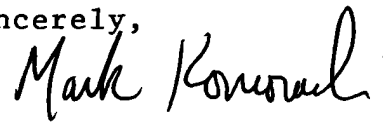
October , 2010

RE: CIVIL ACTION NO.
CRIMINAL ACTION NO. 3:08-cr-00228-EMK-1

Dear Clerk,

Please file the enclosed motion with the court.

Sincerely,



*
Mark Komoroski, Pro-Se
Reg. No. 14640-067
L.S.C.I. Allenwood
P.O. Box 1000
White Deer, PA 17887

MARK Komoroski 1853
Pg. No. 1716
L.S.C.I. #1
Allison
P.O. Box 1148
White Deer, PA 1788



7006 2150 0004 7628 4059

RECEIVED
U.S. DISTRICT COURT
SCRANTON, PA

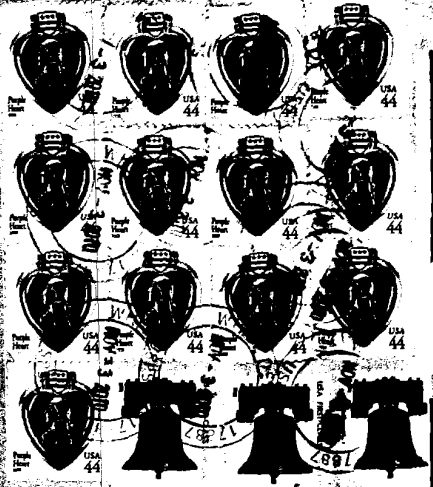
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NOV 4 14



14640-067

U.S. DISTRICT COURT
Office of the Clerk
235 N. Washington Ave.
P.O. Box 1148
Scranton, PA - 18501 - 1148
United States



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17887
NOV 03 - 10
AMOUNT

1005

18501

\$0.00
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