

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHNNY J. NEWMAN,

Defendant.

ORDER

3:07-cv-00504-bbc

3:06-cr-00108-bbc

On September 10, 2007, defendant filed a post conviction motion pursuant to 28 U.S.C. § 2255 contending that his counsel was ineffective at trial for not arguing that defendant should receive a reduction for acceptance of responsibility and for failing to request a psychological evaluation of defendant prior to trial. In addition, he requested relief under Sentencing Commission Amendments 709 and 706. His motion was denied on December 18, 2007. Now defendant has written to the court requesting appointment of counsel to assist him in preparing an application for the issuance of a certificate of appealability of the denial of his motion. His request must be denied. Defendant has no right to a lawyer. It is within my discretion to appoint one for him but as a general rule, I

do not appoint counsel on post-conviction motions unless the defendant has brought a motion that requires an evidentiary hearing. Defendant's motion has already been filed and denied. Defendant indicates in his motion that he asked for counsel when he filed his § 2255 motion. A review of the record bears this out. Buried at the end of page 5 of defendant's brief in support of his § 2255 motion, defendant asked that the court appoint counsel to assist him in "adequately develop[ing] this issue." Although the placement of defendant's request resulted in its being overlooked, I would not have granted the motion in any event, because none of the issues he raised in this § 2255 motion required an evidentiary hearing.

ORDER

IT IS ORDERED that defendant Johnny J. Newman's request for appointment of counsel is DENIED.

Entered this 11th day of January, 2008.

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