

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

**Civil Case No.: 14-CV-60854-JIC
Case No.: 13-CR-60258-JIC**

TIFFANY SHENAE COOPER,

Defendant.

**AMENDED MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE
BY A PERSON IN FEDERAL CUSTODY PURSUANT TO 28 U.S.C. § 2255**

1. **COMES NOW** the Defendant, TIFFANY SHENAE COOPER (“Ms. Cooper”), pursuant to 28 U.S.C. § 2255, by and through the undersigned counsel, and hereby submits an amended motion to vacate, set aside, or correct a sentence by a person in federal custody.

INTRODUCTION

2. In this motion, Ms. Cooper contends that she received ineffective assistance of counsel in violation of her Sixth Amendment rights where, (i) under *Strickland*, trial counsel failed to honor Ms. Cooper’s right to participate in the decisions which were fundamental to her defense and failed to honor her right to be informed of important developments in the course of the prosecution; trial counsel failed to adequately prepare for any aspect of Ms. Cooper’s defense; and (ii) under *Cronic*, trial counsel failed to subject the Government’s case to meaningful adversarial testing.

PRELIMINARY STATEMENT

3. This motion is timely filed pursuant to 28 U.S.C. § 2255(f)(1) as Ms. Cooper's conviction and sentence became final on March 3, 2014 with the entry of this Court's judgment of sentence. (Dkt. 131).

4. In this motion, the United States of America will be referred to as the "Government." The attorney representing Ms. Cooper before the Court, Ms. Cynthia McMechan Curry, Esquire, will be referred to as "trial counsel."

5. No prior motion seeking the relief requested herein pursuant to 28 U.S.C. § 2255, other than the motion this is amending, has been made to this Court.

6. The following exhibits are attached to this motion and incorporated herein:

Exhibit A: November 25, 2013 Email Correspondence

Exhibit B: February 2, 2014 Sentencing Transcript

STATEMENT OF THE CASE AND FACTS

a) Retention of Trial Counsel through Plea Hearing

7. On October 17, 2013, Ms. Cooper was charged with Counts 1, 19, and 20-34 of the Indictment. (Dkt. 28). In response to this indictment, Ms. Cooper sought the advice and representation of trial counsel.

8. During trial counsel's representation of Ms. Cooper, she made little to no effort to develop a defense or strategy in order to protect Ms. Cooper's interests. Despite Ms. Cooper's requests and urging to be able to see, inspect, and discuss the Government's evidence against her, trial counsel refused to provide Ms. Cooper with the full discovery, and failed to advise or discuss any discovery in Ms. Cooper's case. With respect to a DVD containing important information related to the offenses charged and potential sentencing

enhancements, trial counsel advised Ms. Cooper that it had been provided, but she was unable to discuss the discovery with or show it to Ms. Cooper as per the direction of the Government. Trial counsel relied upon an email correspondence between herself and the Government in denying Ms. Cooper access or advice concerning the DVD. (*See* Exhibit A, November 25, 2013 Email Correspondence). The extent of trial counsel's representation included her advising Ms. Cooper to enter a plea without the benefit of knowing what the substance or weight of the Government's case was against her.

9. On December 11, 2013, Ms. Cooper pled guilty to Count 19, possession of 15 or more unauthorized access devices, in violation of 18 U.S.C. § 1029(a)(3); and Count 20, aggravated identity theft, in violation of 18 U.S.C. § 1028(A). (Dkt. 84). This Court imposed sentence on February 28, 2014. (Dkt. 83).

b) Pre-Sentencing

10. On December 16, 2013, Ms. Cooper's presentence investigation was assigned to Probation Officer Shannon Culberson. (Dkt. 90). According to the Presentence Investigation Report ("PSI"), on October 25, 2013, Officer Donald Lesmeister conducted a home assessment of Ms. Cooper's residence. However, following this Court's ordering and assignment of a PSI, neither Officer Culberson nor any other probation officer interviewed Ms. Cooper in relation to the presentence investigation. Trial counsel never met with Ms. Cooper concerning what a PSI interview would consist of or provided any assistance in preparing for such an important aspect of sentencing. Further, trial counsel never raised any concerns or objections when a PSI interview was not conducted.

11. The PSI was provided to the Government and trial counsel on or about January 24, 2014. (Dkt. 110). The Government filed its objections to the PSI on February

24, 2014 and its motion for downward departure and amended motion for downward departure on February 26, 2014. (Dkt. 119, 122-24). Additionally, the Government filed a supplement to its objections on February 26, 2014, with Ms. Cooper's response to the Government's objections being filed on February 27, 2014. (Dkt. 126-27).

12. Trial counsel never filed objections to the PSI, only a response to the Government's objections and supplemental objections. In addition, trial counsel never discussed with Ms. Cooper the opportunity to object to the PSI or what that procedure would entail. Leading up to sentencing, trial counsel only advised Ms. Cooper to show remorse in order to protect against a period of incarceration in excess of what the PSI suggested.

13. Further, trial counsel never filed a sentencing memorandum on behalf of Ms. Cooper or contacted the friends and family of Ms. Cooper for character letters, etc. Regardless of trial counsel's failure to prepare an argument for sentencing, Ms. Cooper obtained her own character letters, and when she sought direction from her attorney, trial counsel directed her to contact probation in order to learn the proper procedure for submitting such letters.

c) Sentencing

14. Sentencing was held on February 28, 2014. (Dkt. 129). This Court began by acknowledging that the only objection filed to the PSI was from the Government. (*See* Exhibit B, February 28, 2014 Sentencing Transcript at 3). The Government explained that the objection was filed in order to rectify its failure to notify the probation department of the "particular vulnerabilities of the victim in preparing the documents for Ms. Cooper's

5K1 and [it] noted [it] had not informed probation of that.” (See Exhibit B, February 28, 2014 Sentencing Transcript at 3).

15. The Government explained its request for an application of two two-level increases because of the vulnerability of the victims. (See Exhibit B, February 28, 2014 Sentencing Transcript at 3-4). When cued by this Court that it was ready for trial counsel’s response to the Government’s request, trial counsel relied on Apex Laboratory website printouts, that Ms. Cooper provided her, to argue on behalf of Ms. Cooper. (See Exhibit B, February 28, 2014 Sentencing Transcript at 4). Trial counsel did not orally present any argument that was substantive in nature or based off of her independent preparation or research prior to the sentencing of Ms. Cooper. (See Exhibit B, February 28, 2014 Sentencing Transcript at 4).

16. After this Court awarded one two-level enhancement based upon the first prong of a vulnerable victim analysis, the Government was asked to provide its position regarding its motion requesting a downward departure. (See Exhibit B, February 28, 2014 Sentencing Transcript at 8). The Government gave a thorough explanation of Ms. Cooper’s involvement and substantial assistance with the case; beginning with when she was first contacted and concluding with her continued assistance, the extent of which the Government stated may possibly lead to the filing of a Rule 35 motion. (See Exhibit B, February 28, 2014 Sentencing Transcript at 8-10).

17. Instead of building upon the Government’s motion for downward departure, trial counsel fleetingly addressed Ms. Cooper’s opportunity to receive a reduced sentence.

Ms. Curry: Yes, judge. Ms. Cooper - - I know the Guidelines are extremely high, but as the Government indicated, she, from the beginning, prior to getting counsel, was extremely cooperative with Agent Cipprioni.

(See Exhibit B, February 28, 2014 Sentencing Transcript at 10).

Ms. Curry: She was nothing but cooperative. We would ask for as minimum incarceration as possible.

(See Exhibit B, February 28, 2014 Sentencing Transcript at 11). The two excerpts *supra* are the extent of trial counsel's argument in favor of granting the Government's motion for downward departure.

18. The remainder of trial counsel's argument at sentencing consisted of an attempt to explain the offense and alleged victims.

Ms. Curry: Her actions in obtaining the information, she did hand it over to Mr. Moye, but she was unable herself to file false tax returns, get into people [sic] bank accounts. That is not her activity. She was unfortunate enough to have access and people knew she had access to information they could use to steal identities, file false tax returns and obtain significant amounts of money.

Ms. Cooper, in fact, probably gained [sic] about three and \$5,000. She never herself did any of the activity that took money by [sic] people, never filed false tax returns. Her guidelines are so high because of the inferred value or loss because of the number of names, when she realized she in one swipe downloaded over 1300 identities, and yes, that is a terrible thing, and it was on her computer. It should not have been there, but she did not act on any one of those names, not any one of those people was an actual victim, there was potential of their being a victim.

(See Exhibit B, February 28, 2014 Sentencing Transcript at 10-11). Trial counsel concluded her argument on behalf of Ms. Cooper by attempting to explain the reasoning behind the crime.

Ms. Curry: She is a single mother. Her actions were caused more by financial distress when she lost her job. She has two young children. She was trying to stay afloat, and she has been extremely remorseful since the service of the warrant, not even the indictment.

(See Exhibit B, February 28, 2014 Sentencing Transcript at 11). The entirety of trial counsel's argument at sentencing can be found *supra*.

19. On March 3, 2014, this Court entered its judgment against Ms. Cooper; on Count 19, imprisonment of 33 months with 3 years of supervised release and; on Count 20, imprisonment of 24 months, to run consecutive to the imprisonment ordered in Count 19, and 1 year of supervised release, to run concurrently with the supervised release ordered in Count 19. (Dkt. 131).

20. On March 10, 2014, after trial counsel ignored Ms. Cooper's request for her to raise the issue during sentencing and subsequently refused to file the same, Ms. Cooper filed her own letter requesting her incarceration be served at a particular facility in order for her family to have the opportunity to visit her. (Dkt. 139). The same day, Ms. Cooper's letter was taken as a motion for judicial recommendation to the Bureau of Prisons to be designated to a facility in the Middle District of Florida, and was granted. (Dkt. 143).

21. After trial counsel adopted an adversarial tone and demeanor with Ms. Cooper while refusing to discuss potential appellate relief, appellate procedure, and Ms. Cooper's appellate rights, Ms. Cooper sought different representation. An order appointing

counsel for purposes of appeal was entered on March 14, 2014. (Dkt. 149). A notice of appeal was filed on March 18, 2014, but an initial brief has not been filed as of this writing. (Dkt. 151).

22. A pro se motion to vacate pursuant to 28 U.S.C. § 2255 was filed by Ms. Cooper on April 10, 2014. (Dkt. 185). This amended motion follows.

ARGUMENT

GROUND ONE

TRIAL COUNSEL WAS INEFFECTIVE AND VIOLATED MS. COOPER'S SIXTH AMENDMENT RIGHTS WHERE TRIAL COUNSEL FAILED TO FULFILL THE REQUIREMENTS OF COUNSEL AS DELINEATED BY *STRICKLAND*, *CRONIC*, AND THEIR PROGENY OF CASES

- A. Under *Strickland*, trial counsel's actions constituted ineffective assistance and Ms. Cooper's Sixth Amendment rights were violated where trial counsel failed to honor Ms. Cooper's right to participate in the decisions which were fundamental to her defense and failed to honor her right to be informed of important developments in the course of the prosecution; and trial counsel failed to adequately prepare for any aspect of Ms. Cooper's defense**

23. The United States Constitution guarantees each defendant in a criminal prosecution the right to the effective assistance of counsel. The fundamental right to the effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a due process of law in an adversarial system of justice. *United States v. Cronic*, 466 U.S. 648, 658 (1984).

24. The United States Supreme Court has held that "[t]he benchmark of judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial [court] cannot be relied on having

produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984). Under the *Strickland* standard, ineffective assistance of counsel is made out when the defendant shows that (i) trial counsel’s performance was deficient, i.e., that he or she made errors so egregious that they failed to function as the “counsel guaranteed the defendant by the Sixth Amendment;” and (ii) the deficient performance prejudiced the defendant enough to deprive him of the due process of law. *Id.* at 687.

25. A court deciding a claim of ineffective assistance of counsel must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct. “The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance. In making that determination, the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case.” *Strickland, supra* at 690.

- i. *Trial counsel was ineffective and violated Ms. Cooper’s Sixth Amendment rights where trial counsel failed to honor Ms. Cooper’s right to participate in the decisions which were fundamental to her defense and failed to honor her right to be informed of important developments in the course of the prosecution*

26. When trial counsel failed to provide certain discovery to, or review the discovery as a whole with Ms. Cooper, trial counsel violated Ms. Cooper’s Sixth Amendment rights. “It is undisputed that a defendant has a constitutional right to participate in the making of certain decisions which are fundamental to his defense.” *Johnson v. Duckworth*, 793 F.2d 898, 900 (7th Cir. 1986) (citing *Jones v. Barnes*, 463 U.S. 745, 751 (1983)). In order to protect this fundamental right and effectively represent one’s client, counsel has an affirmative duty to “consult with the defendant on important

decisions and to keep the defendant informed of important developments in the course of the prosecution.” *Strickland v. Washington*, at 689.

27. Here, trial counsel never provided Ms. Cooper with the complete discovery received from the Government. Trial counsel had the ability to remedy this error by advising or explaining what the evidence against her client was, but when requested and urged by Ms. Cooper to discuss the discovery, she continually and incorrectly relied upon an email sent from the Government in explaining to Ms. Cooper that she was not permitted to discuss the discovery as it pertained to a specific DVD and questionably refused to discuss the remaining discovery in Ms. Cooper’s case.

28. The email in question referred to a DVD that contained personal identity information. (*See Exhibit A, November 25, 2013 Email Correspondence*). The Government requested that trial counsel refrain from providing copies of the DVD or its imprinted information, but expressly granted permission for trial counsel to discuss the material with Ms. Cooper: “You are of course free to discuss the material with your clients and show them the information.” (*See Exhibit A, November 25, 2013 Email Correspondence*).

29. Additionally, trial counsel never reviewed the remainder of the discovery. Ms. Cooper was forced to obtain the remaining discovery from trial counsel after trial counsel had not reviewed or investigated it in the two weeks it was available. Ms. Cooper then read that discovery on her own, only to have trial counsel continue to deny her requests to be advised as to its meaning and relevance to the case.

30. By refusing to provide or discuss the discovery in this case, trial counsel failed to keep the defendant informed of important developments in the course of the

prosecution. This failure kept Ms. Cooper from being able to participate in making fundamental decisions in her case. Specifically, Ms. Cooper was unable to enter a knowing and voluntary plea, and Ms. Cooper was unable to assist in the decisions related to preparation for sentencing.

31. It is well documented that when determining the validity of a guilty plea, the plea must represent a knowing and voluntary choice on the part of the defendant. *Hill v. Lockhart*, 474 U.S. 52, 56 (1985) (citing *North Carolina v. Alford*, 400 U.S. 25, 31 (1970)). Further, for a plea to be knowing and voluntary, a defendant must “have sufficient information about the facts of his case [in order] to make an informed decision about the case against him.” *Chamniss v. Tucker*, 2012 WL 6840497 *6 (N.D. Fla. 2012) *report and recommendation adopted*, 2013 WL 140393 (N.D. Fla. 2013) (citing *Gaddy v. Linahan*, 780 F.2d 935, 943 (11th Cir. 1986) (holding that one of the factors to be considered in determining the voluntary nature of a plea is the information available to a defendant to help him make his decision)).

32. Here, Ms. Cooper was unable to make a knowing and voluntary choice in deciding to plea; she had no understanding of the strength or weaknesses of the Government’s case against her. This lack of knowledge and intelligence concerning the Government’s case was the direct result of trial counsel failing to discuss the available discovery, and this failure resulted in Ms. Cooper’s Sixth Amendment rights being violated.

33. Trial counsel’s failure to discuss the discovery in this case also led to Ms. Cooper being unable to participate in the decision making process surrounding the preparation for sentencing. The Government objected to the PSI in order to move for two

two-level enhancements concerning the vulnerability of the victim(s). (See Exhibit B, February 28, 2014 Sentencing Transcript at 3-4). If trial counsel had appropriately advised Ms. Cooper concerning the discovery in this case and Ms. Cooper would have been consulted regarding the discovery, trial counsel would have been able to prepare an argument to the Government's objection that would have incorporated Ms. Cooper's specific knowledge and understanding concerning the company and alleged victim(s) involved, and this could have resulted in no additional enhancement and an increase in value of the Government's 5K1.1 motion. As it stands, the 5K1.1 motion served basically to minimize the negative impact from the application of a two-level increase. Trial counsel's failure to inform Ms. Cooper and include her on fundamental decisions of her defense directly resulted in Ms. Cooper's Sixth Amendment rights being violated.

ii. *Trial counsel was ineffective and violated Ms. Cooper's Sixth Amendment rights where trial counsel failed to adequately prepare for any aspect of Ms. Cooper's defense*

34. One of the most critical duties of counsel is to properly prepare themselves for an impending adversarial proceeding. *Lawhorn v. Allen*, 519 F.3d 1272, 1295 (11th Cir. 2008) (citing *Magill v. Dugger*, 824 F.2d 879, 886 (11th Cir. 1987)). This is because the duty to investigate and prepare is at "the heart of effective representation." *Goodwin v. Balkcom*, 684 F.2d 794, 805 (11th Cir. 1982). These tenants are equally, if not more so, applicable to sentencing, because the "major requirement of the penalty phase of a trial is that the sentence be individualized by focusing on the particularized characteristics of the individual." *Armstrong v. Dugger*, 833 F.2d 1430, 1433 (11th Cir. 1987) (citing *Eddings v. Oklahoma*, 455 U.S. 104, 112 (1982); *Gregg v. Georgia*, 428 U.S. 153, 199 (1976)).

35. Here, trial counsel failed to adequately prepare for any aspect of the representation of Ms. Cooper. This failure began with no independent investigation or preparation being conducted prior to the plea. Trial counsel placed Ms. Cooper on the fast-track to plea from the very outset, forgoing the development, investigation, or preparation of any defense. Further, as highlighted *supra*, trial counsel even denied Ms. Cooper certain discovery and discussions related to discovery, while failing to even review the discovery on her own. However, this failure is particularly evident prior to and during sentencing.

36. Trial counsel failed to prepare for sentencing. Trial counsel provided no advice concerning a PSI interview; did not make the Court aware of the fact that Probation did not interview Ms. Cooper, and therefore the PSI was incomplete; performed no investigation into mitigating evidence or contact any relatives or friends that could assist in this mitigation development; directed Ms. Cooper to the probation office to inquire of the proper procedures for filing character letters after Ms. Cooper obtained them on her own, without trial counsel's assistance; failed to file any objections to the PSI. Counsel further failed to file a sentencing memorandum on behalf of Ms. Cooper; failed to adequately advocate or argue in favor of a downward departure in light of the Government's 5K1.1 motion; failed to adequately advocate or argue in opposition to the imposition of a two-level enhancement; failed to provide acceptable mitigating evidence; failed to present character evidence or witnesses; and failed to move for a particular incarceration facility at the request of Ms. Cooper, forcing her to file her own motion requesting specific placement.

37. These failures resulted in Ms. Cooper's inability to receive effective representation. Not only did trial counsel not advocate on behalf of Ms. Cooper, Ms.

Cooper was forced to file documents in her own behalf because of either trial counsel's refusal to honor a legitimate goal of the client.

38. If trial counsel would have provided adequate representation through the proper preparation and investigation required of counsel, trial counsel would have been able to effectively argue against a sentencing enhancement and in favor of a significant downward departure, resulting in a reduced sentence in light of Ms. Cooper not having a prior criminal record, her familial situation and background, and the Government's 5K1.1 motions and concession that a Rule 35 motion may be forthcoming.

B. Under *Cronic*, trial counsel was ineffective and violated Ms. Cooper's Sixth Amendment rights where trial counsel entirely failed to subject the Government's case to meaningful adversarial testing

38. In *United States v. Cronic*, *Strickland's* companion case, the United States Supreme Court provided a separate framework or standard for the analysis of claims alleging ineffective assistance of counsel: when "counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable." *United States v. Cronic*, at 659. In *Cronic*, the United States Supreme Court opined that

[t]he right to the effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing. When a true adversarial criminal trial has been conducted – the kind of testing envisioned by the Sixth Amendment has occurred. But if the process loses its character as a confrontation between adversaries, the constitutional guarantee is violated. As Judge Wyzanski has written: "While a criminal trial is not a game in which the participants are expected to enter the ring with a near match in skills, neither is it a sacrifice of unarmed prisoners to gladiators."

United States v. Cronic, at 657 (citing *United States ex rel. Williams v. Twomey*, 510 F.2d 634, 640 (CA7), *cert. denied sub nom. Sielaff v. Williams*, 423 U.S. 876, 96 S.Ct. 148, 46 L.Ed.2d 109 (1975)).

39. Whether counsel is not present or has failed to provide adversarial testing of the government's case through non-action, "*Cronic's* presumption-of-prejudice standard [is] reserved for situations in which counsel has entirely failed to function as the client's advocate." *Darden v. United States*, 708 F.3d 1225, 1229 (11th Cir. 2013) *cert. denied*, 133 S. Ct. 2871 (2013).

40. In *Golden v. Newsome*, 755 F.2d 1478, 1483 (11th Cir. 1985), the Eleventh Circuit Court of Appeals relied on *Cronic* when it reversed and remanded the defendant's sentence because of trial counsel's failure to attend sentencing, even though the defendant was absent from sentencing because of his escape from custody and he received a sentence well within the statutory limits for the crime he was convicted. *Golden v. Newsome*, at 1483.

41. The Eleventh Circuit recognized that an attorney has a duty to affirmatively represent and advocate on behalf of his client during all critical stages, sentencing included. *Golden v. Newsome*, at 1483. This duty extends to a client who is absent from sentencing, and most assuredly extends to a client who is present, available, and desperately willing to assist her counsel in defense and sentencing matters. Further, in holding that an attorney is required to be present at sentencing, it stated that presence alone is insufficient, listing the important actions counsel has a duty to prepare for and participate in during a client's sentencing.

Then is the opportunity afforded for presentation to the Court of facts in extenuation of the offense, or in explanation of the defendant's conduct; to correct any errors or mistakes in reports of the defendant's past record; and, in short, to appeal to the equity of the Court in its administration and enforcement of penal laws. Any Judge with trial court experience must acknowledge that such disclosures frequently result in mitigation, or even suspension, of penalty. That it is also true that such discussion sometimes has a contrary result does not detract from the fact that the nature and possibilities of this important stage of the proceedings are such as to make the absence of counsel at this time presumably prejudicial.

Golden v. Newsome, at 1483-84, (citing *Martin v. United States*, 182 F.2d 225 (5th Cir. 1950), *cert. denied* 340 U.S. 892 (1950)).

42. Here, counsel's failure to provide Ms. Cooper with the advice and representation had the same practical effect as in *Golden*. Both resulted in the failing of counsel to adequately subject the Government's case to adversarial testing, and both failed to follow the important tenants of representation as highlighted by the Eleventh Circuit in *Golden v. Newsome, supra*.

43. As evidenced *supra*, trial counsel wholly and entirely failed to subject the Government's case to the meaningful adversarial testing as envisioned and mandated by the United States Supreme Court. Trial counsel failed to represent Ms. Cooper's interests by affirmatively refusing to discuss and provide the discovery in her case. Further, trial counsel pushed Ms. Cooper towards a plea although a detailed investigation of the discovery or the seeking of Ms. Cooper's assistance in pursuit of the ability to provide adequate advice and representation never occurred.

44. Trial counsel misinterpreted the Government's directions concerning discovery and denied Ms. Cooper a knowing and voluntary plea. Trial counsel failed to

investigate or prepare for sentencing, forcing Ms. Cooper to obtain and file her own character reference letters, and relied upon website printouts provided by Ms. Cooper as her sole investigatory techniques leading up to sentencing.

45. At sentencing, counsel provided little more than an approval of what the Government had presented, relying on little more than the Government's 5K motion to make her argument. A review of the sentencing transcript bears this out. This effectively ceded advocacy on behalf of Ms. Cooper to the Government, an adverse party in this case.

46. Although trial counsel may not have been absent from sentencing in a physical manner, as was the counsel in *Golden v. Newsome*, she was absent for purposes of analysis under *Cronic*, and this absence resulted in her utter failure to subject the Government's case to the adversarial testing as required by the United States Supreme Court. This failure resulted in a per se denial of Ms. Cooper's right to the effective assistance of counsel pursuant to the Sixth Amendment, *Cronic*, and its progeny of cases.

47. As a consequence, this Court should grant the instant petition.

CONCLUSION AND RELIEF REQUESTED

WHEREFORE, the Defendant, TIFFANY SHENAE COOPER, respectfully requests that this Court enter an order:

- A. Vacating the sentence imposed; or
- B. Ordering an evidentiary hearing to determine the merits of this amended motion pursuant to 28 U.S.C. § 2255; and
- C. Awarding any such other and further relief as this Court deems just and proper.

Dated: June 16, 2014

Respectfully submitted,

/s/ Patrick Michael Megaro
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been
furnished by USPS mail on June 16, 2014

Cynthia R. Wood
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/s/ Patrick Michael Megaro
Patrick Michael Megaro, Esquire

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Civil Case No.: 14-CV-60854-JIC

Case No.: 13-CR-60258-JIC

TIFFANY SHENAE COOPER,

Defendant.

VERIFICATION

TIFFANY SHENAE COOPER, being duly sworn, deposes and states as follows under penalty of perjury:

1. I am the Defendant in the above-styled action, am fully familiar with the facts and circumstances of this case and this motion.
2. I read, write, and understand English. I have read the within amended petition pursuant to 28 U.S.C. § 2255 and I understand its contents. This petition is filed in good faith, and is filed within a timely manner, and upon information and belief, has potential merit. The facts contained in this petition are true and correct to my knowledge.
3. No previous motion for the relief requested in the original petition and the amended petition has been made in this Court or any other court.


TIFFANY SHENAE COOPER

Subscribed and sworn to before me this

11th day of June, 2014


Notary Public

