

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

-----  
UNITED STATES OF AMERICA,

Plaintiff,

v.

ROMELLE E. ROSS,

Defendant.  
-----

ORDER

06-cr-132-jcs  
09-cv-779-bbc

Defendant Romelle Ross has filed a document titled “ motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b)” dated September 24, 2010. As I have explained to defendant in a previous order, any motion for reconsideration of his sentence must be filed as a motion pursuant to 28 U.S.C. § 2255. 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 third attempt (which tends to explain his effort to avoid labeling it as a § 2255 motion). He filed a motion pursuant to § 2255 on December 28, 2009; that motion was denied in its entirety on January 8, 2010. On February 4, 2010, defendant filed a document entitled “Motion/Petition to Redress of Grievances” which I construed as a subsequent motion under 28 U.S.C. § 2255 and which I denied because defendant had not obtained certification from the court of appeals for a second motion. Defendant’s latest motion is a third attempt to reconsider his sentence. As before, this court lacks authority to consider the claims raised in his motions without certification by the court of appeals.

Defendant has a long history in this court of attempting to file successive petitions by naming his motion something other a motion brought pursuant to § 2255. As I have admonished defendant on at least two previous occasions, “Any post-judgment motion in a criminal proceeding that fits the description of § 2255 ¶ 1 is a motion under § 2255,” requiring prior appellate approval before it may be brought in the district court. United States v. Evans, 224 F.3d 670, 672 (7th Cir. 2000).

ORDER

IT IS ORDERED that defendant Romelle Ross's motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b) is DENIED for lack of jurisdiction.

Further, IT IS ORDERED that if defendant files any further documents in this case, the clerk of court is directed to forward them to me before filing. If I determine that the document includes a challenge to defendant's conviction or sentence and is not accompanied by an order of the Court of Appeals for the Seventh Circuit permitting the filing, then I will place the document in the file of this case and make no response to it.

Entered this 1st day of October, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge