

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

NATHANIEL SMITH,

Defendant.

ORDER

03-C-0540-C

98-CR-0081-C-01

Defendant Nathaniel Smith has moved for vacation of his sentence pursuant to 28 U.S.C. § 2255, contending that his sentence is illegal because he had ineffective assistance of counsel. Unfortunately for defendant, his motion must be denied because it is the second post-conviction motion he has filed and it has not been certified by the court of appeals.

According to § 2255, a prisoner cannot file a second § 2255 motion unless the court of appeals certifies that the motion rests on newly discovered evidence that would establish by clear and convincing evidence that no reasonable factfinder would have found the prisoner guilty of the offense or upon a new rule of constitutional law made retroactive to cases on collateral review by the Supreme Court. Defendant's motion is not certified.

Therefore, this court lacks the authority to consider it.

ORDER

IT IS ORDERED that defendant Nathaniel Smith's motion for relief pursuant to 28 U.S.C. § 2255 is DENIED because it is the second such motion defendant has filed and it has not been certified by the court of appeals as required under § 2255.

Entered this 22nd day of October, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge