

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

HERBERT R. KEGLEY,

Defendant.

MEMORANDUM

01-CR-62-C-01

Defendant Herbert Kegley has filed a “motion to define and/or clarify sentence,” which consists entirely of certain questions relating to his sentence.

I will attempt to answer the questions. First, defendant asks whether the court had original jurisdiction where the instant offense was committed on May 17, 2001, and the Florida offense was committed on July 2, 2001. It is not entirely clear what defendant is referring to, but he has not shown that this court did not have jurisdiction over him when it imposed sentence on him on October 11, 2002.

Second, defendant asks whether the court had jurisdiction to impose a concurrent sentence pursuant to the provisions of Barden v. Keohane, 921 F.2d 476 (3d Cir. 1990).

The answer is that the court did have jurisdiction to impose a concurrent sentence but chose not to.

Third, defendant asks whether the court erred in not imposing a concurrent sentence when defendant agreed to plead guilty only because he thought he would obtain a concurrent sentence. If defendant thinks he entered an involuntarily plea of guilty that was based upon erroneous advice given him by his court-appointed counsel, he is free to file a motion to vacate his sentence pursuant to 28 U.S.C. § 2255. Nothing in the present record shows what advice defendant received from his counsel or why he chose to plead guilty, other than the statements he made in open court at the time he entered his plea. Among those statements was one to the effect that no one had made him any promises other than those set out in the written plea agreement that is of record. To succeed on a motion to vacate his sentence, defendant would have to show that in fact he was made promises that he did not disclose to the court at the time of this plea.

Fourth, defendant asks whether the court recognizes unique discretionary authority to designate the state prison as a place for federal confinement. I cannot see the relevance of this question. As I understand it, defendant is in custody in a state prison.

Finally, defendant asks whether the federal court failed to award the proper amount of jail time credit to him. The determination of jail credit is made by the Bureau of Prisons. If petitioner believes that the Bureau of Prisons has made an erroneous determination of his

jail credit, he is free to file a federal lawsuit challenging the determination once he has exhausted all of the remedies available to him in the Bureau of Prisons.

Entered this 18th day of February, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge