

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

ELIZABETH CIRVES,

Defendant.  
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ORDER

07-cr-149-bbc  
12-cv-429-bbc

On July 3, 2012, I denied as untimely a motion that was filed by defendant Elizabeth Cirves on June 19, 2012, dkt. #1, 12-cv-429-bbc, to vacate, set aside or correct her sentence under 28 U.S.C. § 2255. Dkt. #2, 12-cv-429-bbc. I determined that defendant's time for filing a motion for relief under § 2255 had expired no later than October 31, 2010. Alternatively, I concluded that her sole claim for relief, which was based on United States v. DePierre, 131 S. Ct. 2225 (2011), was not one on which she could prevail. To date, defendant has not filed a notice of appeal from that decision. However, on July 30, 2012, she filed a motion for reconsideration of the order denying her motion, in which repeats her claim under DePierre and attempts to add several new substantive grounds for relief under 28 U.S.C. § 2255. Dkt. #74, 07-cr-149-bbc. The motion for reconsideration will be denied

First, although defendant says that she was unaware of § 2255 as a remedy until she began visiting the law library at FCI-Danbury in January 2012 and that she had health

problems that prevented her from filing a timely motion, she does not allege specific facts showing that she was unable to file a post conviction motion in this case before the deadline ran on October 31, 2010.

Second, even if defendant had alleged such facts and her § 2255 motion could be considered to have been timely filed, her motion would have to be denied on its merits because she has not shown that she is entitled to relief under the Supreme Court's decision in DePierre or on any other ground.

Third, I cannot give any consideration to the new claims for relief that defendant has included in her motion to reconsider. Courts must treat new claims raised in this manner as a second application for post conviction relief, Gonzalez v. Crosby, 545 U.S. 524, 530-32 (2005); Dunlap v. Litscher, 301 F.3d 873, 876 (7th Cir. 2002), and cannot address those new claims unless the defendant obtains authorization from the Court of Appeals for the Seventh Circuit to file a second application. 28 U.S.C. §§ 2244(b) and 2255(h). Without that permission, the district courts have no jurisdiction to review new claims for relief.

Finally, it has come to my attention that defendant has written several letters to the clerk's office requesting information about the rules and procedures for pursuing an appeal. The clerk's office has made every effort to respond to these letters, but defendant must understand that court personnel are not allowed to provide legal advice to litigants. If defendant has technical questions or concerns about the filing of an appeal or the status of appellate matters, she should address future inquiries in writing to the Clerk's Office, U.S.

Court of Appeals for the Seventh Circuit, 219 South Dearborn Street, Chicago, Illinois 60604. Before writing, defendant should check the court of appeals' public website, which contains a link to Guidelines for Briefs & Other Papers, at <http://www.ca7.uscourts.gov>. that may answer her questions.

#### ORDER

IT IS ORDERED that Defendant Elizabeth M. Cirves's motion for reconsideration of the order denying her motion for post conviction relief, dkt. #74, is DENIED.

Entered this 28th day of August, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge