

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

DEWAYNE CROMPTON,

Defendant.

ORDER

92-cr-126-bbc

Defendant Dewayne Crompton has filed a document entitled “Motion for Violation of Rule 6(F) Substantive Due Process.” Although defendant characterizes his motion as one brought under certain provisions of the Federal Rules of Criminal Procedure, it is actually a motion for modification of his sentence and must be brought pursuant to 28 U.S.C. § 2255 and subject to the rules of the Anti-terrorism and Effective Death Penalty Act. Any motion that is filed in the sentencing court that is substantively within the scope of § 2255 must be filed as a § 2255 motion. Melton v. United States, 359 F.3d 855, 857 (7th Cir. 2004). “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)).

Section 2255 prohibits a defendant from filing a second or successive motion under § 2255 without certification by 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.” This motion is defendant’s third attempt to challenge his sentence (which tends to explain his effort to avoid labeling it as a § 2255 motion). He filed a motion pursuant to § 2255 on May 5, 1997; that motion was denied in its entirety on August 7, 1997. Defendant appealed to the court of appeals unsuccessfully. On July 23, 2001 defendant filed a second § 2255 motion. That motion was denied for lack of jurisdiction on July 24, 2001. Defendant’s present motion to this court is another frivolous attempt to circumvent the rules relating to post conviction motions. As before, this court lacks authority to consider the claims raised in defendant’s motion without certification by the court of appeals.

In light of defendant’s persistence in filing legally frivolous documents that impede the court’s ability to address filings that deserve its attention, I am imposing a filing restriction on defendant. From this date forward, before the clerk files any document defendant files in this case, he is to forward the document to chambers. If the document is one in which defendant raises non-meritorious issues or seeks frivolous forms of relief or is

otherwise not a document permitted to be filed under the Federal Rules of Civil or Appellate Procedure at this stage of defendant's case, the document will be placed in the file and no response will be made to it.

ORDER

IT IS ORDERED that defendant Dewayne Crompton's motion for violation of Rule 6(f) 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.

Further, IT IS ORDERED that the clerk is to forward to chambers before filing any future document defendant files in this case. If the document raises non-meritorious issues or seeks frivolous forms of relief or is otherwise not a document permitted to be filed under the Federal Rules of Civil or Appellate Procedure at this stage of defendant's case, the document will be placed in the file and no response will be made to it.

Entered this 18th day of November, 2010.

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