

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

STERLING C. DANIELS,

Defendant.

ORDER

01-CR-0009-C-08

On February 14, 2005, defendant filed documents titled “Motion for Review of a Sentence to the Honorable Judge Barbara B. Crabb” and “Appellant’s Motion to Recall the Mandate in Support of his Petition/Motion for Review of Sentence,” contending that his sentence is illegal under Blakely v. Washington, 124 S.Ct. 2531 (2004) and United States v. Booker, 375 F.3d 508 (7th Cir. 2004). In an order dated February 16, 2005, I noted that defendant’s motion, if it was to be considered, would have to be re-characterized as a motion pursuant to 28 U.S.C. § 2255. Castro v. United States, 124 S.Ct. 786, 792 (2004). However, I noted also that before I would re-characterize defendant’s motion as a first § 2255 motion, I was required under the holding in Castro to inform defendant of my intent to re-characterize his submission, warn him that this re-characterization means that any

subsequent § 2255 motion will be subject to the restrictions on "second or successive" motions, and provide defendant an opportunity to withdraw the motion or to amend it so that it contains all the § 2255 claims he believes he has. Pursuant to the ruling in Castro, if these warnings are not given, the defendant's motion cannot be considered to have become a § 2255 motion for purposes of applying to later motions the law's "second or successive" restrictions. Id at 791-792.

The court's order of February 16, 2005 directed the defendant to notify the court no later than March 1, 2005, whether he wishes to have the court construe his motion as a motion brought pursuant to 28 U.S.C. § 2255. In a letter dated February 24, 2005, the defendant has now requested that his motion be withdrawn.

ORDER

IT IS ORDERED that defendant's motion filed on February 14, 2005, is considered to have been withdrawn.

Entered this 2nd day of March, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge