

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES T. SMITH,

Defendant.

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ORDER

96-CR-0076-C-01

Defendant has filed a document titled “Affidavit of James Tyrone Smith, by Special Visitation,” which I construe as a challenge to his conviction and sentence pursuant to 28 U.S.C. § 2255. In this challenge, defendant appears to be contending that because he is a sovereign who owns his name, and because he did not give the court or prosecuting attorneys permission to use his name during his criminal proceedings without “consideration,” jurisdiction over him was never conferred, implied or granted and thus, he is “unjustifiably incarcerated, threatened by fraud and irreversible harm continues accruing against [him].”

More than three years ago on February 4, 2000, I denied defendant’s first motion for vacation of his sentence under 28 U.S.C. § 2255, on the ground that the motion was untimely. (This decision was affirmed by the Court of Appeals for the Seventh Circuit on

January 4, 2001.) In July 2000, defendant filed a document titled “Movant’s Memorandum in Law in Support of 28 U.S.C. § 1331 Federal Question.” Although defendant’s purpose was not entirely clear from the document, it appeared that defendant was challenging his conviction and sentence again. In an order dated July 26, 2000, I advised defendant that if he was challenging his conviction, he would have to obtain certification of his motion by a panel of the United States Court of Appeals for the Seventh Circuit before this court would have jurisdiction to entertain it. Despite this instruction, in September 2000, defendant filed another challenge to his conviction in a document titled “Motion for Relief from Judgment pursuant to Fed. R. Civ. P. 60(b) and Actual Innocence.” In an order entered on September 13, 2000, I told defendant once again that because he was attacking his sentence and had previously filed a motion attacking his sentence pursuant to 28 U.S.C. § 2255, he could not proceed in this court unless he obtained permission from the Court of Appeals for the Seventh Circuit to file a second § 2255 motion.

Undeterred, on September 26, 2003, defendant filed a “Motion to Alter Amend Vacate Judgment of September 13, 2000, Denying Motion Pursuant to FRCVP 59(e).” On October 5, 2000, I informed defendant that “however [he] titles his motion, it is a motion attacking his conviction and sentence. . . .” Again, I repeated the message that defendant cannot bring another challenge to his conviction and sentence without obtaining permission from the court of appeals.

On June 8, 2001, defendant filed yet another motion for modification of his sentence. On June 15, 2001, I dismissed the motion for lack of jurisdiction. We are here again. Defendant's "affidavit" challenges his conviction and sentence and it has been filed without a grant of permission from the court of appeals to do so.

I believe that defendant is capable of understanding the repeated instruction I have given him about what he needs to do before he can file a challenge to conviction or sentence in this court. His persistence in filing motions without obtaining the required permission from the court of appeals is nothing more than sport. The judicial resources of this court are insufficient to allow the game to continue.

#### ORDER

IT IS ORDERED that defendant's "affidavit" is construed as a motion brought pursuant to 28 U.S.C. § 2255 and is DISMISSED for lack of jurisdiction.

Further, IT IS ORDERED that if defendant files any further documents in this case, the clerk of court is directed to forward them to me before filing. If I determine that the document includes a challenge to defendant's conviction or sentence and is not accompanied

by an order of the Court of Appeals for the Seventh Circuit permitting the filing, then I will place the document in the file of this case and make no response to it.

Entered this 1st day of July, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge