

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID M. NELSON,

Defendant.

OPINION AND ORDER

10-cv-61-bbc

03-cr-175-bbc

In an order entered November 22, 2010, I denied defendant's motion for post conviction relief after finding that his motion was untimely and that, even if it had been filed on time, defendant was not challenging his sentence on constitutional grounds. Although I was persuaded that the outcome was not one about which reasonable jurists would disagree, I granted defendant a certificate of appealability because the matter was before me on a remand from the court of appeals for reconsideration in light of Welch v. United States, 604 F3d 408 (7th Cir. 2010). It seemed reasonable that if the court of appeals had seen enough potential merit in defendant's claim to warrant a remand, I could not say in good conscience that no reasonable jurist could debate the outcome.

The government has moved for reconsideration of the grant of the certificate of appealability but I continue to believe that it was proper to grant the certificate simply because of the different views that the two courts had taken of the merits of defendant's motion. Therefore, I will deny the government's motion.

ORDER

IT IS ORDERED that the government's motion for reconsideration of the grant of a certificate of appealability to defendant David M. Nelson is DENIED.

Entered this 24th day of November, 2010.

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