

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

MARK J. WRIGHT,

Defendant.

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ORDER

03-C-0709-C

00-CR-0098-C-02

Defendant Mark J. Wright has filed a “Motion of Rehearing and Reconsideration” of the order entered herein on June 4, 2004, denying his motion to vacate his sentence brought pursuant to 28 U.S.C. § 2255. The motion must be denied. Defendant filed a notice of appeal of the June 4 order on June 21, 2004. The filing of that order deprived this court of jurisdiction over any substantive aspects of his § 2255 motion.

If I were inclined to grant defendant’s motion for rehearing, I could ask the court of appeals to remand the matter to this court to allow me to make changes in the order. I am not so inclined. With one exception, defendant’s motion for reconsideration is a rehash of the same arguments he raised in his original motion and that were addressed in the June 4

order. The one exception is his new argument based on Blakely v. Washington, 124 S. Ct. 2531 (2004). Although I did not address the effect of the Blakely decision in the June 4 order (because the case had not yet been decided), I am not inclined to ask for a remand of the matter in order to address the argument now. I consider that it is premature. Although the Supreme Court has held the state of Washington's sentencing scheme unconstitutional to the extent it allows judges to increase sentences on the basis of facts not found by the jury, the Court has not said expressly that its decision applies to the United States Sentencing Guidelines under which defendant was sentenced. Until it declares expressly that defendants have a constitutional right to have their sentences enhanced only on the basis of facts found by a jury (or stipulated to in the course of a plea hearing), *and* declares the right retroactive, defendant has no right to any modification of his sentence.

#### ORDER

IT IS ORDERED that defendant Mark J. Wright's motion for rehearing and

reconsideration is DENIED for lack of jurisdiction.

Entered this 3rd day of August, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge