

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHARLES E. TAYLOR,

Defendant.

ORDER

94-CR-0056-C

Defendant Charles E. Taylor has moved the court to alter or amend the judgment entered on November 1, 2004, pursuant to Fed. R. Civ. P. 59(e), dismissing his second motion for post-conviction relief under 28 U.S.C. § 2255. The motion is timely, but it is without merit and will be denied.

Defendant argues that the court erred in identifying the grounds that he was raising in this § 2255 motion. He says that the grounds he listed on page 3 of his motion were grounds raised in an earlier filed motion that the court had denied, rather than grounds he wanted to raise in this motion.

The error makes no difference to petitioner's ability to file a second § 2255 motion. The law is clear: A defendant may file only one motion pursuant to 28 U.S.C. § 2255 and must do so within a year of the date on which his conviction becomes final. There are only

a few exceptions to this. One is that a movant has one year in which to file after the Supreme Court newly recognizes a right that he contends he was denied.

Defendant is arguing that he was sentenced unconstitutionally because the court relied on facts that had not been found by a jury beyond a reasonable doubt. At the present time, the Supreme Court has not recognized a right for federal defendants to be sentenced only on facts determined by a jury. In the event that it does, defendant will then have a year from the date on which the court recognizes this right in which to seek permission from the Court of Appeals for the Seventh Circuit to file a second § 2255 motion.

In the meantime however, no reason exists for changing the ruling I made. Defendant's § 2255 motion had to be dismissed because this court lacks any authority to entertain it.

ORDER

IT IS ORDERED that defendant's motion to alter or amend the judgment entered on November 1, 2004, dismissing his motion for post-conviction relief is DENIED.

Entered this 16th day of November, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge