IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

UNITED STATES OF AMERICA,

ORDER

Plaintiff,

05-C-0743-C
05-CR-0084-C

v.

TIMOTHY SCHUMANN,

Defendant.

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

Defendant Timothy Schumann has filed a "Motion to Vacate Sentence Under the Constitution and Statutes," in which he claims that imposition of a term of supervised release amounts to double jeopardy and is thus barred by the Constitution. Any motion that is filed in the sentencing court that is substantively within the scope of § 2255 must be filed as a § 2255 motion. Melton v. United States, 359 F.3d 855, 857 (7th Cir. 2004). "Call it a motion for a new trial, arrest of judgment, mandamus, prohibition, coram nobis, coram vobis, audita querela, certiorari, capias, habeas corpus, ejectment, quare impedit, bill of review, writ of error, or an application for a Get-Out-of-Jail Card; the name makes no difference. It is substance that controls." Id. (citing Thurman v. Gramley, 97 F.3d 185,

186-87 (7th Cir.1996)).

Section 2255 prohibits a defendant from filing a second or successive motion under § 2255 without certification by the court of appeals that the new motion contains newly discovered evidence or "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court." This motion is defendant's second (which tends to explain his effort to avoid labeling it as a § 2255 motion). He filed a motion pursuant to § 2255 on December 22, 2005; that motion was denied in its entirety on February 21, 2006. He has not obtained certification from the court of appeals for this second motion. Therefore, this court lacks authority to entertain it.

ORDER

IT IS ORDERED that defendant's "Motion to Vacate Sentence under the Constitution and Statutes" is construed as a motion to vacate or modify a sentence brought pursuant to 28 U.S.C. § 2255 and is DISMISSED because this court lacks the authority to entertain it.

Entered this 1st day of March, 2006.

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