

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

STERLING C. DANIELS,

Defendant.

ORDER

01-CR-0009-C

On June 6, 2005, defendant filed a motion for a reduction of sentence pursuant to 18 U.S.C. § 3582(c), contending that his sentence is unconstitutional because it was increased in reliance on facts that had not been found by a jury beyond a reasonable doubt. In an order dated June 8, 2005, I noted that defendant's motion, if it was to be considered, would have to be re-characterized as a motion pursuant to 28 U.S.C. § 2255. Castro v. United States, 124 S.Ct. 786, 792 (2004). However, I noted also that before I would re-characterize defendant's motion as a first § 2255 motion, I was required under the holding in Castro to inform defendant of my intent to re-characterize his submission, warn him that this re-characterization means that any subsequent § 2255 motion will be subject to the restrictions on "second or successive" motions, and provide defendant an opportunity to

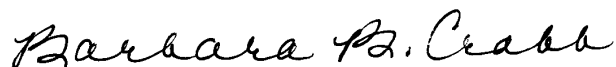
withdraw the motion or to amend it so that it contains all the § 2255 claims he believes he has. Pursuant to the ruling in Castro, if these warnings are not given, the defendant's motion cannot be considered to have become a § 2255 motion for purposes of applying to later motions the law's "second or successive" restrictions. Id at 791-792. In the June 8, 2005 order, I gave defendant until July 1, 2005, in which to advise the court whether he wishes to withdraw his motion or proceed with it. Defendant has not responded in any fashion to the June 8, 2005 order. Therefore, his motion will be considered withdrawn.

ORDER

IT IS ORDERED that defendant's motion filed on June 6, 2005, is considered to have been withdrawn.

Entered this 11th day of July, 2005.

BY THE COURT:

A handwritten signature in black ink, reading "Barbara B. Crabb". The signature is written in a cursive, flowing style.

BARBARA B. CRABB
District Judge