

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 8:20-cv-323-SDM-JSS
8:16-cr-319-SDM-JSS

NEDAL ABU-AISH
_____ /

UNITED STATES OF AMERICA

v.

CASE NO. 8:20-cv-1280-SDM-JSS
8:16-cr-319-SDM-JSS

FAYEZ ABU-AISH
_____ /

ORDER

Brothers Nedal and Fayez Abu-Aish were charged in a single indictment with conspiring to possess with the intent to distribute a mixture or substance containing a detectable amount of XLR-11, in violation of 21 U.S.C. § 846; with one count of distributing a mixture or substance containing a detectable amount of XLR-11, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2; and with one count of possessing a mixture or substance containing a detectable amount of XLR-11, in violation of 21 U.S.C. § 841(a)(1) and (2). A jury convicted the defendants as charged, and each was sentenced to 168 months' imprisonment.

Both brothers filed their respective motion under Section 2255 to vacate the sentence and each alleges, in addition to other claims, that their respective attorney

failed to advise them about a plea offer from the United States. In response to the motions to vacate, the United States disputes this allegation based on an affidavit from each defense attorney. (Docs. 15 in 20-cv-323 and 18 in 20-cv-1280) The brothers disagree with their respective attorney's representations that the plea offer was fully discussed and rejected by the brothers. (Docs. 17 in 20-cv-323 and 19 in 20-cv-1280) Consequently, an evidentiary hearing is necessary to resolve this material factual dispute, which will necessitate a credibility determination.

Fayez Abu-Aish is represented by retained counsel in his action under Section 2255. Although Nedal Abu-Aish is presently *pro se*, appointing him counsel is warranted because an evidentiary hearing is necessary.

This action is referred to the magistrate judge to appoint counsel for Nedal Abu-Aish. No later than **MONDAY, JANUARY 22, 2024**, the parties must jointly propose three dates for an evidentiary hearing.

ORDERED in Tampa, Florida, on December 22, 2023.



STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE