

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

PRINCE P. BECK,

Defendant.

ORDER

12-cv-356-bbc

08-cr-87-bbc

In an order entered on October 11, 2012, I denied defendant Prince P. Beck's motion for post conviction relief under 28 U.S.C. § 2255. On November 13, 2012, defendant filed a motion for reconsideration under Fed. R. Civ. P. 59(e). Although the deadline for filing such a motion is 28 days from the entry of judgment, defendant's motion was not filed in this court until 33 days after the judgment was entered. Therefore, it is untimely unless defendant can claim the benefit of the "mailbox rule" that applies to prisoner filings. Edwards v. United States, 266 F.3d 756, 758 (7th Cir. 2010). Under this rule, a prisoner is deemed to have "filed" a document when he delivers it to prison authorities. Id. at 757.

Ordinarily, I would give an inmate who has filed a late motion an opportunity to submit an affidavit showing that he delivered his motion to prison authorities on or before November 8, 2012, when the 28-day period for filing expired. If he swears under oath or

the penalties of perjury that he did this, then his motion is considered to have been filed within the deadline and it can be entertained by the court. In this case, however, no purpose would be served in asking defendant to submit such an affidavit. Even if he could show that the motion is timely, it would have to be denied because he has not set out any reason why he thinks that the court's order should be reconsidered. All he has said is that the order was "a manifest error of law (and fact) on each of the points of law." Mot., dkt. #26, at 3. He has said nothing about why he thinks the court committed a manifest error of law or fact. Without such an explanation, I cannot evaluate the merits of his motion and must deny it.

ORDER

IT IS ORDERED that defendant Prince P. Beck's motion for reconsideration, dkt. #26, of this court's denial of his motion for post conviction relief under 28 U.S.C. § 2255 is DENIED because the motion is untimely and because he has failed to explain why the order should be reconsidered.

Entered this 30th day of November, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge