

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

ODELL DOBBS,

Defendant.

ORDER No. 2

08-cr-102-bbc

10-cv-584-bbc

On October 6, 2010, defendant Odell Dobbs filed a motion for post conviction relief under 28 U.S.C. § 2255 contesting his conviction and sentence on the ground that his counsel failed to give him minimally effective representation in a number of respects. After reviewing the briefs submitted by both sides, I denied defendant's motion in an order entered on February 4, 2010.

Now defendant has filed a motion to correct errors in the judgment. He asserts claims of newly-discovered evidence of clerical errors in his sentence, prosecutorial misconduct and ineffective assistance of counsel. Although defendant characterizes his motion as one brought under certain provisions of the Federal Rules of Criminal Procedure, it is actually a motion for modification of his sentence and must be brought pursuant to 28 U.S.C. § 2255

and subject to the rules of the Anti-terrorism and Effective Death Penalty Act. 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.” Because this motion is defendant’s second attempt to challenge his sentence, the court lacks authority to consider the claims raised in defendant’s motion without certification by the court of appeals.

ORDER

IT IS ORDERED that defendant Odell Dobbs’s motion for to correct errors in the judgment is re-characterized as a motion brought pursuant to 28 U.S.C. § 2255 and dismissed because it is a successive collateral attack under that statute and this court lacks

authority to entertain it.

Entered this 16th day of February, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge