

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL PAUL DeANGELO,

Defendant.

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ORDER

04-C-0144-C

98-CR-0015-C-01

Defendant Michael Paul DeAngelo has filed a motion, ostensibly pursuant to 18 U.S.C. § 3614, in which he seems to be arguing that the court erred in sentencing him because it required him to make restitution for the loss he caused the Cincinnati Insurance Company, when he filed false claims of injury. Defendant asserts that his counsel was ineffective in not advising the court that a restitution obligation of \$97,174.27 would render defendant insolvent. Defendant makes some additional allegations but it is unnecessary to go over them, because this court has no authority to entertain his motion.

Defendant filed a § 2255 motion in 2000, which was denied, as was his request for a certificate of appealability. The court of appeals upheld the denial of the certificate. Now

defendant is bringing a second motion attacking the legitimacy of his sentence. The fact that he has not called it a § 2255 motion does not change its essential nature. Defendant is asserting that his sentence is subject to collateral attack because he was denied his constitutional right to effective counsel; this makes his motion one that could be brought under § 2255. If it *could* be brought under § 2255, it *must* be brought under § 2255. United States v. Evans, 224 F.3d 670 (7th Cir. 2000) (“any post-judgment motion in a criminal proceeding that fits the description of § 2255 ¶ 1 is a motion under § 2255”). Although defendant would like to avoid the statutory ban that § 2255 ¶ 8 places on successive petitions, he cannot do so by renaming his motion something that it is not. (Moreover, even if it were possible to bring a different kind of challenge to a sentence, 18 U.S.C. § 3614 would not be a mechanism for doing so.)

A district court has no authority to entertain a second § 2255 motion unless the defendant obtains a certificate from the court of appeals. Therefore, if defendant wishes to file a second motion attacking his sentence, he would have to obtain the approval of the Court of Appeals for the Seventh Circuit. 28 U.S.C. § 2255. To do this, he would have to show either that he has newly discovered evidence that could establish by clear and convincing evidence that no reasonable factfinder could have found him guilty of the offense for which he was convicted or that the Supreme Court has announced a new rule of constitutional law and has made it retroactive. It does not appear that defendant’s claim of

ineffective assistance of counsel depends on newly discovered evidence or on an new rule of constitutional law. If it does not, it would be futile for him to seek a certificate from the court of appeals to bring a successive § 2255 motion.

If defendant believes that he will never be able to make full restitution for his crime, his best remedy is to discuss the matter with his supervising United States Probation Officer and with the United States Attorney for this district to try to work out a reduction in the amount he is obligated to pay.

ORDER

IT IS ORDERED that defendant Michael Paul De Angelo's motion for relief pursuant to 18 U.S.C. § 3614 is construed as a motion for modification or vacation of his sentence brought pursuant to 28 U.S.C. § 2255 and DISMISSED because it is defendant's second § 2255 motion and this court has no authority to entertain it.

Entered this 12th day of March, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge