BP-S288.052 **INCIDENT REPORT** CDFRM-
MAY 1994
U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

1. Name Of Institution: **U.S.P. LEWISBURG**

Part I - Incident Report

2. Name Of Inmate	3. Register Number	4. Date Of Incident	5. Time
Sweeney, James	58827-066	07/22/14	10:00 am
6. Place Of Incident: B-block cell 114	7. Assignment Unassg	8. Unit Adami	

9. Incident: 203 Threatening another with bodily harm.

11. Description Of Incident (Date: 07/08/14 Time: 11:00 am Staff became aware of incident).

On July 22, 2014 an SIS investigation concluded the following. On July 8, 2014, the search team conducted a cell search of inmate James Sweeney, #58827-066, the National Leader for Dead Man Incorporated (DMI). Staff found a 16 page document outlining gang activity and placing a hit on Perry Roark, #53975-037, one of the founding members of DMI. Inmate Sweeney was interviewed in regards to the item found in his cell and acknowledged that the document was his but would not elaborate on the details of the document. It is evident Sweeney has authored the document in which he outlined a "hit on site" against Perry Roark # 53975-037 and any other individuals that "say they are riding with Rock (Perry Roark).

12. Signature Of Reporting Employee	Date And Time 07/22/14 10:15 am	13. Name And Title (Printed) SIS Tech A. Hartman	
14. Incident Report Delivered To Above Inmate By		15. Date Incident Report Delivered 7-22-14	16.time Incident Report Delivered 1130hrs

Part II - Committee Action

17. Comments Of Inmate To Committee Regarding Above Incident

18. A. It Is The Finding Of The Committee That You:	B. The Committee Is Referring The Charge(s) To The DHO For Further Hearing.
_____ Committed The Following Prohibited Act.	C. The Committee Advised The Inmate Of Its Finding And Of The Right To File An Appeal Within 15 Calendar Days.
_____ Did Not Commit A Prohibited Act.	

19. Committee Decision Is Based On The Following Information

20. Committee action and/or recommendation if referred to DHO (Contingent upon DHO finding inmate committed prohibited act)

21. Date And Time Of Action _____ (The UDC Chairman's Signature Next To His Name Certifies Who Sat On The UDC And That The Completed Report Accurately Reflects The UDC Proceedings.)

Chairman (Typed Name/signature) Member (Typed Name) Member (Typed Name)

Record Copy - Central File Record; Copy - DHO; Copy - Inmate After UDC Action; Copy - Inmate Within 24 Hours Of Part 1 Preparation
(This Form May Be Replicated Via WP)

Replaces BP-288(52) Of Jan 88

BP-A0304
AUG 11

DISCIPLINE HEARING OFFICER REPORT CDFRM

U.S. DEPARTMENT OF JUSTICE — FEDERAL BUREAU PRISONS

Institution: USP, Lewisburg	Incident Report Number: 2608026	
NAME OF INMATE: SWEENEY, James	REG.NO.: 58827-066	UNIT: B-Block
Date of Incident Report: 07-22-2014	Offense Code: 203	
Date of Incident: 07-08-2014		
Summary of Charges: Threatening Another with Bodily Harm		

I. NOTICE OF CHARGE(S)

A. Advanced written notice of charge (copy of Incident Report) was given to inmate on (date) **07-22-2014** at (time) **11:30 a.m.** (by staff member) **G. Vargeson**.

B. The DHO Hearing was held on (date) **08-06-2014** at (time) **8:30 a.m.**.

C. The inmate was advised of the rights before the DHO by (staff member): **A. Cotterall** on (date) **07-24-2014** and copy of the advisement of rights form is attached.

II. STAFF REPRESENTATIVE

A. Inmate waived right to staff representative. Yes **XX** No____.

B. Inmate requested staff representative and **N/A** appeared.

C. Requested staff representative declined or could not appear but inmate was advised of option to postpone hearing to obtain another staff representative with the result that: **N/A**.

D. Staff representative **N/A** was appointed.

E. Staff representative statement: **N/A**.

III. PRESENTATION OF EVIDENCE

A. Inmate ____(admits) **XX** (denies) the charge(s).

B. Summary of inmate statement:

Inmate Sweeney acknowledged he understood his rights before the DHO and was ready to proceed with the hearing. Inmate Sweeney presented a handwritten document for the DHO to consider in his defense. This handwritten statement is approximately three full pages in length, is titled "Written Defense for Inmate James Sweeney, 58827-066, in Relation to Incident Report written on 7-22-2014, Code Violation 203", is undated, and bears inmate Sweeney's signature and Federal Bureau of Prisons register number. This handwritten statement is summarized as follows. Sweeney states he wishes to have the following documentary evidence reviewed by the DHO, which Sweeney states can be found in his "base file" and/or at baltimoresun.com: (1) "Gangland" documentary on DMI (Dead Man Incorporated), which Sweeney alleges will substantiate local, state, and federal law enforcement and corrections officials are well aware of the public animosity between inmates Sweeney and Roark (Perry Roark, #53975-037); (2) Baltimore Sun news articles that reports inmate Sweeney has denounced inmate Roark as a member of DMI "for being a snitch" - Sweeney further alleges this article was also used as documentation to substantiate his placement in the SMU (Special Management Unit); (3) inmate Sweeney's written statement to the court for his criminal sentence in the DMI RICO case which "documents the leadership qualities of DMI/POA (Power Over All)"; (4) Dead Man Incorporated Guidebook (parts one and two) which Sweeney states includes the organizational structure and documents mandatory workouts, physical strength conditioning, weapons training, and other criminal philosophy, as well as functions for each position in the organizational ranking system - Sweeney further alleges this was also used as documentation to substantiate his placement in the SMU (Special Management Unit); and "all other documentary evidence in inmate Sweeney's "base file" "that documents everything within the 16 page document found in Sweeney's cell."

Sweeney continues on page two of the handwritten document, stating that he wishes to request "Lieutenant Robert Nylen, SIS, USP Beaumont" be called as a witness in this case to "verify that all the information within the 16 pages found in Sweeney's cell has been documented by himself and other institutional investigators at USP Beaumont. Sweeney further states Mr. Nylen can also verify "that Sweeney would have no need to rewrite all this because it is well known by DMI/POA members already". Sweeney alleges that he has "already been sanctioned institutional and criminally" for the information contained within the 16 pages found in his cell. Sweeney reiterates the information within the 16 page document was used to substantiate his placement in the SMU Program and further contends he has received a life

Name of Inmate:	Reg. No.:	Hearing Date:
SWEENEY, James	58827-066	08-06-2014

sentence for the activities documented within the 16 pages. Sweeney contends he did not commit any new code violations, repeat any code violations, or continue gang activities. Sweeney further contends the document found in his cell is "old notes" he used to write all the aforementioned "official documents already on record" mentioned in this handwritten statement, and to show inmate Roark is no longer a member of DMI because of his past homosexual acts and supplying information to the Maryland State prison administrators.

Sweeney continues on page three of this handwritten document reiterating his contention that Mr. Nylen, SIS USP Beaumont can "verify the 16 pages of notes were documented by him and other institutional investigators at USP Beaumont, to include the publicly known animosity between inmates Sweeney and Roark. Sweeney reiterates he did not commit any new prohibited act, nor repeat any prohibited act. Sweeney alleges the 16 page document found in his cell "is old" and "are clearly notes due to the marks within it, and not being dated or signed". Sweeney contends there is no need for him to rewrite such a document when "all the official documents are already written and documented by the Bureau of Prisons, state corrections, and local, state, and federal law enforcement." Sweeney further contends there is no need for him to reiterate the animosity between him and Roark, nor does he have to repeat Roark's status, as the "Gangland" documentary made it public, as did the news articles written by the Baltimore Sun.

In addition to his handwritten statement, inmate Sweeney presented the following verbal testimony during the hearing. Inmate Sweeney testified that he is not disputing the accuracy of Section 11 of the incident report in this case. Upon being presented with a copy of the 16 page document which is the subject of Section 11 of the incident report, attached to the incident report as evidence in this case, Sweeney testified he did, in fact, author this document. Inmate Sweeney testified he is denying, however, committing any prohibited act in this case. Sweeney presented verbal testimony, reiterating his contentions in his handwritten statement, namely, that the 16 page document discovered in his cell in its entirety is "old notes" and that the information contained within them is essentially "common knowledge" among both law enforcement and DMI members, which has received national media attention. Inmate Sweeney made no complaints of procedural errors during the hearing.

C. Witnesses:

1. The inmate requested witnesses. Yes **XX** No_____.

2. The following persons were called as witness at this hearing and appeared: **N/A**.

3. A summary of the testimony of each witness is attached **N/A**.

4. The following persons requested were not called for the reason(s) given:

At the time he appeared before the UDC, inmate Sweeney requested R. Nylen, "SIS Lieutenant" USP Beaumont as a witness in this case to present testimony to the effect of "this information has already been documented and Sweeney was previously given an incident report for these materials at a previous placement (USP Beaumont)". Mr. Nylen was not called to present in-person testimony during the hearing, as he is currently assigned to USP Beaumont, while the hearing in this case was conducted as a result of an incident occurring at USP Lewisburg. A written statement was, however, obtained from Mr. Nylen which was disclosed to inmate Sweeney during the hearing and considered as evidence in this case. Mr. Nylen stated he cannot verify that Sweeney authored the document, which is the subject of Section 11 of the incident report this case, while he was confined at USP Beaumont.

5. Unavailable witnesses were requested to submit written statements and those statements received were considered **XX - YES**.

D. Documentary Evidence: In addition to the Incident Report and Investigation, the DHO considered the following documents:

U.S. Department of Justice Federal Bureau of Prisons Inmate Investigative Report, Case Number LEW 14-0054,dated 07-11-2014; Photocopies of the handwritten document, authored by inmate Sweeney, which is the subject of Section 11 of the incident report in this case; Witness Statement of Nylen; Handwritten statement, authored by inmate Sweeney, presented in his defense

E. Confidential information was used by DHO in support of his findings, but was not revealed to the inmate. The confidential information was documented in a separate report. The confidential information has been (confidential informants have been) determined to be reliable because: **N/A**.

DISCIPLINE HEARING OFFICER REPORT CDFRM

U.S. DEPARTMENT OF JUSTICE — FEDERAL BUREAU PRISONS

Name of Inmate:	Reg. No.:	Hearing Date:
SWEENEY, James	58827-066	08-06-2014

IV. FINDINGS OF THE DHO

XX A. The act was committed as charged.

____ B. The following act was committed: _____.

____ C. No prohibited act was committed:

____ D. Expunge according to Inmate Discipline PS.

V. SPECIFIC EVIDENCE RELIED ON TO SUPPORT FINDINGS (Physical evidence, observations, written documents, etc.):

The DHO finds that inmate Sweeney committed the prohibited act of Threatening Bodily Harm, Code 203. This finding is based on the eyewitness written account of the reporting officer, which indicates on 07-22-2014, an SIS Investigation concluded the following. On 07-08-2014 at approximately 11:00 a.m., the search team conducted a cell search of inmate SWEENEY, James, #58827-066, the National Leader for Dead Man Incorporated (DMI). Staff found a 16-page document outlining gang activity and placing a hit on ROARK, Perry #53975-037, one of the founding members of DMI. Inmate Sweeney was interviewed in regards to the item found in his cell and acknowledged that the document was his but would not elaborate on the details of the document. The reporting officer concluded inmate Sweeney authored the document in which he outlined a "hit on site" against inmate Roark and any other individuals that "say they are riding with Rock (Perry Roark)".

This finding is further based upon the U.S. Department of Justice Federal Bureau of Prisons Inmate Investigative Report, Case Number LEW 14-0054, dated 07-11-2014, which documents an interview between inmate Sweeney and the reporting officer conducted on 7-22-2014, at 9:00 AM. The reporting officer indicates that Sweeney was interviewed in relation to the 16 page letter found in his cell, which is the subject of Section 11 of the incident report in this case. Sweeney was asked if he authored the letter. Sweeney replied "you know that's my handwriting". Sweeney was then asked if any word has gotten out about the hit on site against inmate Roark. Sweeney replied "no disrespect but you know I can't tell you anything else".

This finding is further based on excerpts from the 16 page document, authored by inmate Sweeney, which is the subject of Section 11 of the incident report in this case. Each of the excerpts used to support the findings in this case were discussed with inmate Sweeney during the hearing, and the rationale for using each of these excerpts were explained to Sweeney during the hearing. The document begins *"D-Luv: My salutes of true L.L.R.H. (love, loyalty, respect, honor) holding the triangle high above my head with strength and honor! Communications are an important aspect of the organization. Information about what is going on, who is who, and so forth must be circulated; communication is important for the security and success of the organization. Communication among those holding positions is mandatory - inside prison and within the streets."* The DHO has concluded this is a salutation, ordinarily associated with the opening of a written communication, or letter, intended to be circulated and read by others. The letter continues *"even today as I sit here writing this my communications are highly monitored, this is why it's important my communications with position holders goes unnoticed"*. The DHO has determined this statement is further evidence of the document is, in fact, a written communication intended to be viewed by others, as opposed to "old notes". The document continues on the second page with *"Rock (moniker for inmate Roark, #53975-037) started off by saying I betrayed you by becoming a member of the Aryan brotherhood, he lied… anyone that claims I'm no longer "D" shall be dealt with for attempting to mislead you - sanction them with bloodshed!"* and ***"Rock is no longer "D", he hasn't been for a while and "anyone" that says they are riding with Rock is H.O.S. (hit on sight), no exceptions!"*** On page four of the document, the threat against Roark is reiterated ***"Rock is not only a rat, he's a homosexual, make sure you uphold and carry out that sanction, as I will! And anyone claiming to be riding with this homosexual rat is to be dealt with in the same way, they are H.O.S. (hit on sight), no exceptions!"*** On page seven of the handwritten document Sweeney states *"there will be clowns, cowards, punks, and pretenders that will claim I am on a power trip flexing my muscle. That's not what this is about, however, I will reach out and touch someone, or a few, when and if necessary. Idiots and fools have tested my hand before, they're lying in a fools place. The objective is to impose order within the organization as a whole. This will be reestablished through change and effective leadership."*

On page 10 of his handwritten document are further statements which lend great credibility to the DHO's conclusion this is in fact a letter intended to be circulated and read by DMI members, as opposed to "old notes" as alleged by inmate Sweeney. Sweeney writes *"with this directive will be 101 pages, read them, study them, copy and pass them on, most important, apply them! The enclosed structure is the official organization structure nationwide, it will be reviewed soon. Right now I am passing down the directive that the elders have the state(s) (only until word is received on who*

Name of Inmate:	Reg. No.:	Hearing Date:
SWEENEY, James	58827-066	08-06-2014

the supreme commanders are). No exceptions to this, all elders are to contact me as soon as possible. You must be creative with your letters, do not make it appear you are inside if you are, if you are inside, be sure I can write you back at the return address, we must open the doors of communication. All are welcome to write, just do not be foolish, remember where fools lie" and *"Order must be restored and imposed. From the date of this letter of address, the door to bring someone home within the state of Maryland (inside and in the streets) is closed for the next year - no one should become a member within that year, no exceptions."*

Finally, this finding is based upon the testimony of inmate Sweeney, in which he acknowledged that he did author the 16 page document which is the subject of Section 11 of the incident report this case.

Inmate Sweeney denied, however, committing any prohibited act in this case. He presented in his defense a three-page handwritten statement, and verbal testimony, in which he alleges he committed no new prohibited acts, and is not engaging in continuing gang activity. Sweeney contends that the 16 page document discovered in his cell in its entirety is not a letter, rather, is "old notes" and that the information contained within them is essentially "common knowledge" among both law enforcement and DMI members, which has received national media attention.

The DHO gives the greater weight of the evidence in this case to the eyewitness written account of the reporting officer, the U.S. Department of Justice Federal Bureau of Prisons Inmate Investigative Report, Case Number LEW 14-0054, dated 07-11-2014, excerpts from the 16 page document, authored by inmate Sweeney, which is the subject of Section 11 of the incident report in this case, as documented in the preceding paragraphs of this section of this report, and the testimony of inmate Sweeney, in which he acknowledged that he did author the 16 page document which is the subject of Section 11 of the incident report this case. This evidence indicates on 07-22-2014, an SIS Investigation concluded the following. On 07-08-2014 at approximately 11:00 a.m., the search team conducted a cell search of inmate SWEENEY, James, #58827-066, the National Leader for Dead Man Incorporated (DMI). Staff found a 16-page document outlining gang activity and placing a hit on ROARK, Perry #53975-037, one of the founding members of DMI. Inmate Sweeney was interviewed in regards to the item found in his cell and acknowledged that the document was his but would not elaborate on the details of the document. The reporting officer concludes inmate Sweeney authored the document in which he outlined a "hit on site" against inmate Roark and any other individuals that "say they are riding with Rock (Perry Roark)".

The DHO has considered as evidence in this case the handwritten statement and testimony of inmate Sweeney, in which he alleged he committed no prohibited act in this case and contends that the 16 page document discovered in his cell in its entirety is not a letter, rather, is "old notes" and that the information contained within them is essentially "common knowledge" among both law enforcement and DMI members, which has received national media attention. The DHO gives lesser weight this evidence than that which the greater weight is given in this case, for the following reasons. First, the DHO has determined the handwritten document is, in fact, a written communication, or letter, based on multiple statements made throughout the document, as opposed to "old notes" related to "official documents" authored by Sweeney which he further contends are a matter of public record, or common knowledge. These statements include: *"D-Luv: My salutes of true L.L.R.H. (love, loyalty, respect, honor) holding the triangle high above my head with strength and honor! Communications are an important aspect of the organization. Information about what is going on, who is who, and so forth must be circulated; communication is important for the security and success of the organization. Communication among those holding positions is mandatory - inside prison and within the streets."; "even today as I sit here writing this my communications are highly monitored, this is why it's important my communications with position holders goes unnoticed."; and "with this directive will be 101 pages, read them, study them, copy and pass them on, most important, apply them! The enclosed structure is the official organization structure nationwide, it will be reviewed soon. Right now I am passing down the directive that the elders have the state(s) (only until word is received on who the supreme commanders are). No exceptions to this, all elders are to contact me as soon as possible. You must be creative with your letters, do not make it appear you are inside if you are, if you are inside, be sure I can write you back at the return address, we must open the doors of communication. All are welcome to write, just do not be foolish, remember where fools lie"* and *"Order must be restored and imposed. From the date of this letter of address, the door to bring someone home within the state of Maryland (inside and in the streets) is closed for the next year - no one should become a member within that year, no exceptions."* The DHO concedes the written document is undated, and further that it contains content related to the organizational structure and various philosophies of DMI/POA, however, has determined this does not detract from the credibility of the determination the document is, in fact, a letter intended for circulation among DMI/POA members. Further, the letter contains clear

Name of Inmate:	Reg. No.:	Hearing Date:
SWEENEY, James	58827-066	08-06-2014

threats of bodily harm directed against inmate Roark, and any who claim to follow him. ***"Rock is no longer "D", he hasn't been for a while and "anyone" that says they are riding with Rock is H.O.S. (hit on sight), no exceptions!"*** and ***"Rock is not only a rat, he's a homosexual, make sure you uphold and carry out that sanction, as I will! And anyone claiming to be riding with this homosexual rat is to be dealt with in the same way, they are H.O.S. (hit on sight), no exceptions!"***

The DHO concedes that the open animosity between inmates Sweeney and Roark is likely well known among DMI members, and has been given national media attention. However, there remains a distinction between expressing disdain for an individual, and placing a standing order for that individual and any of his associates to be "hit on sight", which is a clear threat of bodily harm.

Moreover, the DHO has considered Sweeney's contention there is no need for him to rewrite such a document when "all the official documents are already written and documented by the Bureau of Prisons, state corrections, and local, state, and federal law enforcement." Sweeney further contends there is no need for him to reiterate the animosity between him and Roark, nor does he have to repeat Roark's status, as the "Gangland" documentary made it public, as did the news articles written by the Baltimore Sun. The DHO has concluded in contrast, however, there is no need for Sweeney to maintain such documentation, unless he intended to circulate or re-circulate the information, specifically, the "Hit On Sight" order against Roark and any associates. The DHO notes, and informed Sweeney during the hearing, just because Sweeney may have expressed his animosity toward Roark, or even openly threatened Roark in the past, does not give him license to continue to issue threats against Roark and his associates, simply based on Sweeney's contention this long-standing animosity or prior threats are a matter of record, or common knowledge. Each time this threat is reissued, or attempted or intended to be reissued constitutes commission of a new prohibited act.

Finally, the DHO has considered the statement of inmate Sweeney's requested witness in this case, Mr. Nylen. Mr. Nylen stated, however, he cannot verify that Sweeney authored the document, which is the subject of Section 11 of the incident report this case, while he was confined at USP Beaumont, and therefore cannot corroborate Sweeney's claim that the document consists of "old notes".

The greater weight of the evidence in this case, therefore, supports the finding inmate Sweeney committed the prohibited act of Threatening Bodily Harm, Code 203.

VI. SANCTION(S) OR ACTION(S) IMPOSED:

CODE: 203

Disciplinary Segregation: 30 days
Loss of Commissary Privilege: 120 days
Loss of Telephone Privilege: 120 days
Loss of Visiting Privilege: 120 days

VII. REASON FOR EACH SANCTION OR ACTION TAKEN:

Threatening others with bodily harm in a correctional institution inherently jeopardizes the security and good order of the institution. The rationale for the sanctions imposed in this case, therefore, is to punish the inmate for his misconduct, which is viewed as having an adverse effect on the security and orderly operation of the institution, as well as to deter future misconduct. Disciplinary segregation is imposed as punishment for the misconduct. Loss of commissary, telephone, and visiting privileges are imposed to demonstrate that engaging in misconduct will result in the loss of pleasurable privileges while incarcerated.

VIII. APPEAL RIGHTS: XX The inmate has been advised of the findings, specific evidence relied on, sanction(s)/action(s) and reasons for the action. The inmate has been advised of the right to appeal this action within 20 calendar days under the Administrative Remedy Procedure. A copy of this report has been given to the inmate.

IX. Discipline Hearing Officer

Printed Name	Signature	Date
B. Chambers, DHO		8/29/2014

Delivered to Inmate: L Flowers 8/29/14

Prescribed by P5270 Replaces BP-304(52) of JAN 88

U.S. Department of Justice

Federal Bureau of Prisons

Regional Administrative Remedy Appeal

Type or use ball-point pen. If attachments are needed, submit four copies. One copy of the completed BP-229(13) including any attachments must be submitted with this appeal.

From: Sweeney, James M (LAST NAME, FIRST, MIDDLE INITIAL) 58827-066 (REG. NO.) B (UNIT) Lewisburg SMU (INSTITUTION)

Part A - REASON FOR APPEAL The DHO used excerpts from the 16 pg.s of notes found in Appellant's cell to come to his personal opinion; The DHO's decision is not based on some facts indicating Sweeney committed the code violation. [Appellant will use those same excerpts] to show the 16 pg.s are in fact "old notes written years ago" and were used as short-hand notes to write official documents and a letter of Address years past; Appellant will also use requested documentary evidence to support his claim. (Note that at the DHO hearing the DHO stated he only read one (1) News Article and none of the other requested documentary evidence, violation of due process).

Pg. 1

Please see Attachment(s), Continuation Pg.s 2-8

DATE

James Sweeney 58827-066
SIGNATURE OF REQUESTER

Part B - RESPONSE

DATE

REGIONAL DIRECTOR

If dissatisfied with this response, you may appeal to the General Counsel. Your appeal must be received in the General Counsel's Office within 30 calendar days of the date of this response.

ORIGINAL: RETURN TO INMATE

CASE NUMBER: _____

Part C - RECEIPT

CASE NUMBER: _____

Return to: _____ (LAST NAME, FIRST, MIDDLE INITIAL) _____ (REG. NO.) _____ (UNIT) _____ (INSTITUTION)

SUBJECT: _____

DATE

SIGNATURE, RECIPIENT OF REGIONAL APPEAL

UPN LVN

BP-230(13)
JUNE 2002

Continuation, pages 2 through 8

The DHO is misleading in his report. The Appellant's witness SFS Lt. R. Nylen, testified that the contents of the 16 pg.s were in fact known to him and Sweeney has been sanctioned for it already. [This means Appellant's witness "did in fact" support Sweeney's claim that the contents of the 16 pg.s are old notes written years ago and were documented years ago]. Yes, Lt. Nylen did say he can not confirm that the 16 pg.s per se were written at U.S.P. Beaumont, that does not override the fact he also stated he is aware of the contents of the 16 pg.s, personally made a record of it and that Sweeney has been sanctioned for it already. The DHO only made clear in his report what he felt benefited him and not the content of Lt. Nylen's entire statement. The greater weight supports Appellant.

The DHO used excerpt "with this directive will be 101 pages... the enclosed structure is the official organizational structure nationwide." The 101 pg.s are the 101 pg. "Dead Man Inc. guidebook Appellant requested as documentary evidence (which the DHO refused to review because it was not in Sweeney's base file). The Dead Man Inc. guidebook was requested as documentary evidence because it would prove that the 101 pg.s mentioned in the 16 pg.s is the 101 pg. guidebook that was "written years ago" and can be obtained at several public websites and which the Baltimore Sun wrote an article about. The 101 pg. guidebook excludes philosophy, principles, bylaws, org. structure and much more for DMI/FOA. [Sweeney does NOT have access to the 101 pg. guidebook, therefore it would

be impossible for him to exclude it with anything written recently or in the future]. This supports Appellant's claim that the 16 pgs are in fact old notes written years ago. The greater weight supports Appellant.

The DHO uses several excerpts from the 16 pgs related to communications between Appellant and other members of DMI/PCA. [SIS records can prove that Sweeney has not been in contact with any DMI/PCA members for years and has not attempted to communicate]. The SIS highly monitor Appellant's communications and will NOT allow letters of this type into or out of the institution. What the DHO is alleging here is that the SIS is not doing their job and allowing Sweeney to freely communicate with DMI/PCA members. Appellant disputes this allegation because he does not communicate with DMI/PCA members and SIS will NOT allow him to do so. For the DHO to allege otherwise (as he has done) is a bold statement against the SIS alleging they are not doing their job. The greater weight supports Appellant.

The DHO uses excerpt: "Kell started off by saying I betrayed you by becoming a member of the Aryan brotherhood, he lied..." This was documented in 2009-10 by media, corrections, and law enforcement, [it was addressed and corrected in 2010 by Appellant, which is also documented]. The DHO's excerpt has no merit as to when the 16 pgs were written. The greater weight supports Appellant.

The DHO uses excerpt "D-Luv: my salutes of True C.C.R.H...." This is a well known form of greeting among all DMI/PCA members that was established several years ago by Sweeney. The DHO's excerpt has no merit as to when the 16 pgs

were written. [There are letters made public by the media and other sources years ago starting off with "my salutes of true C.C.R.H."]. Thus, giving weight that the 16 pgs were written years ago. The greater weight supports Appellant.

The DHC uses excerpt: "Rock is no longer 'D', he hasn't been for a while and 'Anyone' that says they are Riding with Rock is H.O.S. (Hit on Sight)... Rock is not only a RAT, he's a homosexual..." Zlotorowski Vs. Beeman, 2011 U.S. Dist. Lexis 124925, civil action no. DKC-10-2120, 4th cir. dist. ct, makes clear that Rock (Roark) was supplying information to the Md. prison Administration and protecting other known informants. This case law was published in October 2011 (giving weight the 16 pg.s are years old). As established at the creation of DMI, under the C.O.D. (Cause Of Death) Any DMI/POA member that is a confirmed informant must be hit on sight to maintain order. The C.O.D. further states Anyone that supports A known snitch or homosexual shall be H.O.S. And those that do not uphold that law are subjected to the same sanction, no acceptions.

As one of the founding members of DMI, Roark is a statistic of his own creation, The C.O.D. (Cause Of Death).

Roark denounced DMI publicly at his sentencing hearing (news article requested as documentary evidence). This means Roark is NOT a member of DMI by his own choosing, [so how is it possible for Appellant to put a standing "H.O.S." order on any DMI/POA member claiming to ride with Roark when Roark personally denounced membership of DMI, it is impossible to do because Roark is not a member of DMI and is not supported by any members of DMI/POA]. This further

Supports the fact that the 16 pg.s found in Sweeney's cell are old notes written years ago, Thus it can NOT be new material to be circulated as suggested by the DHO. The greater weight supports the Appellant.

Furthermore, lets be realistic here, if Appellant wanted to do so he could use outside resources to have Roark hit. It would be a simple matter of Appellant giving the Baltimore, D.C, VA. blacks (those whom Roark is receiving with in the BOP) the information to show beyond a doubt Roark is a confirmed informant, And they would no doubt deal with the matter, for they have no tolerance for informants.

However [The Appellant has NO intentions or desire on doing this], he is only making a point to show that the 16 pg.s are old notes.

This further proves that Sweeney has not attempted to circulate new material as the DHO suggest. Not only that, it would be impossible for the Appellant to mail such a letter and or document like the 16 pg.s found in his cell. The DHO has suggested several times in his report that the STS is in cahoots with the Appellant to Allow him to communicate freely, for that would be the only way possible for the 16 pg.s to be mailed out of the institution.

The excerpts used by the DHO hold no merit as to the 16 pg.s being recently written (And he can not assume such) Thus the DHO does NOT present some facts indicating Sweeney committed the code violation.

However, Sweeney uses the SAME excerpts As the DHO And proves that the 16 pg.s Are in fact old notes written years ago, Appellant Also proves that it would be

impossible to circulate the 16 pg.s As suggested by the DHO, Sweeney Also shows that it would be impossible for the 16 pg.s To have been written recently.

The greater weight of the evidence (in its entire) supports Appellant's statement that the 16 pg.s Are old notes written years Ago And that he did not commit Any prohibited Act. (It is Also clear That the contents of the 16 pg.s were documented years Ago by BOP officials As well As law enforcement, And That Appellant has been sanctioned for the contents of the 16 pg.s of notes, institutionally And criminally.

The Appellant has Also been subjected to double jeopardy: Sweeney was found guilty by the DHO And giving several disciplinary sanctions, As the record shows, "After" Sweeney was found guilty by the DHO he was giving A second And completely separate disciplinary sanction by the unit Team, (before the guilty finding of the DHO Appellant was on phase 3 of the SMU program, "After" the DHO found Sweeney guilty of the code violation unit Team set him back To phase one in the SMU program for the same code violation The DHO found him guilty of. This means Sweeney must serve the disciplinary sanctions giving to him by the DHO, Plus the separate disciplinary sanction giving To him by the unit Team — Sweeney must be An extra Ten (10) months in the SMU program because of the second And separate disciplinary sanction, which was giving To him for the same disciplinary Action).

Correctional/institutional procedures and policy fall under civil law, and the double jeopardy clause applies to both "civil" and criminal law. The reason being is so an individual is NOT giving separate disciplinary sanctions Two (2) or more times for the same disciplinary action.

If the double jeopardy clause did not apply to civil/administrative law, a governmental employee can be subjected to repeated disciplinary sanctions for the same disciplinary action: Their boss would be able to give them a disciplinary sanction and then they could be giving a "second and completely separate" disciplinary sanction by another branch of their employment, but as it is, a government employee can only be giving one (1) disciplinary sanction for a single disciplinary action, and this is because of the 5th Amendment, the double jeopardy clause.

Therefore, if the double jeopardy clause applies to civil law when it comes to disciplinary actions taken against a governmental employee, it also applies to the inmate being giving a disciplinary sanction under civil/administrative law (institutional policy and procedure). However, Sweeney's 5th Amendment has been violated because he has been subjected to two (2) separate disciplinary sanctions for the same disciplinary action.

To further support the fact that the double jeopardy clause applies to an inmate receiving a disciplinary sanction for a disciplinary action: by BOP policy an inmate can NOT be giving a sanction by the UDC (unit team)

for an incident report and then be giving a disciplinary sanction by the DHO for the same incident report. The inmate can ONLY be sanctioned one (1) time, either by the DHO or unit team, NOT both. However, Sweeney has been giving a disciplinary sanction by both the DHO and unit team, two (2) separate sanctions for the same incident report.

Requested Relief:

1). Incident report be expunged from Appellant's record, or;

2) One of the two separate disciplinary sanctions Appellant received be reversed by the regional director, which has the authority to do so.

September 10, 2014 — James Sweeney 58827-066

* Addition *

Through request of unit team, DHO refused to allow Sweeney access to 16 pg.s to use to counter DHO report: Appellant wishes to use same evidence as DHO to prove his innocence.

DHO excert: "From the date of this letter of address, the door to bring someone have within the state of Maryland... is closed for the next year." 2009 DMI gangland show documents this year shutdown, so did corrections and law enforcement, supports Appellant's claim 16 pg.s are old notes.

GARY ZLOTORZYNSKI, Plaintiff, v. BRUCE BOZMAN, et al., Defendants.
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND
2011 U.S. Dist. LEXIS 124925
CIVIL ACTION NO. DKC-10-2120
October 27, 2011, Decided
October 27, 2011, Filed

Counsel Gary Zlotorzynski, Plaintiff, Pro se, Ferndale, MD.
For Bruce Bozman, Case Manager, Defendant: Rex Schultz Gordon, Maryland Office of the Attorney General, Baltimore, MD.
For Kathleen S. Green, Warden, Defendant: Rex Schultz Gordon, LEAD ATTORNEY, Maryland Office of the Attorney General, Baltimore, MD.
Judges: DEBORAH K. CHASANOW, United States District Judge.

Opinion

Opinion by: DEBORAH K. CHASANOW

Opinion

MEMORANDUM OPINION

Pending is the motion of Defendants Bruce Bozman and Kathleen Green to Dismiss or for Summary Judgment. ECF No. 18. Plaintiff has not responded. 1 Upon review of papers and exhibits filed, the court finds an oral hearing in this matter unnecessary. *See* Local Rule 105.6 (D. Md. 2011).

Background

Plaintiff alleges that in July of 2009, while incarcerated at the Eastern Correctional Institution ("ECI"), his throat was cut with a razor by another inmate. He states that Case Manager Bozman was aware there was a hit on Plaintiff as Bozman had heard recorded telephone conversations between an inmate and "someone on the outside." Plaintiff states that Bozman did nothing with this information. He states that after the attack, Bozman advised Plaintiff he was safe, removed Plaintiff from administrative segregation, and returned Plaintiff to the same housing unit. Plaintiff states he was assaulted again on August 18, 2009. He claims he was then transferred to a Hagerstown facility with the inmate that attacked him. He states that while in Hagerstown he was hit with a "lock in a sock." ECF No. 1.

Standard of Review

Under revised Fed. R. Civ. P. 56(a):

> A party may move for summary judgment, identifying each claim or defense-or the part of each claim or defense-on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

Summary judgment is appropriate under Rule 56(c) of the Federal Rules of Civil Procedure when there is no genuine issue as to any material fact, and the moving party is plainly entitled to judgment in its favor as a matter of law. In *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986) the Supreme Court explained that in considering a motion for summary judgment, the "judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." A dispute about a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* at 248. Thus, "the judge must ask himself not whether he thinks the evidence unmistakably favors one side or the other but whether a fair-minded jury could return a verdict for the [nonmoving party] on the evidence presented." *Id.* at 252.

The moving party bears the burden of showing that there is no genuine issue as to any material fact. No genuine issue of material fact exists if the nonmoving party fails to make a sufficient showing on an essential element of his or her case as to which he or she would have the burden of proof. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). Therefore, on those issues on which the nonmoving party has the burden of proof, it is his or her responsibility to confront the summary judgment motion with an affidavit or other similar evidence showing that there is a genuine issue for trial.

In undertaking this inquiry, a court must view the facts and the reasonable inferences drawn therefrom "in a light most favorable to the party opposing the motion." *Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986) (quoting *United States v. Diebold, Inc.*, 369 U.S. 654, 655, 82 S. Ct. 993, 8 L. Ed. 2d 176 (1962)); *see also E.E.O.C. v. Navy Federal Credit Union*, 424 F.3d 397, 405 (4th Cir. 2005). The mere existence of a "scintilla" of evidence in support of the non-moving party's case is not sufficient to preclude an order granting summary judgment. *See Anderson*, 477 U.S. at 252.

This court has previously held that a "party cannot create a genuine dispute of material fact through mere speculation or compilation of inferences." *Shin v. Shalala*, 166 F.Supp.2d 373, 375 (D. Md. 2001) (citation omitted). Indeed, the court has an affirmative obligation to prevent factually unsupported claims and defenses from going to trial. *See Drewitt v. Pratt*, 999 F.2d 774, 778-79 (4th Cir. 1993) (quoting *Felty v. Graves-Humphreys Co.*, 818 F.2d 1126, 1128 (4th Cir. 1987)).

Discussion

A. Exhaustion

The court must first examine Defendants' assertion that Plaintiff's case should be dismissed in its entirety due to Plaintiff's failure to exhaust available administrative remedies. The Prison Litigation Reform Act ["PLRA"] generally requires a prisoner plaintiff to exhaust administrative remedies before filing suit in federal court. Title 42 U.S.C. § 1997e(a) provides that "[n]o action shall be brought with respect to prison conditions under ' 1983 of this title, or any other Federal law by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." The Supreme Court has interpreted the language of this provision broadly, holding that the phrase "prison conditions" encompasses "all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." *Porter v. Nussle*, 534 U.S. 516, 532, 122 S. Ct. 983, 152 L. Ed. 2d 12 (2002). Thus, the exhaustion provision plainly extends to Plaintiff's allegations. His complaint must be dismissed, unless he can show that he has satisfied the administrative exhaustion requirement under the PLRA or that defendants have forfeited their right to raise non-exhaustion as a defense. *See Chase v. Peay*, 286 F.Supp.2d 523, 528 (D. Md. 2003).

The PLRA's exhaustion requirement is designed so that prisoners pursue administrative grievances until they receive a final denial of the claims, appealing through all available stages in the administrative process. *Chase*, 286 F.Supp.2d at 530; *Gibbs v. Bureau of Prisons*, 986 F.Supp. 941, 943-44 (D. Md. 1997) (dismissing a federal prisoner's lawsuit for failure to exhaust, where plaintiff did not appeal his administrative claim through all four stages of the BOP's grievance process); *Booth v. Churner*, 532 U.S. 731, 735, 121 S. Ct. 1819, 149 L. Ed. 2d 958 (2001) (affirming dismissal of prisoner's claim for failure to exhaust where he "never sought intermediate or full administrative review after prison authority denied relief"); *Thomas v. Woolum*, 337 F.3d 720, 726 (6th Cir. 2003) (noting that a prisoner must appeal administrative rulings "to the highest possible administrative level"); *Pozo v. McCaughtry*, 286 F.3d 1022, 1024 (7th Cir. 2002) (prisoner must follow all administrative steps to meet the exhaustion requirement, but need not seek judicial review).

In Maryland, filing a request for administrative remedy with the Warden of the prison in which one is incarcerated is the first of three steps in the Administrative Remedy Procedure ("ARP") process provided by the Division of Correction to its prisoners. If this request is denied, the prisoner has ten calendar days to file an appeal with the Commissioner of Correction. If this appeal is denied, the prisoner has thirty days in which to file an appeal to the Executive Director of the Inmate Grievance Office ("IGO"). *See* Md. Code Ann. Corr. Serv. §§ 10-206, 10-210; Md. Regs. Code title 12 § 07.01.03.

The facts regarding Plaintiff's efforts to exhaust his administrative remedies are not in dispute. Plaintiff submitted several administrative remedy requests during his incarceration at ECI. ECF No. 18, Ex. D. On November 10, 2009, Plaintiff submitted three ARPs regarding an assault. The first, ECI 6202-09, stated he was having vision problems as a result of being cut by another inmate. He stated he put slips in to be seen by medical but he did not receive a response. The ARP was later withdrawn. *Id.*, p. 15-16. The second, ECI 6203-09, requested he be placed on protective custody due to threats against him by gang members. He stated he had already been "hit" twice and asked to see Bozman. The ARP was dismissed as it was deemed to concern a case management decision which are not subject to the ARP process. Plaintiff did not appeal this determination. *Id.*, p. 17. The third, ECI-6204-09, requested he be able to speak with someone about pressing charges against the inmate that assaulted him. This ARP was dismissed as the relief requested could not be obtained through the ARP process. *Id.*, p. 18.

Defendants maintain that Plaintiff's failure to appeal the dismissal of his ARP regarding his desire to be placed on protective custody should result in the dismissal of his case. The court disagrees. Plaintiff was advised that the subject matter of his complaint could not be addressed through the ARP process. *Booth* requires exhaustion of administrative remedies even if the relief requested is not available but only when there is the possibility of some relief for the action complained of. *Booth*, 532 U.S. 731, 738-9, 121 S. Ct. 1819, 149 L. Ed. 2d 958. Here, Plaintiff was advised that no relief was available through the administrative process for case management decisions.

B. Respondeat Superior

As a fundamental element of § 1983 liability, Plaintiff must show that the named Defendants were involved in the alleged deprivation of his constitutional rights. It is well established that the doctrine of respondeat superior does not apply in § 1983 claims. *See Love-Lane v. Martin*, 355 F.3d 766, 782 (4th Cir.2004) (no respondeat superior liability under § 1983); *see also Trulock v. Freeh*, 275 F.3d 391, 402 (4th Cir. 2001). Liability of supervisory officials "is not based on ordinary principles of respondeat superior, but rather is premised on 'a recognition that supervisory indifference or tacit authorization of subordinates' misconduct may be a causative factor in the constitutional injuries they inflict on those committed to their care.' " *Baynard v. Malone*, 268 F.3d 228, 235 (4th Cir.2001), *citing*

Slakan v. Porter, 737 F.2d 368, 372 (4th Cir.1984). Supervisory liability under § 1983 must be supported with evidence that: (1) the supervisor had actual or constructive knowledge that his subordinate was engaged in conduct that posed a pervasive and unreasonable risk of constitutional injury to citizens like the plaintiff; (2) the supervisor's response to the knowledge was so inadequate as to show deliberate indifference to or tacit authorization of the alleged offensive practices; and (3) there was an affirmative causal link between the supervisor's inaction and the particular constitutional injury suffered by the plaintiff. *See Shaw v. Stroud*, 13 F.3d 791, 799 (4th Cir. 1994).

Plaintiff has pointed to no action or inaction on the part of Warden Green that resulted in a constitutional injury. In fact, Plaintiff has merely named the Warden in the caption of his complaint and provided no facts linking Warden Green to the actions that comprise his claim. Warden Green is entitled to dismissal from suit.

C. Failure to Protect

Plaintiff alleges that Bozman was deliberately indifferent in failing to provide adequate security to protect him and as such his right to be free from cruel and unusual punishment has been violated. The Eighth Amendment recognizes this right. *See Belcher v. Oliver*, 898 F.2d 32, 34 (4th Cir. 1990).

As noted by the Supreme Court in *Farmer v. Brennan*, 511 U.S. 825, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994).

> Prison officials have a duty . . . to protect prisoners from violence at the hands of other prisoners. Having incarcerated persons with demonstrated proclivities for antisocial criminal, and often violent, conduct, having stripped them of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course. Prison conditions may be restrictive and even harsh, but gratuitously allowing the beating or rape of one prisoner by another serves no legitimate penological objective any more than it squares with evolving standards of decency. Being violently assaulted in prison is simply not part of the penalty that criminal offenders pay for their offenses against society.*Id.* at 833 (internal quotations and citations omitted). In a failure to protect claim, a prisoner must show, first, that the harm he suffered was objectively serious, and second, that prison officials acted with deliberate indifference. *Id.* at 834.

Defendant Bozman avers that he is a case management specialist assigned to ECI. His caseload includes inmates on administrative and disciplinary segregation and he works closely with the ECI Intelligence Unit to manage members of security threat groups. Bozman states that he was well acquainted with Plaintiff while Plaintiff was incarcerated at ECI. Plaintiff was, at one time, a high-ranking member of Dead Men Incorporated (**DMI**) and his nickname was Lucky. ECF 18, Ex. A.

In early 2009, intelligence units throughout the Division of Corrections were paying special attention to **DMI**. It was believed that April 13, 2009, would hold special significance to **DMI** as the number in that date corresponded to the order of the letters of **DMI** in the alphabet. Rumors circulated that **DMI leaders** planned to mark the date by assaulting a number of **DMI** members due to suspected transgressions against the group. Bozman learned that Plaintiff might be among those likely to be assaulted. *Id.*

In late March, Bozman met with the founder and **leader** of **DMI**, inmate **Perry Roark**. Bozman, a 23-year veteran of the DOC, knew **Roark** for many years and had developed a good rapport with him as **Roark** had assisted in straightening out many problems. At the time of the meeting, Bozman reports, there was disharmony within **DMI**. Plaintiff "was not in good graces with some **DMI leaders** because he often shared inside information about threat group activity with ECI's administration to curry favor for himself and other select members of **DMI**." *Id.* **Roark** assured Bozman that Plaintiff

was not an intended target of an assault, another inmate also nicknamed "Lucky" was the intended target, and Plaintiff was not in any danger. *Id.*

At the time of Bozman's interview with **Roark**, Plaintiff was not housed at ECI. He returned to ECI on April 2, 2009, and was placed in disciplinary segregation. In early April, 2009, Bozman met with Plaintiff and relayed to him the conversation Bozman had with **Roark**. Plaintiff stated that he was happy and wanted to stay at ECI, returning to general population when his segregation time ended. On April 16, 2009, Plaintiff was returned to general population and removed from Bozman's case load. *Id.*

On an unspecified date, ECI intelligence received information that Plaintiff and two other inmates were targeted by **DMI**. Plaintiff and the other inmates were placed on administrative segregation for their safety on April 29, 2009. Bozman again met with **Roark** regarding the threats against Plaintiff. Bozman advised **Roark** that information given to **Roark** regarding Plaintiff was mistaken-acts attributed to Plaintiff could not have been done by him as he was not housed at ECI at the time of the alleged "transgressions." It appeared to Bozman that lies were being told about Plaintiff because of a power struggle within **DMI**. **Roark** advised Bozman that the "hit" was removed but Plaintiff and the other two inmates should sever their ties with **DMI** to guarantee against future assault. Bozman again met with Plaintiff and advised him that **Roark** said Plaintiff should end his affiliation with **DMI**. Plaintiff said he would cut his ties with **DMI** and reiterated he wanted to stay at ECI in general population. Other **DMI leaders** at ECI were interviewed and advised as to what **Roark** had said regarding the hit on Plaintiff. They all indicated they understood and would abide by Roark's directives. Bozman avers that based on this activity, he believed Plaintiff was not in danger of assault by **DMI** members. *Id.*

On May 7, 2009, Plaintiff was returned to general population and removed from Plaintiff's case load. Thereafter, Bozman saw Plaintiff on the compound and spoke with him on a number of occasions. Plaintiff reported that everything was fine and did not indicate any concerns regarding his safety. *Id.*

On August 19, 2009, Plaintiff was sent to the ASOA area because of a claimed assault on him by a **DMI** member. At an unknown time Plaintiff suffered a small cut on his neck which left a scar. This incident had not been reported to correctional officials. 2 When Bozman interviewed Plaintiff he asked Plaintiff if he had been "hanging out" with **DMI**. Bozman inferred from Plaintiff's responses that he had either been "hanging out" with **DMI** or attempting to rejoin the group by exchanging correspondence with **DMI leaders**. Bozman offered to place Plaintiff in administrative segregation for his safety or to transfer him to another institution. Plaintiff replied that he wished to return to general population at ECI, he had a good relationship with his cellmate, he did not fear for his safety, and he was trying to work out his differences with **DMI**. Bozman advised Plaintiff not to affiliate with **DMI** unless he had worked out his differences. Bozman believed, based on his experience, that the minor nature of the cut on Plaintiff's neck indicated that the assailant intended to "send a message" to Plaintiff rather than seriously harm him. Plaintiff was returned to general population and removed from Bozman's caseload on August 20, 2009. *Id.*

On October 18, 2009, Plaintiff was assaulted by a **DMI** member. He was placed on administrative segregation and returned to Bozman's caseload. Plaintiff was placed in the disciplinary segregation unit because Bozman felt Plaintiff could be more safely housed there, as other inmates affiliated with **DMI** were housed on the administrative segregation unit. Bozman received information that Plaintiff had continued to associate with **DMI** despite warnings given to him by Bozman. Bozman met with Plaintiff and told him that despite his desire to remain at ECI he would be transferred for his safety. *Id.*

In November, 2009, Plaintiff requested he be moved to the administrative segregation unit or

released to general population. Bozman deemed it unsafe to return Plaintiff to general population. He was transferred to the administrative segregation unit, pending transfer, after Bozman determined there were no longer **DMI** inmates/enemies of Plaintiff housed in the unit. He was later transferred from ECI. Bozman had no role in the actual transfer of Plaintiff or the selection of Plaintiff's new facility. *Id.*

Assuming, arguendo, that Plaintiff's injuries from the assault were held to satisfy the first prong of the *Farmer* test, the second element is more problematic.

Deliberate indifference in the context of a failure to protect claim means that defendant "knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Farmer*, 511 U.S. at 837. Unless a prison official actually makes this inference, he does not act with deliberate indifference, even where his actions violate prison regulations or can be described as stupid or lazy. *Rich v. Bruce*, 129 F.3d 336, 339-40 (4th Cir. 1997); *see also Lewis v. Richards*, 107 F.3d 549, 553 (7th Cir. 1997) ("[T]he fact that an inmate sought and was denied protective custody is not dispositive of the fact that prison officials were therefore deliberately indifferent to his safety.").

After Bozman twice became aware that Plaintiff was the possible subject of a **DMI** assault he contacted the **leader** of **DMI** and was assured that the assault was not planned for Plaintiff. Bozman then relayed all that he knew about the threats and assurances to Plaintiff. Plaintiff repeatedly voiced his belief that he could be safely housed in general population and his desire to stay at ECI, despite Bozman's offer to move him. There is no record that Plaintiff was assaulted in July as he alleges. There is no SIR or medical record to support his claim. Even after he reported the attack to Bozman, in August, 2009, he stated that he believed he could safely be housed at ECI in general population. After Plaintiff was attacked in October, 2009, he was removed from general population and ultimately transferred from ECI. The evidence demonstrates that against advice, Plaintiff engaged in activity which endangered his safety, i.e. failing to sever all ties with **DMI**. The evidence further demonstrates that at all times Bozman acted in concert with Plaintiff to evaluate the threat against Plaintiff and take what at the time appeared to be necessary precautions. Bozman believed, based on his experience, interview with **DMI** leadership, and Plaintiff's own representations that he could be safely housed in general population. That Plaintiff and Bozman were wrong in this decision does not mean that Bozman was deliberately indifferent to Plaintiff's safety. As noted, a prison official is deliberately indifferent when he possesses actual, subjective knowledge of an excessive risk of harm to the prisoner's safety and disregards it. *Farmer*, 511 U.S. at 837-39. There is simply no evidence before the court that Defendants were deliberately indifferent to Plaintiff's safety.

Plaintiff, the non-moving party, must establish the existence of a genuine issue of material fact by presenting evidence on which a fact-finder could reasonably find in his favor. Plaintiff has failed to submit evidence to support his claim, or to put the material fact of this case-the failure to protect-in dispute. *See generally Gray v. Spillman*, 925 F.2d 90 (4th Cir. 1991). Although the non-moving party may rely upon a verified complaint when allegations therein are based on personal knowledge, *see Williams v. Griffin*, 952 F.2d 820, 823 (4th Cir. 1991), Plaintiff's complaint is not verified. Accordingly, Defendants' unopposed Motion for Summary Judgment shall be granted.

Conclusion

For the aforementioned reasons, Defendants' Motion, construed as a motion for summary judgment, shall be granted. A separate Order follows.

Date: October 27, 2011

In The United States District Court
For The Eastern District of Texas
Beaumont Division

James Sweeney

Civil No. 1:14-cv-00112
V. Criminal No. 1:12-cr-105

United States of America

Petitioner's motion of response to Government's Answer to Petitioner's motion to VACATE, set Aside, or correct sentence under 28 U.S.C. § 2255

Comes now, the Petitioner, James Sweeney, And files this motion And would show:

Claim no. 1:
Petitioner's guilty plea is invalid because the government breached the plea Agreement by dismissing Petitioner's murder charges without prejudice.
Supporting facts:
Obligations of the United States Attorney's office "After Sentencing in the instant case, the U.S. Attorney for The Eastern District of Texas will move to [dismiss] the indictment charging the defendant in that District under 1:11-cr-62" (Plea Agreement August 30, 2012).
Legal Authority And Argument
"Total ignorance of the outer limits of the penalty the defendant could suffer renders the plea invalid under due process."

Hill V. Estelle, 653 F.2d 202, 205 (5th cir.). The determination of whether the government has breached A plea Agreement is A question of law. U.S. V. Gonzales, 309 F.3d 882, 886 (5th cir. 2002). The party Alleging A breach of plea Agreement must prove the facts that establish A breach by A preponderance of the evidence. Id. (see supporting facts). And "if it is determined that A plea Agreement has been breached, 'specific performance of the Agreement is called for...'." U.S. V. Valencia, 985 F.2d 758, 761 (5th cir. 1993). Plea Agreements Are contractual in nature and Are interpreted in Accordance with "general principles of contract law." U.S. V. Cantu, 185 F.3d 298, 304 (5th cir. 1999). A Court's primary goal when construing A contract is to give effect to the intentions of the parties As expressed in the Agreement. Texas V. American Tobacco Company, 463 F.3d 399, 407 (5th cir. 2006). This is Accomplished by giving the terms of the contract "their plain, ordinary, And generally Accepted meanings." Nichols V. Enterasys Networks, Inc., 495 F.3d 185, 190 (5th cir. 2007).

To "dismiss" means: To send Away; specif., to terminate An Action or claim without further hearing, esp. before the trial of the issues involved." Petitioner And the government Agreed to "dismiss" murder indictment 1:11-cr-62 (see plea Agreement).

Order of Judge Marcia Crone in Case 1-11-cr-62, Document 106, filed 2/21/13: "Before the Court is the government's motion to dismiss without prejudice Counts one, two And three of the indictment Against the Defendant, James Sweeney. The Court, having considered the government's motion to dismiss without prejudice, is of the opinion that the motion is meritorious.

"Therefore, it is ORDERED that the government's motion to dismiss counts one, two and three of the indictment without prejudice is GRANTED."

To dismiss "without prejudice" means: without loss of legal rights or privileges of a party.

Interpretation of a plea agreement begins with the agreement's text. U.S. v. Guerrero, 299 Fed. Appx. 331, 335 (5th Cir. 2008) ("The sole measure of performance is the government's express terms"). (citing U.S. v. Cates, 952 F.2d 149, 153 (5th Cir 1992)). To determine whether the government has breached the terms of a plea agreement, the Court "must determin whether 'the government's conduct is consistent with the parties reasonable understanding of the agreement'." U.S. v. Garcia-Bonilla, 11 F.3d 45, 46 (5th Cir. 1993).

The government must strictly adhere to the terms and conditions of its promises in a plea agreement. U.S. v. Munoz, 408 F.3d 222, 226 (5th Cir 2005).

If the government breached a plea agreement, the defendant may seek... withdrawal of his guilty plea. Santobello v. New York, 404 U.S. 257, 263, 92 S.Ct. 495, 30 L.Ed 2d 427 (1971); U.S. v. Gonzales, 309 F.3d at 886 (5th Cir. 2002). The defendant is entitled to relief even if the government's breach did not ultimately influence the defendant's sentence. Santobello, 404 U.S. at 263; Saling, 205 F.3d at 766-67; U.S. v. Valencia, 985 F.2d 758, 761 (5th Cir. 1993), U.S. v. Cardinetti, 564 F.2d 723, 726 (5th Cir 1977).

Cause:

As part of the plea agreement the petitioner waived

his right to direct Appeal, therefore this is his first opportunity to raise the claim. See document 30.

Prejudice:

Petitioner is innocent of the instant case, he was influenced into the plea Agreement because the government Agreed to "dismiss" murder indictment 1:11-cr-62, however, After Sentencing the government breached that Agreement And motioned the Court to dismiss the indictment "without prejudice", (which was not part of the Agreement). Petitioner is in no better position than he was before the Agreement, he still faces the threat And punishment of prosecution for the murder indictment.

The government did not Adhere to the terms And conditions of its promises in the plea Agreement, that in of itself prejudiced the Petitioner And Sweeney wishes to withdraw his plea.

Also see document 30

Claim no. 2:

Petitioner's guilty plea is invalid because the Trial Court failed to inform the Petitioner of the consequences of the plea and the nature of the charge.

Legal authority and argument; supporting facts:

The Court failed to comply with Federal rule of Criminal procedure 11 before accepting Petitioner's plea. The Court failed to inform Sweeney of the consequences of his plea — that by pleading guilty the government could still prosecute him for capital murder (Petitioner was not made aware of this until after sentencing, several weeks later). Because the Court failed to satisfy this core objective of Rule 11 Petitioner was deprived of his substantial rights. Hernandez-Fraire, 208 F.3d at 949, Quinones, 97 F.3d at 475, U.S. v. DePace, 120 F.3d 233, 236

A Court's failure to address any one of the core concerns under Rule 11 requires Automatic reversal. Mosley, 173 F.3d at 1322, U.S. v. Hourihan, 936 F.2d 508, 511

Due to the complexity of the instant case and Petitioner's repeated statements that he has no knowledge whatsoever of the crimes alleged in the indictment, that the indictment is unconstitutionally vague, Counsel misled, misinformed, and rendered ineffective assistance, the Court should of gone deeper into the explanation of the nature/elements of the offense; Taken the record as a whole, the Court did not adequately explain the elements of the charge. DePace, 120 F.3d at 237 (quoting U.S. v. Drayton, 604 F.2d 931, 978). U.S. v. James, 210 F.3d 1342, 1344. Had Sweeney been informed that element(s) of the charge in which he pleads is the intent to agree and intent to participate, either

Directly or indirectly, in the racketeering conspiracy. That Petitioner had to agree to commit one of the multiple illegal activities of the racketeering conspiracy, he would not of plead guilty because he is innocent of the instant case and was mislead into pleading guilty.

Petitioner expressed his confusion several times on the record about the elements of the offense and that he was not involved in any way in the activities alleged in the indictment, the Court's explanation of the Charge does not satisfy this core objective of Rule 11.

Cause:

As part of the plea Agreement the Petitioner waived his right to direct appeal, therefore this is his first opportunity to raise the claim. See document 30.

Prejudice

Had Petitioner been made aware of the consequences of the plea, and the mature/elements of the plea he would not of plead guilty. Also, see document 30. Petitioner wishes to withdraw his plea

Claim no. 3:

The factual basis for Petitioner's plea was not based on crimes charged in indictment and was false, therefore, the Court's acceptance of such factual basis amounted to a constructive Amendment of the indictment.

Supporting facts:

Petitioner is not alleged to have committed or participated in any of the Alleged criminal Acts (overt Acts) in indictment 1:11-CR-00547-RDB (see indictment), however, the government Alleged direct criminal activity in plea Agreement (see plea Agreement).

Legal Authority And Argument

Only A grand jury can Amend An indictment to broaden it; And such broadening need not be explicit to constitute reversible error. U.S. V. Doucet, 994 F.2d 169, 172 (5th Cir. 1993); U.S. V. Chambers, 408 F.3d 237, 2005 WL 995671 (5th Cir. 2005).

Counsel for the government prepared the plea Agreement based on information And Alleged criminal Activity that was never presented to the grand jury. Thus, the government made A subsequent guess As To what was in the minds of the grand jury.

When the government placed criminal Activity in the plea Agreement that was NOT presented to the grand jury, ultimately, the indictment Against Petitioner was constructively Amended. Information used to prepare the plea Agreement was never presented to the grand jury for review and investigated.

The fifth Amendment provides that "no person shall be held to Answer for A capital, or otherwise infamous crime, unless on A presentment or indictment of A grand jury." U.S.

Const. Amend. V. Under Supreme Court case law interpreting the fifth Amendment, "A court cannot permit a defendant to be tried on charges that are not made in the indictment against him." Stirone V. U.S., 361 U.S. 212, 217, 80 S.Ct. 270, 273, 4 L.Ed.2d 252 (1960). Simply put, A defendant can be convicted only on A crime charged in the indictment. U.S. V. Deutch, 696 F.3d 1104, 1111 (11th Cir 2012), cert denied, 133 S.Ct 993, 184 L.Ed 2d 771 (2013). Movant was convicted of crimes not made in the indictment And not presented to the grand jury.

The grand jury, in order to make the ultimate determination, must necessarily determine what crimes are supported by investigative information and material, And placed in the indictment. This underlying principle is reflected by the settled rule in the federal courts that An indictment may not be Amended except by resubmission to the grand jury. Ex parte Bain, 121 U.S. 1, 30 L.Ed 849, 7 S.Ct. 781; U.S. V. Norris, 281 U.S. 619, 74 L.Ed 1076, 50 S.Ct 424; Stirone V. U.S.. Once the government made the decision to make a subsequent guess As to what was in the minds of the grand jury At the time They returned the indictment Against the Petitioner, the government deprived Mr. Sweeney of the basic protection which the guaranty of the intervention of A grand jury is designed to secure. This Voluntarily And intelligent decision to constructively Amend the indictment resulted in the petitioner being convicted on the basis of facts not found by, And not even presented to, the grand jury which indicted him.

If it lies within the province of the court or prosecuting Attorney to change the specific information of

Criminal activity to suit its own notions of what ought to have been, or what the grand jury would probably have made it if their attention had been called to suggest changes, the great importantance which the common law attaches to an indictment by a grand jury, as a prerequisite to the defendant's prosecution for a crime, and without which the constitution says "no person shall be held to answer," will be frittered away until its value is almost destroyed. Any other doctrine would place the rights of the petitioner, which were intended to be protected by the constitutional provision, at the mercy or control of the Court or prosecuting attorney; for, if it be once held that changes can be made by consent or the order of the prosecuting attorney in specific information of facts of the indictment as presented to the grand jury, and the Movant can be called upon to answer to the specific information of the facts of the indictment as thus changed, the restriction which the constitution places upon the power of the Court and prosecuting attorney, in regard to the prerequisite of an indictment, in reality no longer exist.

The very purpose of this requirement that the specific information of facts, be presented to the grand jury is to limit Mr. Sweeney's jeopardy to offenses charged by the prosecuting attorney acting independently. For this reason, the specific information of facts within the plea must be the specific information of facts presented to the grand jury that indicted the petitioner.

The specific information of facts pertinent to the subject matter under indictment — in this case that would be Mr. Sweeney and his alleged participation in criminal

activity related to DMI (Dead Man Inc.) — must be decied by the grand jury that indicted the petitioner, and not by the prosecuting attorney, whom has acted independently.

The record shall show that no specific information related to the specific information charged in the plea was ever presented to the grand jury, nor is it cited within the indictment, but was the decision of the prosecuting attorney acting independently, resulting in a constructive amendment of the indictment and the movant being convicted on the basis of information not charged in the indictment or presented to the grand jury in which indicted, thus depriving Sweeney of the basic constitutional provision.

U.S. V. Keller, 916 F.2d 628, 634 (11th cir. 1990); Chapman V. California, 386 U.S. 18, 23, 87 S.Ct. 824, 827-28, 17 L.Ed. 2d 705 (1967); U.S. V. Olano, 507 U.S. 725, 113 S.Ct 1770, 123 L.Ed 2nd 508 (1993); U.S. V. Fletcher, 121 F.3d 187, 193 (5th cir 1997); U.S. V. Bizzard, 615 F.2d 1080, 1082 (5th cir 1980); Costello V. U.S., 350 U.S. 359, 362, 100 L.Ed. 397, 402, 76 S.Ct 406; Stirone V. U.S., 157 U.S 286, 290; Rosen V. U.S. 161 U.S. 29, 34

Cause:

As part of the plea agreement the petitioner waived his right to direct appeal, therefore this is his first opportunity to raise the Claim. See Document 30.

Prejudice:

Petitioner has been convicted of crimes that were not presented to the grand jury for review and not made in the

indictment, thus Petitioner is prejudiced because he has been deprived of the basic protection which the guaranty of the intervention of the grand jury is designed to secure — the fifth Amendment: "no person shall be held to Answer for A capital, or otherwise infamous crime, unless on A presentment or indictment of A grand jury" (Petitioner Can only be convicted of A crime charged in the indictment). Also see document 3c

Petitioner wishes to withdraw his plea

Claim no. 4:

The indictment was unconstitutionally vague for failing to allege overt acts in which petitioner was charged with, thus, petitioner was not properly notified of the charges and ultimately plead guilty to conduct not charged by the grand jury.

Supporting facts:

The indictment against petitioner fails to identify any event(s) in which he is alleged to have participated in; there are no events or overt acts pertinent to the subject-matter under indictment alleged against Sweeney. (See indictment).

Legal Authority and Argument.

The very core of criminality depends upon a specific identification of fact, an indictment must do more than simply repeat the language of criminal status. The indictment against petitioner does not allege that he engaged in a criminal enterprise through participation in criminal activity that was part of a series of racketeering offense(s), which were undertaken by several people. Furthermore, there was no evidence or information presented to the grand jury to support a racketeering indictment against the Movant, hence the lack of any crimes (overt acts) alleging petitioner's participation. (Racketeering conspiracy, 18 U.S.C. § 1962(d)... it shall be unlawful for any person to conspire to violate any of the provision of subsection (a), (b), or (c) of this section. In order to establish a conspiracy of racketeering there must be a "pattern of racketeering activity" which requires at least two acts of racketeering activity. "Racketeering activity"

means (A) Any Act or Threat involving murder, kidnapping, gambling, Arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in A controlled substance or listed chemical (As defined in section 102 of the controlled substance Act [21 U.S.C.S. § 802], which is chargeable under state law And punishable by imprisonment for more Than one year... NO where within The indictment Against Petitioner does it specify the Alleged predicate Racketeering Acts which Petitioner Alleged to have conspired in, directly or indirectly; Therefore, The indictment is unconstitutionally Vage.

The U.S. Supreme Court determined That An indictment is constitutionally Vage if it does not comply With Three requirements. 418 U.S. 87, 117, 94 S.Ct. 2887, 41 L.Ed. 2d 590 (1974); See Also U.S. V. Arlen 947 F.2d 139, 144 (5th. Cir. 1991); cert. denied, 117 L.Ed. 2d 623, 112 S.Ct 1480. An Adequate indictment 1). enumerates each prima facie element of The charged offense, 2). notifies The Defendant of The charges Against him, And 3). provides The Defendant with A double jeopardy defense Against future prosecutions. Hamling, 418 U.S. At 117; U.S. V. Price, 868 F.2d 1379, 1383 (5th Cir. 1989), cert. denied, 493 U.S. 932, 110 S.Ct. 321, 107 L.Ed. 2d. 312. Petitioner claims that The indictment failed To comply with The requirements of Hamling.

1. Elements of the offense

To satisfy The first Hamling requirement The indictment must set forth each element of The punishable offense. Hamling, 418 U.S. At 117; U.S. V. London, 550 F.2d 206, 210 (5th Cir. 1977). To secure A conviction under RAKEteering conspiracy, 18 U.S.C. § 1962(d), The government must prove both intent To Agree And

intent to participate, directly or indirectly, in a conspiracy. No formal agreement is necessary, An agreement can be established by A current action, meaning the parties within the indictment worked together understandingly, with the objective to Accomplish the common purpose. To where in the current RACKeteering indictment, the indictment alleges A conspiracy To commit multiple offense, And the charge can be sustained by sufficient evidence of conspiracy to commit Anyone offense. The prosecution must prove that the defendant(s) Agreed to commit one of the multiple illegal objectives of the conspiracy sufficed to sustain the conviction on that count.

Each of the foregoing are An element of the offense charged in the indictment against the Petitioner — they Are without A doubt, A component part, contributing factor of the charge(s); And the indictment does not provide these elements.

2. Adequate notice:

To satisfy the second Hamling requirement the indictment must describe the specific facts and circumstances surrounding the offense in question in such A manner as to inform the defendant of the particular offense charged. Hamling, 418 U.S. at 117-18.

Petitioner has repeatedly claimed (To counsel And the court) That the indictment is Vague, misleading, prejudced, And confusing, And That he has not been giving Any notice of overt Acts (facts And crimes) And circumstances surrounding the offense in question, in fact, Sweeney has repeatedly claimed That he has no knowledge of the Alleged Acts within the indictment And did not take part in them in Any way,

directly or indirectly. Within the indictment there is not even one (1) overt Act that Petitioner is alleged to have participated in.

3. Double Jeopardy Defense:

In order for an indictment to be adequate and satisfy the Third Hamling requirement, an indictment must provide the defendant with a double jeopardy defense against future prosecution.

The only way to satisfy this requirement is to describe the specific Acts And circumstances in which the Petitioner has Alleged to have participated in. The indictment Against Petitioner does not meet this requirement because it lacks any specific criminal Acts in which Sweeney participated in

In the indictment Against the Petitioner the language of the statute was used in the general description of the offense, however, it is not sufficient to set forth the offense in the words of the statute unless those words of themselves fully, directly, And expressly, sets out the specific circumstances. The indictment does not Apprise the Movant with reasonable certainty of the facts And circumstances As will inform him of the specific events Alleged Against him

A corollary purpose of this requirement that an indictment set out the specific offense coming under the general description with which the Petitioner is charged is to inform the court And the defense of the facts Alleged, so That they may decide whether they Are sufficient in law to support A conviction, if one should be had.

Petitioner should of been Accorded every safeguard which the law Accords in All other federal criminal cases. The indictment in which the Movant is under does not even Allege

that the means by which he committed the offense are unknown

Uniformly, the federal courts have held that an indictment must do more than simply repeat the language of the criminal statute, for this is the means by which gives the court jurisdiction and the Petitioner a fair trial. It is undoubtedly that the indictment against Sweeney is not accompanied with a statement of facts and circumstances as would inform him of the specific offense, coming under the general description, with which he is charged, thus the Trial court lacks the jurisdiction to uphold any conviction. The indictment's insufficiency to clearly fulfill its primary office - To inform Petitioner of the nature of the accusation(s) against him is a complete violation of Rule 7(c).

Ultimately, the Court lacks jurisdiction to uphold the conviction because Petitioner has not been convicted of any offense/crime alleged in the indictment, and he has been convicted of an indictment that does not even purport to inform him, or the Court, in any way of the nature of the accusation(s) against him. Instead, the indictment left the government free to roam at large to shift its theory of criminality so as to take advantage of each passing vicissitude of the prosecution.

Yet, Sweeney can not be guilty of any criminal offense unless there are specific facts alleged against him within the indictment.

The indictment against the Petitioner is failing to identify the events in which he is alleged to have participated in because there are no events or overt acts pertinent to the subject-matter under indictment. Thus Sweeney was never giving the opportunity to prepare any defense against

specific acts.

U.S. v. Powell, 423 U.S. 87, 92, 96 S.Ct 316, 46 L.Ed. 2d 228 (1975); U.S. v. Clark, 582 F.3d 607, 612-13 (5th cir. 2009, (quoting Rabek & Hardee LP v. City of Austin, 522 F.3d 533, 546-47, 551 n. 19 (5th cir. 2008)), U.S. v. Heinze, 361 F. Supp 46, 56 (D. Del. 1973). Fed. R. Crim. P. 7 (c), U.S. v. Raines, 537 F.3d 439, 459 (5th cir 2008), 1 Wright & Miller, Supra § 125 At 542, U.S. v. Resendiz-Ponce, 549 U.S. 102, 108, 127 S.Ct 782, 166 L.Ed. 2d. 291 (2007), Cochran and Sayre V. U.S., 157 U.S. 286, 209, Bartell V. U.S., 227 U.S. 427, 431, 57 L.ed 583, 33 S.Ct. 383, U.S. V. Debrew, 346 U.S. 374, 377, 378, 98 L.Ed 92, 97, 74 S.Ct 113, U.S. V. Hess, 124 U.S. 483, 487, 31 L.ed. 516, 518, 8, S.Ct. 571.

Cause:

As part of the plea Agreement the petitioner waived his right to direct Appeal, Therefore this is his first opportunity to raise the claim. See Document 30.

Prejudice:

Petitioner was not accorded every safeguard which the law accords in all other federal criminal cases. The indictment fails to identify any one event in which he is Alleged to have participated in, Thus depriving Sweeney the right to prepare any defense Against specific acts. Also see Document 30.

Petitioner wishes to withdraw his plea.

Claim no. 5:

Factual basis for Petitioner's plea was not supported factually; the plea was not supported by evidence obtained by A governmental investigation. Ultimately, Petitioner's plea is not supported by A factual basis.

Supporting facts:

Factual stipulations of plea Agreement are not Actual events That occured, they were fabricated by the Petitioner And the government Adopted Them.

Legal Authority And Argument.

A guilty plea does not waive the right of A defendant To Appeal A District Court's finding of A factual basis for the plea on the ground That the facts set forth in the record do not constitute A federal crime. Johnson, 194 F.3d At 659; Sprouill, 292 F.3d At 215. Factual basis for the plea As shown on record must establish An element of the offense of conviction. Sprouill, 292 F.3d At 215 (quoting U.S. v. White, 255 F.3d 374, 380 (5th Cir. 2001).

Petitioner wrote A fictitious letter To the U.S. Attorney's office, District of Maryland, dated June 8, 2012, To mislead, manipulate, And Assist codefendants in their defense because lead defendant, Perry "Big Rock" Roark, Admitted To ordering Murder(s) And Assault(s), And by doing so Rock continued, Admitted, codefendants carried out his orders, so Sweeney believed it was necessary To Assist codefendants, even At the cost of his own freedom.

Petitioner understood That he had To come up with A way To make his letter believable because At no time during The government's investigation of The Activities Alleged in The indictment was there information revealed About him

participating in any criminal activity. Sweeney played on his knowledge of the government wanting to secure a conviction against him by any means necessary, even through false and unfounded information, therefore, he wrote the June 8, 2012 letter by first stating:

"From the beginning, I have been recognized and accepted as the Supreme Dead Man or 'Supreme-D.'" The government adopted this with, "The Defendant was a founder of DMI and became its 'Supreme-D.'"

Never has there been a position within DMI titled "Supreme Dead Man," until Petitioner created it in the June 8th letter, as a means to make his fictitious story appear real. There have been no documentation or information obtained during the governmental investigation revealing such a position. (The government has named all organizational positions in the indictment). Sweeney took things a step further to make his story more believable. "After" he created the Supreme-D position in the June 8th letter, he incorporated it into a structure, then mailed it through the regular institutional mail so it would be obtained by institutional investigators, he knew they would make a copy and forward it to the government, or a branch therein.

PSR states "The Defendant was incarcerated in several state prison facilities in Maryland and oversaw the activities of DMI." There is no investigative information that alleges this, furthermore it [completely contradicts] what the government alleged in the indictment. This unfounded allegation had to be stated in order to fulfill Petitioner's false story in order to allow the government to prepare a plea based on unfounded information and non-existing crimes.

Petitioner falsely claimed in the June 8th letter that he passed down orders stating that DMI was officially an organization for hire, that DMI would accept any and all hits for those with the means to pay for that service. The government stated, "The Defendant announced that DMI was AVAILABLE to do 'hits' for hire in order to raise money and to enable white prisoners to retaliate against black gangs and cliques."

The plea further states, "The Defendant was aware of and participated in the smuggling of drugs into prisons by DMI members and on behalf of DMI members. These drugs included heroin, cocain, MARIJUANA, crack cocaine, and prescription drugs."

At no time within the indictment does it allege that Petitioner was involved in drug activity (or any of the other acts in the plea), nor does Sweeney mention drug activity in the June 8th letter. Its publicly known that Petitioner is against drug dealing because it is destroying organizational members, our youth, families and communities. The claim of drug activity had to be placed in the plea by the government in order to satisfy their claim that DMI is involved in hired hits, drug distribution and other criminal activity.

In the June 8th letter, Petitioner falsely claimed that he secretly ordered "hits" throughout the Maryland state prison system. The government adopted as alleged (untrue-edly) in plea, "during his years in Maryland... the Defendant ordered numerous 'hits'."

Neither the Court or prosecution may change the crimes in the indictment put forward by the grand jury, the fifth amendment guarantees that no person shall be held

To answer for a capital or infamous crime unless on presentment or indictment of a grand jury. If it were within the power of the court to change the charging part of an indictment to suit its own notions the great importance that the common law and constitution attach to an indictment by a grand jury "may be frittered away until its value is almost destroyed." Ex parte Bain, 121 U.S. 1, 10, 30 L.Ed. 849, 7 S.Ct. 781 (1887).

By comparing the June 8th letter falsely written by Sweeney (where he falsely alleges involvement in non-existing crimes as a means to assist codefendants), and the government's plea agreement, the Court will clearly be able to establish that the plea is not based on facts, but "Solely" on the June 8th fabricated letter. The false claims Petitioner made against himself in the letter was not investigated on any level, nor did he mention any of the alligations in the indictment.

In the June 8th letter Sweeney clearly states, "I devised a plan... so I contacted the U.S. Attorney's office in Baltimore in 2008, telling them that I was willing to work with them... I had to use these events surrounded by a fictitious story - who did it and why had to be false. So I begin to create a story of fiction about people and events that I hoped would make the United States Attorney's office and FBI in Baltimore believe that I was really going to flip and become a switch for them. I continued to write them in hopes of making them think I was in a bad place in my life, stressing and so forth. The fictitious story I gave them was violent and based on some true events with a little publicly known history about DMI added, but in

reality none of the events had anything to do with DMI, nor was the who and why true."

Petitioner further states, "The goal, if they fell for and believed the lies I was telling them... To mislead and manipulate the United States Attorney's office and FBI..."

Sweeney makes clear in the June 8th letter that he repeatedly lied to the U.S. Attorney's office and FBI in order to mislead and manipulate them. Therefore, for the government to base the plea agreement on more lies and manipulations by the Petitioner is irresponsible, un-ethical, and completely unconstitutional.

The end result is that the plea agreement is not supported by any factual events, basis — information obtained through an investigation and or by the grand jury in which indicted him.

There is no doubt that the statement of facts in the governments plea proposal is based solely on the false claims Petitioner made against himself in the false letter dated June 8, 2012.

When it is clear that Petitioner has lied to and manipulated the U.S. Attorney's office and FBI, it is irresponsible, unethical, and unconstitutional for the government to prepare a plea agreement without first investigating the false claims made by Sweeney. The government failed to investigate those claims in order to prove the events were true or false, to gather information to support these claims, and learn if anyone else was involved.

Because the government failed to do their legal duty and uphold their ethical responsibility, they prepared a plea

Agreement based on extended information — information not supported by any investigation or information reviewed by the grand jury — Sweeney has been forced to plea to, and has been convicted of offenses that are not within the indictment, therefore, the Trial Court did not have the jurisdiction to accept Petitioner's plea, nor uphold that conviction.

The factual basis requirement is designed to prevent a defendant from entering a plea to an offense not supported by evidence and helps ensure that the constitutional standards of voluntariness and intelligence are met.

Notwithstanding the acceptance of a plea of guilty, the Court should not enter a judgement upon such a plea without making such inquiry as shall satisfy it that there is a factual basis for the plea. Fed R. Crim. P. 11(f). In the instant case, the court was not presented with evidence with which it could reasonably find that Sweeney was guilty. Lopez, 907 F.2d at 1100. The factual proffer of the government was insufficient to support a plea of guilty to racketeering conspiracy. In order to convict a defendant of racketeering conspiracy, the government must prove both intent to agree and intent to participate, directly or indirectly, in the racketeering conspiracy; that the defendant agreed to commit one of the multiple illegal activities of the racketeering conspiracy.

In the Petitioner's case, there are no documents or information which would support the factual basis in the plea agreement, the government has never been in possession of investigative material or evidence sufficient enough to

support the factual basis of the plea agreement, making the plea not supported factually by a true and concrete statement of facts.

U.S. V. Bayman, 312 F.3d 225, 227 (5th cir 2002) U.S. V. Carter, 117 F.3d 262, 265 (5th cir 1997); U.S. V. Marek, 238 F.3d 310, 315 (5th cir 2001); U.S. V. Adams, 961 F.2d 505, 509 (5th cir 1992); U.S. V. Gaitan, 426 F.3d 560, 584 (5th cir 2006)

Cause:

As part of the plea agreement the Petitioner waived his right to direct appeal, therefore this is his first opportunity to raise the claim. See document 30.

Prejudice:

Petitioner was misled into pleading to crimes that do not exist, not supported by evidence, he has been deprived of the constitutional standards of voluntariness and intelligence, Also see document 30

Petitioner wishes to withdraw his plea

Claim no. 5:

Ineffective Assistance of Counsel

Legal Authority And Argument, Supporting facts:

The supporting facts will show that the performance of counsel for Petitioner fell below the objective reasonableness of prevailing professional norms, and there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding(s) would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. Strickland v. Washington 466 U.S. 668, 104 S.Ct 2052, 80 L.Ed. 2d 674 (1984), U.S. v. Green, 882 F 2d 999, 1002 (5th Cir.).

Petitioner had reasonable expectation that Capital murder indictment would be dismissed and he would never have to worry about prosecution for these allegations, it is clearly indicated in the written plea Agreement that Capital Murder indictment would be dismissed. Sweeney was informed by counsel(s) And the government that capital murder indictment would be "dismissed". Counsel failed to file motion(s) on behalf of Petitioner once they became Aware the government intended to breach the plea by moving to dismiss capital murder indictment "without prejudice". Petitioner was not made Aware of this until "After" he was sentenced And "After" he waived his right to direct Appeal As part of the plea Agreement, which the government breached. Had Petitioner been made Aware That the capital murder indictment was going to be dismissed without prejudice, he would of decided to go to Trial And not Accept the plea Agreement because he is Actually innocent of the instant case. Thus, Counsel rendered ineffective Assistance by misinforming the

Petitioner that capital murder indictment would be dismissed and that this would terminate the allegation(s) and there would be no further hearing(s); and by failing to file motion to withdraw plea agreement upon notice of the government's breach of the plea agreement — that the government was moving to dismiss the capital murder indictment without prejudice.

Petitioner wrote Counsel(s) letters informing them that the government did not have a "factual theory" only a "theory" and that the indictment against him was too vague because the government did not establish any criminal offense in which Sweeney allegedly participated in; the indictment does not definitely establish, determine, confirm, the conspiracy Petitioner Allegedly took part in — the indictment does not show that Sweeney directly or indirectly participated in a pattern of Racketeering.

Counsel for Petitioner was well aware that the indictment lacked the essential facts constituting the offense charged, that the indictment does not specify any means by which Sweeney participated in the indictment — conspiracy.

Counsel had knowledge that the indictment against Petitioner only cited the language of the statute but was not accompanied with such a statement of facts and circumstances As would have informed Petitioner of the specific offense and nature of acts with which he was charged. Counsel knew and understood that the indictment against Sweeney must do more than simply repeat the language of the criminal statute, that the substantial safeguards and indictment is designed to provid the Petitioner was not there, however, Counsel failed to file necessary motion(s) on behalf of Sweeney.

Due to the fact Counsel was aware that the indictment

lacked a statement of facts and circumstances of the specific offense pertinent to the subject-matter in which Petitioner was indicted under, therefore, Counsel was also aware that because the indictment lacked a statement of facts and circumstances as would have informed the Petitioner of the specific offense and nature of acts with which Sweeney was charged, it would be impossible for the Petitioner to prepare any defense against acts he was not made aware of.

Counsel was aware of legal grounds to file motion to dismiss the indictment against the Petitioner but failed to do so, thus rendering ineffective assistance of counsel. Had counsel filed motion to dismiss as requested by Sweeney, with an understanding of the legal grounds to do so, there is a reasonable probability that, but for counsel's unprofessional error(s), the result of the proceeding(s) would have been different.

Also see Motion to withdraw plea Agreement (September 10th, 2012); Motion to withdraw plea Agreement (January 31, 2013), and Defendant's statement of facts to support motion to withdraw plea Agreement (January 31, 2013).

Cause:

As part of the plea Agreement the Petitioner waived his right to direct appeal, therefore this is his first opportunity to raise the claim. See document 30.

Prejudice:

Had counsel informed Petitioner that murder charges would NOT be dismissed with prejudice, Petitioner would have not plead guilty, had counsel filed motion to withdraw plea upon notice government filed motion to dismiss murder

charges without prejudice, Sweeney would of withdrawn plea, has Counsel filed proper motions toward vague indictment, unconstitutionally constructive amendment of indictment, informed Petitioner of the burden of proof, nature/elements of offense, and evidence surrounding the case and contents of plea, the outcome of the proceedings would of been different. This changing the outcome of the proceedings.

Taken the record in its entire, Petitioner was rendered ineffective assistance of Counsel.

Also see document 30

Claim no. 2

Guilty plea not entered voluntarily and intelligently.

Legal Authority and Argument; supporting facts:

A plea not voluntarily and intelligently made has been obtained in violation of due process and is void. McCarthy v. U.S. 394 U.S. 459, 466, 22 L.Ed. 2d 418, 89 S.Ct. 1166.

A guilty plea, if induced by promises or threats which deprive it of the character of a voluntary act, is void. Miller v. Angliker, 848 F.2d 1312, 1320. The defendant must also understand the consequences of his plea, including the nature of the constitutional protection he is waiving. Henderson, 426 U.S. at 645 n.13; Brady v. U.S., 397 U.S. at 755; Machibroda, 368 U.S. at 493. Petitioner agreed to have murder indictment dismissed, he was led to believe by all parties that this meant the case would be terminated and that there would not be any possibility of any further prosecution involving the murder indictment, "After" Sentencing, A few weeks later, Prosecutor learned that the government breached that agreement and as a consequence the government still has the right to prosecute the murder charges, Petitioner did not enter into the plea voluntary and intelligently because he was not aware of these consequences until "After" sentencing. Out of just consideration for persons accused of crime, courts must ensure that a plea of guilty shall not be accepted unless made voluntarily after proper advice and with full understanding of the consequences. Miller, 848 F.2d at 1320. The defendant must have available the advice of competent counsel. Tollett, 411 U.S. at 261-68; Brady v. U.S., 397 U.S. at 756. Counsel for Petitioner failed to advise him of the consequences of the plea and nature of the charge, and

rendered ineffective assistance of counsel. McMann v. Richardson, 397 U.S. 759, 771 & N. 14, 25 L.Ed.2d 763, 90 S.Ct. 1441. The advice of competent counsel exists as a safeguard to ensure that pleas are voluntarily and intelligently made. Cf. Henderson, 426 U.S. at 647.

Petitioner was not fully advised of the consequences of the plea; the indictment was unconstitutional amended constructively, unconstitutionally vague, plea not supported by a factual basis.

The entire arrest violation(s) rendered Sweeney incapable of making a voluntary decision on how to plead and present a viable defense and forced him into an involuntary plea. (See claims 1-6).

Cause:

As part of the plea agreement the Petitioner waived his right to direct appeal, therefore this is his first opportunity to raise the claim. See document 3a.

Prejudice:

Sweeney is actually innocent of the instant offense, and had it not been for these arrest violations (claims 1 through 6) he would NOT of plead guilty. Thus, changing the outcome of the proceedings. Also see document 3a.

Respectfully submitted
James Sweeney
James Sweeney
reg. no. 58827-066
U.S.P. Lewisburg
P.O. Box 1000
Lewisburg, PA 17837