

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
KENTUCKY, CENTRAL DIVISION**

United States of America v. James Allen Phelps

Phelps · No. Criminal Action No. 5:23-099-DCR; Civil Action No. 5:25-149-DCR-CJS · Decided January 15,
2026

OPINION

Phelps

PER CURIAM.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION

(at Lexington)

UNITED STATES OF AMERICA,)

) Plaintiff/Respondent,) Criminal Action No. 5: 23-099-DCR) and V.) Civil Action No. 5: 25-
149-DCR-CJS)

JAMES ALLEN PHELPS,)

) MEMORANDUM ORDER

Defendant/Movant.) *** ** This matter is pending for consideration of Defendant/Movant James Phelps’s motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 [Record No. 32] The motion was filed April 29, 2025, and included a claim that his attorney provided ineffective assistance by failing to file a notice of appeal following his sentencing hearing. While Phelps asserts that he wished to take a direct appeal to the United States Court of Appeals for the Sixth Circuit to challenge his designation as a career offender, his contends that his attorney did not object to the designation during the sentencing hearing and did not follow his instructions to file a timely notice of appeal regarding that issue. Consistent with local practice, Phelps’s motion was referred to a United States Magistrate Judge for review and issuance of a Report and Recommendation (“R&R”) pursuant to 28 U.S.C. § 636(b)(1)(B). United States Magistrate Judge Matthew A. Stinnett issued his R&R on December 23, 2025, recommending that the motion be granted regarding the claim that his counsel failed to file a timely notice of appeal.¹ [Record No. 44] And based on this determination, he recommends that the remaining grounds for relief asserted by Phelps be denied as moot. The parties were advised that they could file specific written objections to the Magistrate Judge’s recommendations and, if filed, any such objection would be subject to de novo review by the undersigned. [See Id. at p. 6.] And the parties were further cautioned that failure to make timely objections may, and ordinarily will, result in a waiver of further appeal or review by the District Judge and Sixth Circuit Court of Appeals. [Id.] However, neither party objected to the R&R. While the undersigned makes de novo

determinations of those portions of an R&R to which an objection is made pursuant to 28 U.S.C. § 636(b)(1)(C), “[i]t does not appear that Congress intended to require district court review of a magistrate’s factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings.” *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Here, no objections have been made, and the undersigned agrees with the Magistrate Judge’s recommendations. Accordingly, it is hereby DRDERED as follows:

1. The Report and Recommendation of United States Magistrate Judge Matthew A. Stinnett [Record No. 44] is ADOPTED in full and INCORPORATED here by reference.
2. The defendant/movant’s motion to vacate, correct, or set aside his sentence under 28 U.S.C. §2255 [Record No. 32] is GRANTED regarding his first claim that his trial 1 In advance of the evidentiary hearing scheduled by Magistrate Judge Stinnett, and after speaking with Phelps’s trial counsel, the United States conceded that this ground for relief had merit. Therefore, an evidentiary hearing on the issue was canceled. attorney provided ineffective assistance by failing to file a timely notice of appeal. Therefore, within fourteen (14) days, the defendant may file a Notice of Appeal seeking to challenge the sentence imposed together with his designation as a Career Offender under the United States Sentencing Guidelines.
3. Other than the first claim for relief addressed above, the remaining claims identified in the defendant/movant’s motion [Record No. 32] are DENIED as moot.
4. Pursuant to the provisions of the Criminal Justice Act, Kathryn Walton is re-appointed as counsel for the Defendant/Movant Phelps to assist him with filing a timely Notice of Appeal. This appointment remains in effect, pending intervening orders by this Court or by the United States Court of Appeals for the Sixth Circuit.
5. In addition to counsel of record, the Clerk of the Court is DIRECTED to forward a copy of this Memorandum Order and the accompanying Judgment to Defendant/Movant Phelps at his current place of incarceration. Dated: January 15, 2026. ‘ 7) i : Danny C. Reeves, District Judge WE xy United States District Court tla — Eastern District of Kentucky -3-