

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

BOYD FLANNAGAN,

Defendant.

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ORDER

02-CR-0130-C

Defendant has written to the court requesting a copy of his plea and sentencing transcript at government expense. Defendant wishes to use these transcripts to challenge his conviction in a motion brought pursuant to 28 U.S.C. § 2255. In defendant's view, because the court made findings on drug quantities and gave him a two-point gun enhancement, resulting in an increase in the sentencing guideline range applied to him, and because the court's findings were not based on a jury determination that the facts underlying the findings had been proven beyond a reasonable doubt, he is entitled to relief under Blakely v. Washington, 125 S.Ct. 2531 (2004). I construe his letter as a motion for preparation of the transcripts at government expense, pursuant to 28 U.S.C. §753(f), which provides in relevant part:

Fees for transcripts furnished in proceedings brought under section 2255 of this title to persons permitted to sue or appeal in forma pauperis shall be paid by the United States . . . if the

trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal.

It is true that defendant's sentence was enhanced by the court and that the enhancements were not based on jury findings. However, it may be that defendant admitted to the critical facts during his plea hearing. Without a transcript of the hearing, it is not possible to determine whether defendant's allegations are accurate. Even if they were, it would not follow that he is entitled to a modification of his sentence under § 2255. Blakely has not been made retroactive. Unless it is made retroactive in the future, defendant has no viable claim for relief. His sentence was presumptively valid when he was sentenced. It remains so. He has no need for a transcript at this time.

#### ORDER

IT IS ORDERED that defendant's motion for preparation of transcripts at government expense pursuant to 28 U.S.C. §753(f) is DENIED without prejudice.

Entered this 26th day of July, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge