

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
3:75-CR-26-3  
5:06-CV-24-F

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UNITED STATES OF AMERICA	)
	)
v.	)
	)
JEFFREY R. MacDONALD	)
Defendant	)

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**UNOPPOSED MOTION FOR LEAVE TO FILE  
SUBSTITUTE POST-HEARING MEMORANDUM**

NOW COMES defendant, Jeffrey R. MacDonald, by and through his undersigned counsel, with the consent of the government, and moves this Court to grant him leave to file a substitute post-hearing memorandum to replace the supplemental memorandum [DE 336] filed on 1 April 2013. In further support of this request, defendant shows the following:

1. This matter is before the Court on remand from the United States Court of Appeals for the Fourth Circuit for determination of defendant’s motion to vacate under 28 U.S.C. § 2255, a determination of the issues in the motion that must be assessed on the basis of the “evidence as a whole” under 28 U.S.C. § 2255(h)(1). *United States v. MacDonald*, 641 F.3d 596, 610-17 (4<sup>th</sup> Cir. 2011). This Court conducted a hearing from September 17 through September 25. This Court extended the time for filing defendant’s post-hearing memorandum to 1 April 2013.

2. As previously indicated to this Court, the undersigned was finalizing and scanning

the memorandum on March 29. His office was closed due to a state holiday. The undersigned had technical difficulties with office equipment and was unable to complete and scan the memorandum. The memorandum was then been filed on 1 April 2013. [DE 336]

3. In anticipation of receiving the government's supplemental memorandum, the undersigned very recently reviewed the supplemental memorandum he filed on April 1. There were a sizable number of non-substantive technical, formatting, and grammatical errors and omissions in the pleading. As best the undersigned can surmise, most of these errors and omissions likely resulted from recovering, re-formatting, and scanning materials into the document filed on April 1.

4. When opposing counsel, First Assistant United States Attorney John S. Bruce, contacted the undersigned about the government needing additional time to file its responsive supplemental memorandum, the undersigned mentioned this concern to Mr. Bruce and indicated the undersigned would like the opportunity to file a corrected supplemental memorandum. Mr. Bruce graciously consented to the undersigned having an opportunity to file a corrected supplemental memorandum.

5. This Court recently extended the time for the government to file its responsive memorandum to 1 July 2013. The undersigned respectfully requests that he be allowed to file a corrected supplemental memorandum to replace DE 336. Given the undersigned's other work, including two appellate briefs due in the next fourteen days, the undersigned asks this Court to grant him five business days from the entry of an order allowing this motion to file the substitute supplemental memorandum.

6. The undersigned does not believe this request will unduly burden this Court or the government. Should the government find its needs additional time beyond July 1 in which to file its response, defendant consents to the request.

7. Based on these considerations, defendant respectfully requests that he be granted leave to file a substitute supplemental memorandum to replace DE 336, and that he be given five days from the entry of the order in which to file this pleading. A proposed order is attached.

WHEREFORE, Jeffrey R. MacDonald respectfully requests that this Court grant him leave to file a substitute supplemental memorandum within five days of the granting of the motion.

This the 31<sup>st</sup> day of May, 2013.

**RUDOLF WIDENHOUSE & FIALKO**

/s/ M. Gordon Widenhouse, Jr.

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Attorney for Jeffrey R. MacDonald

**CERTIFICATE OF SERVICE**

I hereby certify that on 31 May 2013, I electronically filed the foregoing Unopposed Motion for One Day Extension of Time to File Defendant's Post-Hearing Memorandum with the Clerk of Court using the CM/ECF system which will send notification of such filing to counsel of record in this matter.

**RUDOLF WIDENHOUSE & FIALKO**

/s/ M. Gordon Widenhouse, Jr.\_\_\_\_\_

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\_\_\_\_\_  
UNITED STATES OF AMERICA )  
 )  
v. )  
 )  
JEFFREY R. MacDONALD, ) **ORDER**  
Defendant )  
\_\_\_\_\_ )

The matter is before the Court on defendant's Unopposed Motion for Leave to File a Substitute Post-Hearing Memorandum to replace DE 336. The government has consented to the motion. The request is reasonable and justified. Therefore, for good cause shown, the motion is ALLOWED. The defendant shall file his substitute post-hearing memorandum within five business days of the entry of this order.

This the \_\_\_ day of May, 2013.

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JAMES C. FOX  
Senior United States District Judge