

DEC 13 2005

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA * CRIMINAL NO. 04CR20075
VERSUS * JUDGE MELANCON
GREGORY JAMES CATON * MAGISTRATE JUDGE HILL

JUDGMENT¹

For the reasons stated in the Report and Recommendation of the Magistrate Judge previously filed herein, and after an independent review of the record, and a *de novo* determination of the issues, and consideration of the objections filed herein, and having determined that the findings are correct under applicable law;

IT IS HEREBY ORDERED that the Clerk REINSTATE petitioner's judgment of conviction and sentence on this court's docket as of **December 15, 2005**, that date representing the date from which the time for filing a notice of direct appeal shall run.

IT IS FURTHER ORDERED that petitioner's claim that he received ineffective assistance of counsel at sentencing because his attorney failed to argue claims based on *Blakely v. Washington*, 124 S.Ct. 2531 (2004) is **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that petitioner's remaining claim that he received ineffective assistance of counsel because the cumulative effect of these errors by counsel deprived him of Due Process is **DISMISSED WITHOUT PREJUDICE**.

Signed in chambers in Lafayette, Louisiana this 13th day of December, 2005.



Tucker L. Melançon
United States District Judge

The District Judge is appreciative of the Magistrate Judge's recognition of the context in which the District Judge's comments were made, as set out in Footnote 15 on Page twenty-six of this Report and Recommendation.