

United States Court of Appeals For the First Circuit

No. 07-2112

ALFRED W. TRENKLER,

Petitioner,

v.

UNITED STATES,

Respondent.

Before

Boudin, Chief Judge,
Selya, Senior Circuit Judge,
and Lipez, Circuit Judge.

JUDGMENT

Entered: September 6, 2007

Petitioner Alfred W. Trenkler seeks to present to the district court a second section 2255 challenge to his federal conviction for participating in a bombing plot. Under applicable certification provisions, 28 U.S.C. §§ 2244, 2255, we must determine whether Trenkler has made a prima facie showing of newly discovered evidence that would show by clear and convincing evidence that a reasonable fact finder aware of such evidence would not have convicted him.

Trenkler has alleged under oath new forensic evidence that, if established, could well be substantial (exculpatory statements by a co-defendant are less impressive). Less clear are the bases for claims that the evidence is newly discovered or that its earlier unavailability reflects any constitutional violation, but it is conceivable that Trenkler might be able to fill in these gaps.

The test for certification, although nominally rigorous, is also expected to be applied swiftly--there is a 30-day target--and

often will have to be done, as here, on a highly incomplete record. In this case, we have determined to grant the certification, but without prejudice to summary resolution by the district court if further information required from Trenkler or tendered by the government so warrants.

The motion for certification is granted.

By the Court:

Richard Cushing Donovan, Clerk.

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IS A TRUE AND CORRECT COPY OF
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AND IN MY LEGAL CUSTODY.

MARGARET CARTER

By: _____
Margaret Carter, Chief Deputy Clerk

FIRST CIRCUIT COURT OF APPEALS
BOSTON, MA

By: *Alan Sauer* Date: 9/6/07

[certified copies: Honorable Rya W. Zobel, Sarah Allison Thornton, Clerk of Court for the District of Massachusetts]

[cc: Michael J. Sullivan, USA, David G. Tobin, AUSA, Michael J. Pelgro, AUSA, James F. Lang, AUSA, Randall E. Kromm, AUSA, Dina M. Chaitowitz, AUSA, James L. Sultan, Esq., Corey A. Salsberg, Esq., Joan M. Griffin, Esq., Alfred W. Trenkler, Petitioner]