

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>UNITED STATES OF AMERICA,</b>	:	
	:	
<b>Petitioner,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>VICTOR GATES,</b>	:	<b>No. 17-cr-00564-WB</b>
	:	
<b>Respondents.</b>	:	
	:	

**ORDER**

Petitioner Victor Gates has filed a motion for permission to present additional witnesses in support of his motion to vacate his sentence under 28 U.S.C. 2255. Doc. No. 180. The motion includes an Exhibit “B” listing nineteen witnesses that Mr. Gates would like to call. Doc. No. 180-2. The government has filed a response requesting that the motion be denied in its entirety. My review of the motion and the accompanying attachments reveals that:

1. Mr. Gates has failed to provide affidavits of any witness that establishes that the witness will testify to information that relates to the relevant issue of ineffective assistance of counsel and will be helpful to me as the trier of fact.

2. With respect to Mr. Philip Cochetti, Mr. Gates has failed to comply with my sequestration order, and has provided an affidavit that attempts to respond to the testimony of James Binns, Esq. Nevertheless, this affidavit contains much that is irrelevant and little that is probative about the dispute before me, which is whether trial counsel was ineffective. The Cochetti affidavit seems to be devoted primarily to explaining why Mr. Cochetti’s theory of defense for Mr. Gates would have been better than Mr. Binns’. I read the affidavit, and counsel’s lengthy memorandum, with great

care. I came away profoundly unconvinced by Mr. Cochetti's thesis. I am satisfied that putting Mr. Cochetti on the stand at trial to testify in accordance with his affidavit would have been utterly disastrous for Mr. Gates. I find that Mr. Binns' decision not to put Mr. Cochetti and his alternate defense theory on the stand at trial was good lawyering, and did not prejudice Mr. Gates. I do not need to hear Mr. Cochetti reiterate the content of his affidavit via live testimony.

Therefore, it is on this 10<sup>th</sup> day of August, 2021, **ORDERED**, that the motion for permission to present additional witnesses in support of his motion to vacate is **DENIED** as to all witnesses, except Mr. Gates. Mr. Gates may testify at an evidentiary hearing on the **6<sup>th</sup>** day of **October, 2021**, from 9:30 a.m. to 12:00 p.m. in **Courtroom 3D**.

**BY THE COURT:**

*s/Richard A. Lloret*  

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**HON. RICHARD A. LLORET**  
**United States Magistrate Judge**