

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

CARLTON A. HUNTER,

Defendant.  
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ORDER

10-cr-29-bbc

Defendant Carlton A. Hunter has submitted a “letter motion” to the court in which he complains of an alleged violation of his rights because he did not receive a copy of the presentence report in his case at least 35 days before his sentencing as required under Fed. R. Crim. P. 32(d)(3)(D)(2). Defendant did not label his motion as one brought under 28 U.S.C. § 2255, but the law is clear that I must treat his motion as one brought under that statute.

Although defendant does not say so, his motion is one attacking the validity of his sentence; otherwise it would be meaningless to complain at this late date about not having had sufficient access to his presentence report. Melton v. United States, 359 F.3d 855, 857 (7th Cir. 2004) (“[a]ny motion filed in the district court that imposed the sentence, and

substantively within the scope of § 2255 *is* a motion under § 2255"). Defendant was sentenced in this court on August 11, 2010 and his motion is substantively within the scope of § 2255 because it is intended as a challenge to his sentence.

When a defendant files a motion not labeled as a § 2255 motion, and the district court finds that it must be treated as a motion under § 2255, the court must warn the defendant that he has only one chance to file such a motion. Castro v. United States, 540 U.S. 375 (2003). I will hold this motion until defendant has had an opportunity to consider whether he wants to raise any other challenges to his conviction within the one-year period he has in which to file. That period started running fourteen days after judgment in this case, Fed. R. App. P. 4, or August 26, 2010; it will expire on August 26, 2011. Defendant has ample time left within which to contemplate any grounds he might have for challenging his sentence. In the meantime, I will take no action on the motion he has filed unless he advises the court that he wants the motion decided, knowing that he will have no right to file any additional challenges to his conviction or sentence.

Before defendant decides to go forward on the motion that he has filed, he should take into consideration the fact that he had a chance at his sentencing hearing to advise the court that he had not had sufficient time to review the presentence report. Instead, he told the court that he had reviewed the report and discussed it with his counsel. Courts take seriously any statements made in open court and generally give little weight to later efforts

to disavow the statements.

Moreover, defendant needs to know that he has almost no chance of upsetting his sentence. He received the lowest possible sentence under the statutory charge to which he pleaded guilty.

#### ORDER

IT IS ORDERED that no action will be taken on defendant Carlton A. Hunter's November 3, 2010 "letter motion" unless defendant advises the court that he wants to go forward on the motion and that he understands it will be his only chance to challenge his sentence.

Entered this 2d day of December, 2010.

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