

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

GORDON O. HOFF, SR.,

Defendant.

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OPINION AND ORDER

96-CR-0010-C

Defendant Gordon Hoff, Sr., has filed a motion to modify his sentence, asking the court to apply Amendment 591 of the Sentencing Guidelines to his sentence. Defendant argues that he should be resentenced in accordance with the amendment.

Although defendant has not said that he is bringing his motion to modify his sentence under 28 U.S.C. § 2255, that is the only procedural route he may use to challenge his federal sentence. United States v. Evans, 224 F.3d 670, 672 (7th Cir.2000) (“any post-judgment motion in a criminal proceeding that fits the description of § 2255 ¶ 1 is a motion under § 2255”). Defendant is asserting that his sentence was in excess of the maximum authorized by law; such a claim is one of those listed in § 2255; therefore, his motion must be considered to be brought under § 2255.

Defendant has filed and appealed one motion brought pursuant to § 2255 motion. His appeal was dismissed by the court of appeals in July 2000. Section 2255 prohibits him from filing a another motion to modify his sentence unless he obtains the permission of the court of appeals to file a second collateral attack. Nunez v. United States, 96 F.3d 990 (7th Cir. 1996).

ORDER

IT IS ORDERED that defendant Gordon O. Hoff's motion to modify his sentence is construed as a motion brought pursuant to 28 U.S.C. § 2255 and DISMISSED for lack of jurisdiction in the absence of a showing by defendant that he has received the permission of the Court of Appeals for the Seventh Circuit to file a second collateral attack.

Entered this 20th day of July, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge