

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

BERNARD BRISCO,

Defendant.  
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ORDER

02-cr-27-bbc

On March 4, 2005, defendant Bernard Brisco filed a motion for post conviction relief under 28 U.S.C. § 2255 (05-cv-139--bbc), contesting his conviction and sentence on the ground that his counsel failed to give him minimally effective representation in a number of respects. On March 15, 2005, I denied most of defendant's motion with the exception of two claims. The parties briefed those claims and they were denied on May 1, 2005.

Almost twelve years later, defendant has filed a motion under Fed R. Crim. P. 36, to correct clerical errors in his conviction. Despite the heading given the motion, it is actually a motion for modification of defendant's sentence and therefore, must be must be brought under 28 U.S.C. § 2255 and in compliance with the rules of the Anti-Terrorism and Effective Death Penalty Act. Calling it a motion to correct clerical orders does not mean that it is

merely a motion to correct a clerical order. “Call it a motion for a new trial, arrest of judgment, mandamus, prohibition, coram nobis, coram vobis, audita querela, certiorari, capias, habeas corpus, ejectment, quare impedit, bill of review, writ of error, or an application for a Get-Out-of-Jail Card; the name makes no difference. It is substance that controls.” Id. (citing Thurman v. Gramley, 97 F.3d 185, 186-87 (7th Cir. 1996)). Defendant is not seeking a mere clerical correction; he wants the court to re-open his conviction and determine whether he was sentenced correctly.

Defendant has had one chance to contest his conviction. Under § 2255, he is prohibited from filing a second or successive motion under § 2255 without obtaining the certification of the court of appeals that the new motion contains newly discovered evidence or "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court." Because this motion is defendant's second attempt to challenge his sentence and he has not shown that the court of appeals has certified it for a successive appeal, this court has no authority to consider the claims raised in the motion.

#### ORDER

IT IS ORDERED that defendant Bernard Brisco’s motion for to correct errors in the judgment is re-characterized as a motion brought pursuant to 28 U.S.C. § 2255 and dismissed because it is a successive collateral attack under that statute and this court lacks

authority to entertain it.

Entered this 28th day of February, 2017.

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