

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

UNITED STATES OF AMERICA ,

Plaintiff,

v.

PATRICK HENDERSON,

Defendant.

ORDER

00-C-0483-C

97-CR-0074-C-03

Events have caught up with defendant Patrick Henderson. Between the time he filed his motion to vacate his sentence pursuant to 28 U.S.C. § 2255 and I had the opportunity to address the motion, the Court of Appeals for the Seventh Circuit ruled definitively that convicted persons could not rely on the Supreme Court's recent decision in Apprendi v. New Jersey, 120 S. Ct. 2348 (2000), to challenge their sentences, whether federal or state. See Talbott v. Indiana, 2000 WL 1268166 (7th Cir. 2000); Hernandez v. United States, 2000 WL 1253528 (7th Cir. 2000). Defendant based his entire § 2255 motion on his contention that Apprendi invalidated his sentence because the jury was not asked to determine the amount of crack cocaine for which he should be held responsible. Now the court of appeals has

held that unless and until the United States Supreme Court should declare Appendi retroactive, its holding does not apply cases such as defendant's that were not pending when the case was decided. The court of appeals' decision is binding on all lower courts. Therefore, I have no option but to dismiss defendant's petition for lack of any substantive challenge to his sentence.

IT IS ORDERED that defendant Patrick Henderson's motion to vacate his sentence is DENIED for defendant's failure to show that the sentence is subject to vacation for any of the reasons set out in § 2255.

Entered this 25th day of September, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge