

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

PRINCE P. BECK,

Defendant.

ORDER

08-cr-87-bbc

Defendant Prince Beck has filed what he calls a Memorandum “under 3582(c)” in which he seeks resentencing in his criminal case on the ground that Amendment 709 to the United States Sentencing Guidelines shows that he was not a career offender at the time he was sentenced. Although defendant calls his memorandum one brought under [18 U.S.C. §] 3582, in reality it is a motion for post conviction relief and must be brought under 28 U.S.C. § 2255. Section 3582 can be used only for sentence modifications based upon changes in the guidelines that have been ruled retroactive by the Sentencing Commission. Challenges such as defendant’s are brought properly under 28 U.S.C. § 2255.

Defendant has previously filed a motion for post conviction relief, dkt. # 427, which was denied in an order entered October 11, 2012, dkt. # 467. It does not appear that defendant appealed from the denial of his motion; even if he had, he cannot bring a new motion for relief under § 2255 without obtaining leave to do so from a panel of the Court

of Appeals for the Seventh Circuit. 28 U.S.C. § 2255(b). Until he does so, this court has no jurisdiction to entertain his challenge to his sentence.

It is probably unnecessary to consider the question of issuing a certificate of appealability. To complete the record, however, I find under Rule 11 of the Rules Governing Section 2255 Proceedings, that defendant has not made a "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2); Tennard v. Dretke, 542 U.S. 274, 282 (2004), so no certificate will issue.

ORDER

Defendant Prince Beck's motion for resentencing, brought under 18 U.S.C. § 3582(c) is DENIED because this court lacks jurisdiction to hear the motion. No certificate of appealability shall issue.

Entered this 13th day of February, 2015.

BY THE COURT:

/s/
BARBARA B. CRABB
District Judge