

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

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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June 06, 2016

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 12-14989-U
Case Style: Dan McCarthan v. FCI Estill - Warden
District Court Docket No: 5:09-cv-00110-WTH-PRL

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.

For the purpose of the upcoming en banc rehearing in the above referenced case, the court desires for counsel to focus on their briefs the following issues:

1. Did our decisions in *Bryant v. Warden, FCC Coleman- Medium*, 738 F.3d 1253 (11th Cir. 2013), *Williams v. Warden, Fed. Bureau of Prisons*, 713 F.3d 1332 (11th Cir. 2013), *Gilbert v. United States*, 640 F.3d 1293 (11th Cir. 2011) (en bane) ("*Gilbert II*"), and *Wofford v. Scott*, 177 F.3d 1236 (11th Cir. 1999), "erroneously interpret[]" 28 U.S.C. § 2255(e)? *Samak v. Warden, FCC Coleman- Medium*, 766 F.3d 1271, 1276 (11th Cir. 2014) (Pryor, J., concurring); *see id.* at 1275-95

2. What is the correct standard for determining whether Dan McCarthan may seek to modify his sentence by a writ of habeas corpus, 28 USC §§ 2241, 2255(e)?

3. Applying the correct standard, is McCarthan entitled to relief by a writ of habeas corpus?

Eleventh Circuit Rule 31-1 requires that APPELLANT'S EN BANC BRIEF BE SERVED AND FILED ON OR BEFORE JULY 18, 2016 BY 5:00 P.M. APPELLEE'S EN BANC BRIEF SHALL BE SERVED AND FILED ELECTRONICALLY ON OR BEFORE AUGUST 17, 2016. Any en banc reply brief shall be filed electronically on or before September 5, 2016 by 5:00 p.m. NO EXTENSIONS WILL BE GRANTED. 20 copies of the en banc briefs should be filed (appellants in blue covers, appellees in red covers and any reply briefs in gray covers). The parties are expected to insure that all other parties receive a copy of their briefs before the close of business on the day of filing. NO TIME FOR MAILING SHALL BE ALLOWED. The filing on an en banc amicus brief is governed by 11th Cir.R.35-8.

All counsel are requested to submit 20 copies of their original panel briefs, appendix and supplemental authorities prior to 5:00 p.m. July 18, 2016.

Oral argument will be conducted the week of October 24, 2016 in Atlanta, Georgia. Each party will be allotted 20 minutes of oral argument.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jenifer L. Tubbs

Phone #: 404-335-6166(direct) or 404-335-6131(court sessions)

BR-1CIV Civil appeal briefing ntc issued