

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

JERRY L. WENDT,

Defendant.  
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ORDER

05-C-0359-C

04-CR-0044-C

Defendant Jerry L. Wendt has filed a timely motion pursuant to 28 U.S.C. § 2255. In his motion it appears that defendant is contending that his counsel was ineffective because he 1) failed to challenge defendant's presentence investigation report under Blakely v. Washington, 124 S. Ct. 2531 (2004) so that [his] enhancements would have brought [his] level down"; and 2) coerced him into pleading guilty.

In order to prevail on a claim of ineffectiveness of counsel, a defendant must show both that his attorney performed below an objective standard of reasonableness *and* that there is a reasonable probability that the results of the proceeding would have been different had counsel performed in a professional manner. See Strickland v. Washington, 466 U.S.

668, 687-88, 694 (1984). Defendant's allegations are far too vague to require the holding of an evidentiary hearing. To go forward on his claim that his lawyer coerced him into pleading guilty, defendant will have to identify with more specificity how he was coerced.

Defendant should be aware that this will be his only chance to file a § 2255 motion, unless he should discover new evidence sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found him guilty of the offense he is challenging or the Supreme Court should establish a new rule of constitutional law that is retroactive and would invalidate his conviction and sentence. Since it is highly unlikely that he will have a second chance to file, he should include in this motion every challenge he has to his conviction and sentence.

#### ORDER

IT IS ORDERED that defendant Jerry Wendt may have until July 21, 2005, in which to file an affidavit in support of his motion for post-conviction relief pursuant to 28 U.S.C. § 2255 and to amend his motion to include additional challenges, if he has them, to the legality of his sentence. If he does not file the affidavit by that date, his motion for post-

conviction relief under § 2255 will be decided without the benefit of defendant's clarification of his claims.

Entered this 22nd day of June, 2005.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge