

IN THE
SUPREME COURT OF THE UNITED STATES

Sinclair Ellis Jr.
Petitioner

vs.

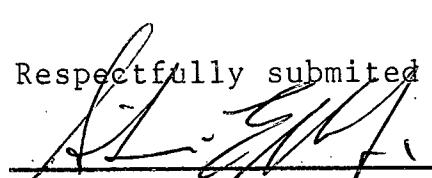
United States of America
Respondent

PETITION FOR WRIT OF CERTIORARI

Appendix-A

I Sinclair Ellis Jr. state the following is enclosed; The
Judgment of the United States District Court for the District of
Maryland Northen Division and Fourth Circuit Court of Appeals.

Respectfully submitted


Sinclair Ellis Jr.-10952-054
Federal Prison Camp-Schuylkill
P.O. Box 670
Minersville Pa. 17954

(9)

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

SINCLAIR ELLIS, JR.

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

*

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Civil Action No. GLR-19-2644
(Related Crim. Case GLR-16-0515)

ORDER

Pending before the Court is Petitioner Sinclair Ellis' ("Petitioner") Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence. ECF No. 238. The Motion is ripe for disposition and no hearing is necessary. See Rule 8 of the Federal Rules Governing § 2255 cases. For the reasons that follow, the Court will deny the Motion.

On October 25, 2016, the Petitioner, along with several of his co-defendants, was indicted by a federal grand jury on drug conspiracy charges. ECF No. 24. The last defendant named in the indictment to have her initial appearance in Maryland was Maria Smith, whose initial appearance was November 1, 2016. ECF No. 29.

On January 4, 2017, the government filed an unopposed Motion to Exclude Time from Speedy Trial Act Computations from November 1, 2016 through and including February 1, 2017." ECF No. 57. The Court granted the Motion based upon the parties' need to review discovery to prepare for trial, and ongoing plea discussions. Id. As a result, the Court made specific findings that the ends of justice were served by granting the Motion. ECF No. 58. On January 23, 2017, co-defendant Marc Williams filed pre-trial motions ECF No. 60, 61, 62 and 65.

On August 22, 2017, a superseding indictment was returned by the grand jury. ECF No. 123. On January 6, 2018, Petitioner filed his own pre-trial motions. ECF Nos. 135 – 142.

On February 16, 2018, Petitioner pled guilty unconditionally and without a plea agreement. ECF No. 166. He was sentenced to a total term of imprisonment of 151 months. ECF No. 205. Petitioner noted an appeal to the Fourth Circuit, which affirmed his conviction. United States v. Ellis, 752 F. App'x. 173 (4th Cir. Feb. 14, 2019). On September 11, 2019, Petitioner filed the instant Motion to Vacate Under 28 U.S.C. § 2255.

In Petitioner's Motion, he argues that his counsel was ineffective for failing to object to, and seek dismissal of, the Indictment based upon a violation of the Speedy Trial Act. Petitioner's claim is without merit.

To establish ineffective assistance of counsel in violation of the Sixth Amendment, a Petitioner must show that (1) "counsel's performance was deficient"; and (2) that this "deficient performance prejudiced the defense." Strickland v. Washington, 466 U.S. 668, 687 (1984). Applying these principles, and after a review of the entire record including the procedural history, first, Petitioner waived his Speedy Trial Act concerns by pleading guilty unconditionally. See United States v. Moreno-Serafino, 251 F. App'x. 185, 188 (4th Cir. 2007). Further, claims that are waived at the district court level and not raised on appeal are not resurrected or raised for the first time on, or in, a habeas petition. See Boeckenhaupt v. United States, 537, F.2d 1182, 1183 (4th Cir. 1976).

Second, the Petitioner cannot satisfy either prong under Strickland. The government correctly points out that there could be no ineffective assistance of counsel, as the Speedy Trial Act was indeed tolled from November 1, 2016 through February 1, 2017 by Order of the District Court under 18 U.S.C. § 3161(h)(7), and by virtue of the pending pre-trial motions from January

23, 2017 through the date of the Petitioner's guilty plea under 18 U.S.C. § 3161(h)(1)(D). As a result, there was no Speedy Trial Act violation. Further, the Petitioner cannot establish any prejudice inured from defense counsel's failure to move to dismiss the Indictment or Superseding Indictment based upon the Speedy Trial Act violation. First, any such motion would not have been successful for the aforementioned reasons. In addition, any dismissal on the Speedy Trial Act grounds would have been without prejudice, thereby allowing the government to refile charges. Finally, the Petitioner has not raised any other ground by which he might have been prejudiced by the absence of a Speedy Trial Act dismissal. Petitioner, thus, cannot establish any basis for fulfilling the second prong of the Strickland element. For the above reasons, as well as those cited in the government's brief, the Motion is DENIED.

Under Rule (a) of the Rules Governing Proceedings pursuant to 28 U.S.C. § 2255, the Court is required to issue or deny a certificate of appealability when it enters a final order adverse to the applicant. A certificate of appealability is a jurisdictional prerequisite to appeal from the Court's Order. United States v. Hadden, 475 F.3d 652, 659 (4th Cir. 2007). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(B)(2). A certificate of appealability will not issue unless the petitioner can demonstrate both "(1) that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and (2) that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Rose v. Lee, 252 F.3d 676, 684 (4th Cir. 2001) (internal quotation marks omitted). Where the court denies a petitioner's motion on its merits, the petitioner satisfies this standard by demonstrating that reasonable jurists would find the

court's assessment of the constitutional claims debatable or wrong. See Slack v. McDaniel, 529 U.S. 473, 484 (2000).

The Court, for the aforementioned reasons, concludes that Petitioner has not provided a basis to issue a certificate of appealability because reasonable jurists would not find Petitioner's claims debatable. Thus, the Court will not issue a certificate of appealability.

The Clerk is DIRECTED TO PROVIDE a copy of this Order to all parties of record and CLOSE the case.

So ORDERED this 27th day of January 2020.

/s/
George L. Russell, III
United States District Judge

FILED: July 24, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6197
(1:16-cr-00515-GLR-1)
(1:19-cv-2644-GLR)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

SINCLAIR ELLIS, JR.

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 20-6197

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SINCLAIR ELLIS, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore.
George L. Russell, III, District Judge. (1:16-cr-00515-GLR-1; 1:19-cv-2644-GLR)

Submitted: July 21, 2020

Decided: July 24, 2020

Before AGEE, DIAZ, and HARRIS, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Sinclair Ellis, Jr., Appellant Pro Se. Jason Daniel Medinger, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Sinclair Ellis, Jr., seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 (2018) motion. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(B) (2018). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2018). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong. *See Buck v. Davis*, 137 S. Ct. 759, 773-74 (2017). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the motion states a debatable claim of the denial of a constitutional right. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Ellis has not made the requisite showing. Accordingly, we deny Ellis' motion for a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

IN THE
SUPREME COURT OF THE UNITED STATES

Sinclair, Ellis Jr.
Petitioner

vs.

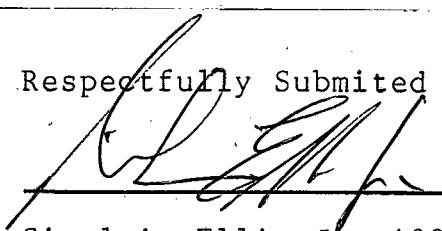
United States of America
Respondent

PETITION FOR WRIT OF CERTIORARI

Appendix-B

I Sinclair Ellis Jr. state the Following: The District Court
Docket sheet Exhibit-A

Respectfully Submitted


Sinclair Ellis Jr.-10952-054
Federal Prison Camp Schuylkill
P.O. Box 670
Minersville Pa. 17954

Date Filed	#	Docket Text
10/12/2016	<u>1</u>	COMPLAINT as to Maria C. Smith (1). (Attachments: # <u>1</u> Affidavit) (jks, Deputy Clerk) [1:16-mj-02725-JMC] (Entered: 10/13/2016)
10/12/2016	<u>3</u>	COMPLAINT as to Yesenia Margarita Garcia (1). (Attachments: # <u>1</u> Affidavit) (jks, Deputy Clerk)[1:16-mj-02722-JMC] Modified on 10/25/2016 (hmls, Deputy Clerk). (Entered: 10/13/2016)
10/12/2016	<u>5</u>	COMPLAINT as to Sinclair Ellis (1). (Attachments: # <u>1</u> Affidavit) (jks, Deputy Clerk) [1:16-mj-02724-JMC] Modified on 10/25/2016 (hmls, Deputy Clerk). (Entered: 10/13/2016)
10/12/2016	<u>7</u>	COMPLAINT as to Marc A. Williams (1). (Attachments: # <u>1</u> Affidavit) (jks, Deputy Clerk)[1:16-mj-02723-JMC] Modified on 10/25/2016 (hmls, Deputy Clerk). (Entered: 10/13/2016)
10/13/2016	<u>9</u>	Initial Appearance as to Sinclair Ellis (Defendant informed of Rights.) held on 10/13/2016 before Magistrate Judge J. Mark Coulson. (FTR Waryu-7B) (jws, Deputy Clerk)[1:16-mj-02724-JMC] Modified on 10/25/2016 (hmls, Deputy Clerk). (Entered: 10/14/2016)
10/13/2016	<u>10</u>	CJA 23 Financial Affidavit by Sinclair Ellis (jws, Deputy Clerk)[1:16-mj-02724-JMC] Modified on 10/25/2016 (hmls, Deputy Clerk). (Entered: 10/14/2016)
10/13/2016	<u>11</u>	ORDER APPOINTING FEDERAL PUBLIC DEFENDER as to Sinclair Ellis. Signed by Magistrate Judge J. Mark Coulson on 10/13/2016. (jws, Deputy Clerk)[1:16-mj-02724-JMC] Modified on 10/25/2016 (hmls, Deputy Clerk). (Entered: 10/14/2016)
10/14/2016	<u>14</u>	Initial Appearance as to Marc A. Williams (Defendant informed of Rights.) held on 10/14/2016 before Magistrate Judge J. Mark Coulson. (FTR Klein -7B.) (jks, Deputy Clerk)[1:16-mj-02723-JMC] Modified on 10/25/2016 (hmls, Deputy Clerk). (Entered: 10/17/2016)
10/14/2016	<u>15</u>	CJA 23 Financial Affidavit by Marc A. Williams (jks, Deputy Clerk)[1:16-mj-02723-JMC] Modified on 10/25/2016 (hmls, Deputy Clerk). (Entered: 10/17/2016)
10/14/2016	<u>16</u>	ORDER OF TEMPORARY DETENTION as to Marc A. Williams Detention Hearing set for 10/17/2016 01:00 PM in Courtroom 7B, 101 West Lombard Street, Baltimore, Maryland 21201, before Magistrate Judge A. David Copperthite. Signed by Magistrate Judge J. Mark Coulson on 10/14/2016. (jks, Deputy Clerk)[1:16-mj-02723-JMC] Modified on 10/25/2016 (hmls, Deputy Clerk). (Entered: 10/17/2016)
10/17/2016		PAPERLESS NOTICE OF HEARING by U.S. Attorney's Office as to Sinclair Ellis. PLEASE NOTE: Defendant is in custody. A writ has not been requested. A come up was requested on 10/17/2016. An interpreter will not be needed. Detention Hearing set for 10/17/2016 02:00 PM in Courtroom 7B, 101 West Lombard Street, Baltimore, Maryland 21201, before Magistrate Judge A. David Copperthite. (Medinger, Jason) [1:16-mj-02724-JMC] (Entered: 10/17/2016)
10/17/2016	<u>17</u>	Detention Hearing as to Sinclair Ellis held on 10/17/2016 before Magistrate Judge A. David Copperthite. (FTR: Vockroth) (kvs, Deputy Clerk)[1:16-mj-02724-JMC] Modified on 10/25/2016 (hmls, Deputy Clerk). (Entered: 10/18/2016)
10/17/2016	<u>18</u>	ORDER Setting Conditions of Release as to Sinclair Ellis. Signed by Magistrate Judge A. David Copperthite on 10/17/2016. (kvs, Deputy Clerk)[1:16-mj-02724-JMC] Modified on 10/25/2016 (hmls, Deputy Clerk). (Entered: 10/18/2016)

01/23/2017	<u>67</u>	MOTION FOR LEAVE TO AMEND, SUPPLEMENT, WITHDRAW AND/OR FILE ADDITIONAL MOTIONS by Marc A. Williams. (Attachments: # <u>1</u> Text of Proposed Order)(Francomano, John) (Entered: 01/23/2017)
01/23/2017	<u>68</u>	ORDER granting <u>67</u> Motion for Leave to Amend, Supplement, Withdraw and/or File Additional Motions as to Marc A. Williams (4). Signed by Judge George Levi Russell, III on 1/23/2017. (hmls, Deputy Clerk) (Entered: 01/23/2017)
01/23/2017	<u>69</u>	MOTION for Extension of Time to File <i>Motions</i> by Maria C. Smith. (Van Hoven, Jonathan) (Entered: 01/23/2017)
01/23/2017	<u>70</u>	MOTION for Leave to File <i>Additional Motions</i> by Yesenia Margarita Garcia. (Attachments: # <u>1</u> Text of Proposed Order Garcia Order 1)(Burdges, John) (Entered: 01/23/2017)
01/24/2017	<u>71</u>	Marginal ORDER granting <u>69</u> Motion for Extension of Time to File Motions to 2/1/17 as to Maria C. Smith (2). Signed by Judge George Levi Russell, III on 1/24/2017. (hmls, Deputy Clerk) (Entered: 01/24/2017)
01/24/2017	<u>72</u>	ORDER granting <u>70</u> Motion for Leave to File Additional Motions as to Yesenia Margarita Garcia (3). Signed by Judge George Levi Russell, III on 1/24/2017. (hmls, Deputy Clerk) (Entered: 01/24/2017)
02/02/2017 ✓	<u>73</u>	STATUS REPORT by USA as to Sinclair Ellis, Jr, Maria C. Smith, Yesenia Margarita Garcia, Marc A. Williams (Medinger, Jason) (Entered: 02/02/2017)
02/06/2017 ✓	<u>74</u>	MARGINAL ORDER as to Sinclair Ellis, Jr, et al. approving <u>73</u> Status Report filed by USA. Signed by Judge George Levi Russell, III on 2/6/2017. (dass, Deputy Clerk) (Entered: 02/06/2017)
02/09/2017	<u>75</u>	Consent MOTION to Modify Conditions of Release by Maria C. Smith. (Attachments: # <u>1</u> Text of Proposed Order)(Van Hoven, Jonathan) (Entered: 02/09/2017)
02/09/2017	<u>76</u>	ORDER GRANTING <u>75</u> Motion to Modify Conditions of Release as to Maria C. Smith (2). Signed by Magistrate Judge Stephanie A Gallagher on 2/9/2017. (hmls, Deputy Clerk) (Entered: 02/09/2017)
02/22/2017		PAPERLESS NOTICE OF HEARING by U.S. Attorney's Office as to Maria C. Smith. PLEASE NOTE: Defendant is not in custody. A writ has not been requested. A come up has not been requested. An interpreter will not be needed. Rearraignment set for 3/9/2017 02:00 PM in Courtroom 7A, 101 West Lombard Street, Baltimore, Maryland 21201, before Judge George Levi Russell III.(Medinger, Jason) (Entered: 02/22/2017)
02/24/2017	<u>77</u>	Consent MOTION to Modify Conditions of Release by Maria C. Smith. (Attachments: # <u>1</u> Text of Proposed Order)(Van Hoven, Jonathan) (Entered: 02/24/2017)
02/24/2017	<u>78</u>	ORDER granting <u>77</u> Motion to Modify Conditions of Release as to Maria C. Smith (2). Signed by Magistrate Judge Stephanie A Gallagher on 2/24/2017. (hmls, Deputy Clerk) (Entered: 02/24/2017)
03/09/2017	<u>79</u>	Rearraignment as to Maria C. Smith (2) as to Count 1 of the Indictment held on 3/9/2017, Plea entered by Maria C. Smith (2) Guilty Count 1. before Judge George Levi Russell, III.(Court Reporter: Nadine Gazic-7A) (chs, Deputy Clerk) (Entered: 03/09/2017)
03/09/2017	<u>80</u>	PLEA AGREEMENT as to Maria C. Smith. (hmls, Deputy Clerk) (Entered: 03/09/2017)
03/09/2017	<u>81</u>	-SEALED- PLEA SUPPLEMENT as to Maria C. Smith. (hmls, Deputy Clerk) (Entered: 03/09/2017)
03/09/2017	<u>82</u>	Sentencing Order as to Maria C. Smith. Signed by Judge George Levi Russell, III on

06/08/2017	<u>112</u>	-SEALED- MOTION to Seal by Maria C. Smith. (Attachments: # <u>1</u> Text of Proposed Order)(Van Hoven, Jonathan) (Entered: 06/08/2017)
06/08/2017	<u>113</u>	PROPOSED SEALED DOCUMENT (Attachments: # <u>1</u> Text of Proposed Order)(Van Hoven, Jonathan) (Entered: 06/08/2017)
06/08/2017	<u>114</u>	-SEALED- ORDER granting <u>112</u> Motion to Seal as to <u>113</u> Proposed Sealed Document as to Maria C. Smith (2). Signed by Magistrate Judge J. Mark Coulson on 6/8/2017. (c/m 6/9/17 jnls, Deputy Clerk) (Entered: 06/09/2017)
06/08/2017	<u>115</u>	Sealed Document (jnls, Deputy Clerk) (Entered: 06/09/2017)
06/09/2017	✓	PAPERLESS NOTICE OF HEARING by U.S. Attorney's Office as to Sinclair Ellis, Jr. PLEASE NOTE: Defendant is in custody. A writ has not been requested. A come up was requested on 6/9/2017. An interpreter will not be needed. Detention Hearing set for 7/7/2017 01:30 PM in Courtroom 7B, 101 West Lombard Street, Baltimore, Maryland 21201, before Magistrate Judge J. Mark Coulson.(Medinger, Jason) (Entered: 06/09/2017)
06/09/2017	✓	<u>116</u> SCHEDULING ORDER as to Sinclair Ellis, Jr, Marc A. Williams. Signed by Judge George Levi Russell, III on 6/9/2017. (jnls, Deputy Clerk) (Entered: 06/09/2017)
06/21/2017	<u>117</u>	Sealed Document. (hmls, Deputy Clerk) (Entered: 06/21/2017)
07/07/2017	✓	<u>119</u> Detention Hearing as to Sinclair Ellis, Jr. held on 7/7/2017 before Magistrate Judge J. Mark Coulson, hearing postponed until further notice.(FTR Gold) (stds, Deputy Clerk) (Entered: 07/07/2017)
07/20/2017		PAPERLESS NOTICE OF HEARING by U.S. Attorney's Office as to Maria C. Smith. PLEASE NOTE: THE FOLLOWING HEARING HAS BEEN CANCELLED: Sentencing scheduled for 9/15/2017 at 09:30 located at Courtroom 7A, 101 West Lombard Street, Baltimore, Maryland 21201. An interpreter was not previously requested for this hearing. (Medinger, Jason) (Entered: 07/20/2017)
07/20/2017	✓	PAPERLESS NOTICE OF HEARING by U.S. Attorney's Office as to Maria C. Smith. PLEASE NOTE: Defendant is not in custody. A writ has not been requested. A come up has not been requested. An interpreter will not be needed. Sentencing set for 1/19/2018 09:30 AM in Courtroom 7A, 101 West Lombard Street, Baltimore, Maryland 21201, before Judge George Levi Russell III.(Medinger, Jason) (Entered: 07/20/2017)
07/20/2017		PAPERLESS NOTICE OF HEARING by U.S. Attorney's Office as to Yesenia Margarita Garcia. PLEASE NOTE: THE FOLLOWING HEARING HAS BEEN CANCELLED: Sentencing scheduled for 7/21/2017 at 11:00 located at Courtroom 7A, 101 West Lombard Street, Baltimore, Maryland 21201. An interpreter was previously requested for this hearing. (Medinger, Jason) (Entered: 07/20/2017)
07/20/2017		PAPERLESS NOTICE OF HEARING by U.S. Attorney's Office as to Yesenia Margarita Garcia. PLEASE NOTE: Defendant is not in custody. A writ has not been requested. A come up has not been requested. An interpreter for Spanish was requested on 7/20/2017. Sentencing set for 8/16/2017 09:30 PM in Courtroom 7A, 101 West Lombard Street, Baltimore, Maryland 21201, before Judge George Levi Russell III.(Medinger, Jason) (Entered: 07/20/2017)
07/20/2017	✓	Amended PAPERLESS NOTICE OF HEARING by U.S. Attorney's Office as to Yesenia Margarita Garcia. PLEASE NOTE: Defendant is not in custody. A writ has not been requested. A come up has not been requested. An interpreter for Spanish was requested on 7/20/2017. Sentencing set for 8/16/2017 09:30 AM in Courtroom 7A, 101 West Lombard Street, Baltimore, Maryland 21201, before Judge George Levi Russell III. (Medinger, Jason) (Entered: 07/20/2017)

1:16-cr-00515-GLR-1 USA v. Ellis et al

Date filed: 10/25/2016

Date of last filing: 04/26/2018

Filer Sinclair Ellis Jr.

Doc. No.	Event Name	Filed
<u>59</u>	Notice of Attorney Appearance - Defendant	01/19/2017
<u>94</u>	Motion to Withdraw as Attorney	05/01/2017
<u>102</u>	Review of Release or Detention Order	05/30/2017
<u>122</u>	Motion to Withdraw as Attorney	08/22/2017
<u>127</u>	Notice of Attorney Appearance - Defendant	08/24/2017
<u>135</u>	Motion for Leave to File	01/06/2018
<u>136</u>	Motion to Adopt Motion of Other Defendant	01/06/2018
<u>137</u>	Motion for Disclosure	01/06/2018
<u>138</u>	Memorandum in Support of Motion	01/06/2018
<u>139</u>	Motion for Disclosure	01/06/2018
<u>140</u>	Motion for Disclosure	01/06/2018
<u>141</u>	Motion for Disclosure	01/06/2018
<u>142</u>	Motion to Compel	01/06/2018
<u>143</u>	Motion for Extension of Time to File	01/06/2018
<u>144</u>	Motion to Suppress	01/07/2018
<u>145</u>	Motion to Suppress	01/07/2018
<u>146</u>	Motion to Suppress	01/07/2018
<u>160</u>	Request for Hearing/Trial date	02/09/2018
<u>161</u>	Waiver of Trial by Jury	02/12/2018
<u>167</u>	Exhibit List	02/16/2018
<u>200</u>	Sentencing Memorandum	04/12/2018
<u>201</u>	Sentencing Memorandum	04/12/2018