

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

VINCENT LOWE,

Defendant.

ORDER

11-cv-742-bbc
09-cr-18-bbc

On October 27, 2011, defendant Vincent Lowe filed a motion for post conviction relief under 28 U.S.C. § 2255, contending that he was denied due process by the court and that his counsel was constitutionally ineffective. His motion was denied on February 21, 2012. On March 9, 2013, defendant filed a notice of appeal. His appeal is pending.

Defendant has now filed a motion to reopen his § 2255 motion under Fed. R. Civ. P. 60(b), on the ground that his motion should be reopened because the court denied his § 2255 motion before considering his supplemental claims. Absent extraordinary circumstances, the district court should not consider, or reopen, § 2255 motions while an appeal is pending. United States v. Robinson, 8 F.3d 398 (7th Cir. 1993). Doing so would

run the risk that two courts would be working on the same case at the same time. To avoid this possibility, district courts lose jurisdiction over a case once it is appealed.

In some circumstances, it is appropriate for a district court to advise the court of appeals that it would take an action in the case being appealed if the court of appeals would remand the case to it for that purpose. No such circumstances are present here; defendant's supplemental arguments were considered at the time his § 2255 motion was denied.

ORDER

IT IS ORDERED that defendant Vincent Lowe's motion to reopen his § 2255 motion under Fed. R. Civ. P. 60(b) is DENIED without prejudice as premature.

Entered this 26th day of March, 2013.

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