

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARK J. WRIGHT,

Defendant.

ORDER

03-C-0709-C

00-CR-0098-C

Defendant Mark J. Wright has filed a Notice of Appeal for Review of Sentence Via 18 USC § 3742.” He objects to the weight of the drugs attributed to him at sentencing and asks for relief in the form of a downward departure. Although defendant characterizes his appeal as one brought under certain provisions of Title 18, it is actually a motion for modification of his sentence and must be brought pursuant to 28 U.S.C. § 2255. Any motion that is filed in the sentencing court that is substantively within the scope of § 2255 must be filed as a § 2255 motion. Melton v. United States, 359 F.3d 855, 857 (7th Cir. 2004). “Call it a motion for a new trial, arrest of judgment, mandamus, prohibition, coram nobis, coram vobis, audita querela, certiorari, capias, habeas corpus, ejectment, quare

impedit, bill of review, writ of error, or an application for a Get-Out-of-Jail Card; the name makes no difference. It is substance that controls.” Id. (citing Thurman v. Gramley, 97 F.3d 185, 186-87 (7th Cir.1996)).

Section 2255 prohibits a defendant from filing a second or successive motion under § 2255 without certification by the court of appeals that the new motion contains newly discovered evidence or “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court.” This motion is defendant’s second (which tends to explain his effort to avoid labeling it as a § 2255 motion). He filed a motion pursuant to § 2255 on December 12, 2003; that motion was denied in its entirety on June 3, 2004. He has not obtained certification from the court of appeals for this second motion. Therefore, this court lacks authority to entertain it.

ORDER

IT IS ORDERED that the Notice of Appeal for Review of Sentence Via 18 USC § 3742 filed by defendant Mark Wright is construed as a motion to vacate or modify a

sentence brought pursuant to 28 U.S.C. § 2255 and is DISMISSED because this court lacks the authority to entertain it.

Entered this 23rd day of February, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge