

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

MARK J. WRIGHT,

Petitioner,

v.

UNITED STATES,

Respondent.

ORDER

03-C-0709-C

Petitioner Mark J. Wright has filed a document under the All Writs Act, the Administrative Procedure Act, the Citizens Protection Act and the Jencks Act. The gist of his petition is that he was found guilty of cocaine distribution in this court because he had ineffective counsel, the court was prejudiced and the prosecution used informants and did not provide Jencks Act materials to defendant. He contends that there is sufficient evidence to support a vacation or correction of his sentence.

Although petitioner has not filed his petition pursuant to 28 U.S.C. § 2255, he is seeking relief that he can obtain only through § 2255. Therefore, his petition must be construed as a § 2255 motion. United States v. Evans, 224 F.3d 670, 673 (7th Cir. 2000) (“[A]ny motion filed after the expiration of the time for direct appeal, and invoking grounds

mentioned in [§ 2255(1)] is a collateral attack for purposes of [2255(8)].”) However, before I attach that label on it, I will give petitioner an opportunity to withdraw the motion and submit a motion labeled properly as a motion for vacation of sentence pursuant to § 2255. Castro v. United States, 124 S. Ct. 786 (2003); Evans, 224 F.3d at 675; Henderson v. United States, 264 F.3d 709 (7th Cir. 2001). If petitioner chooses not to withdraw the motion, I will construe it as a motion brought pursuant to § 2255. Petitioner should be aware that in that instance, he will not have another chance to file a § 2255 motion without the advance permission of the court of appeals. § 2255 (“A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals . . .”). If he thinks he has additional grounds to assert, he should withdraw his motion and amend it to include every § 2255 claim he believes he has.

If petitioner chooses to withdraw his motion and re-submit it at a later time, he should keep in mind the time limits that apply to the filing of motions for § 2255 relief.

ORDER

IT IS ORDERED that petitioner Mark J. Wright may have until January 9, 2004, in which to advise the court whether he wishes to withdraw his motion under the All Writs Act, Administrative Procedure Act, Citizens Protection Act and Jencks Act or whether he wishes to have the court construe the motion as one brought pursuant to 28 U.S.C. § 2255. If

petitioner does not respond by January 9, 2004, I will proceed to construe his motion as one brought pursuant to § 2255.

Entered this 30th day of December, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge