

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

TONY L. SUTTON,

Defendant.

ORDER

97-CR-0053-C-01
06-C-0109-C

Defendant Tony L. Sutton has filed a motion pursuant to 28 U.S.C. § 2255 to vacate, set aside or correct a sentence imposed upon him in 1997. It appears from the motion that defendant appealed his sentence and the case was remanded to this court for re-sentencing, which occurred on March 5, 1999. Defendant appealed from the re-sentencing; his appeal was denied in August 1999.

Although it appears from the motion that it is fatally late, defendant's counsel, T. Michael Barrett, has asked for an opportunity to file a brief on that issue. The request is GRANTED. Defendant may have until March 24, 2006, in which to file a brief setting forth the reasons why he believes that this court can entertain his belated motion for post-conviction relief.

Mr. Barrett has asked to be appointed as counsel for defendant under the Criminal Justice Act, 18 U.S.C. § 3006A. It is not ordinarily the court's practice to appoint counsel for persons seeking post conviction relief unless it is shown that the movant is incapable of prosecuting his own motion or the motion is set for an evidentiary hearing. Therefore, I will reserve a ruling on Mr. Barrett's request until the matter has proceeded further and I can make a determination whether appointment of counsel would be in the interest of justice.

Entered this 3d day of March, 2006.

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