

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JACK ERVAN, III,

Defendant.

MEMORANDUM

05-C-0108-C

99-CR-0106-C-03

Defendant Jack Ervan, III, has written to the clerk, arguing that the court misconstrued his recent “notice of appeal” as a second or successive motion pursuant to 28 U.S.C. § 2255, when in fact, it was meant as an appeal of his sentence. Unfortunately for defendant, the time in which he could have appealed his sentence expired years ago. He was sentenced in this court on August 31, 2000. In fact, he took an appeal from his conviction and sentence that was dismissed in November 2001.

I gather from defendant’s letter that he thinks it was error for the court to interpret his notice of appeal as a § 2255 motion. However the notice is characterized, it has no

chance of succeeding.

Entered this 8th day of March, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge