IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA *

*

v. * CRIMINAL NO. CBD-13-0149

*

KIRK YAMATANI,

*

Defendant

GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION TO VACATE SENTENCE

The United States of America, by its attorneys, Rod J. Rosenstein, United States Attorney for the District of Maryland, and Adam K. Ake, Assistant United States Attorney for said District, opposes the defendant's motion to vacate sentence. Although the government concedes that the magistrate court failed to notify the defendant of his right to appeal his sentence within fourteen days before the end of the sentencing hearing, the defendant has already noted his appeal at ECF No. 14, thus demonstrating he is aware of that right. In such cases, the Supreme Court has held there is no prejudice from a sentencing court's failure to advise a defendant of his right to appeal. *See Peguero v. United States*, 526 U.S. 23, 29-30 (1999) ("we hold that petitioner is not entitled to ... relief based on a[n advice of appeal right] violation when he had independent knowledge of the right to appeal and so was not prejudiced by the trial court's omission." Accordingly, the government opposes the instant motion.

Respectfully submitted,

Rod J. Rosenstein United States Attorney

By: /s/

Adam K. Ake

Assistant United States Attorney

CERTIFICATE OF SERVICE

This is to certify that on this 20th day of June, 2013, a copy of the foregoing Respnse to the Defendant's Motion to Vacate was served via electronic case filing upon the following:

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

__/s/___ Adam K. Ake Assistant United States Attorney