

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA	*	
Plaintiff	*	
v.	*	Criminal No: 8:13-149 CBD
KIRK YAMATANI	*	
Defendant	*	
* * * * *		

MOTION TO VACATE SENTENCE

Comes now the defendant, Kirk Yamatani, and moves, through undersigned counsel, to vacate the sentence and the order of immediate detention. In support thereof, the defendant states as follows:

The magistrate judge failed to advise Mr. Yamatani of his right to appeal or request reconsideration by a district court, as required by Rule 32(j)(1)(B), Fed.R.Crim.P., which, in part, states as follows:

After sentencing--regardless of the defendant's plea--the court must advise the defendant of any right to appeal the sentence.

Rule 32(j)(1)(B) is specific in its command. It is obviously designed to insure that a convicted defendant be advised precisely of his right to appeal or request reconsideration and to avoid a situation where the Government claims a defendant is otherwise aware of those rights while the defendant denies such knowledge. In this case, because Mr. Yamatani has rights to request reconsideration, in addition to his right to appeal, it would be appropriate to remand this case for a new sentencing hearing.

For these reasons, Mr. Yamatani requests that his sentence be vacated and that he be released pending a new sentencing hearing. See *United States v. Paige*, 443 F.2d 781 (4th Cir. 1971).

Respectfully submitted,

June 20, 2013

Date

_____/s/_____
Steven H. Levin
Levin & Curlett LLC
250 West Pratt Street
Suite 1300
Baltimore MD 21201

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been served, by electronic mail, on this 20th day of June 2013, on all parties to the case.

_____/s/_____
Steven H. Levin
Attorney for the Defendant