

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

LISETTE CASSANOVA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM AND ORDER
05-C-159-S
02-CR-048-S-02

Petitioner Lisette Cassanova moves to vacate her sentence pursuant to 28 U.S.C. §2255. Respondent responded on April 15, 2005. Petitioner's reply was to be filed not later than May 16, 2005 and has not been filed to date.

FACTS

On June 5, 2005 a grand jury sitting in the Western District of Wisconsin returned a superseding indictment charging petitioner Lisette Cassanova with conspiracy to distribute a controlled substance in violation of 21 U.S.C. §846. On September 1, 2004 petitioner pled guilty to the superseding indictment. On November 10, 2004 this Court sentenced petitioner to 63 months in prison.

Petitioner did not appeal her sentence. On March 14, 2005 petitioner filed a motion to vacate her sentence under 28 U.S.C. § 2255.

MEMORANDUM

Petitioner claims that Blakely v. Washington, 124 S.Ct. 2531 (2004) and United States v. Booker, 125 S.Ct.738 (2004) should be applied to her sentence. She also claims that sentencing enhancements should not have been applied to her guideline calculation and that the Court should have given her credit for acceptance of responsibility.

Three types of issues cannot be raised in a 28 U.S.C. § 2255 motion: issues that were raised on direct appeal, absent a showing of changed circumstances; non-constitutional issues that could have been raised but were not raised on direct appeal and constitutional issues that were not raised on direct appeal, unless defendant demonstrates cause for procedural default as well as actual prejudice from the failure to appeal. Prewitt v. United States, 83 F.3d 813, 816 (7th Cir. 1996). Issues raised and decided on direct appeal may not be raised again in a 28 U.S.C. § 2255 motion pursuant to the "law of the case". See Daniels v. United States, 26 F.3d 706, 711-12 (7th Cir. 1994).

Petitioner is barred from raising her Blakely and Booker claims because she failed to raise them on direct appeal and failed to show either cause or prejudice for not raising them on appeal. Further, the Court's decisions in Booker and Blakely do not apply retroactively to criminal cases that became final before its release on January 12, 2005. See McReynolds, et al. v. United

States, 397 F.3d 479 (7th Cir. 2005). Accordingly, Blakely and Booker do not apply retroactively to petitioner's case.

Petitioner's claims concerning the sentencing guidelines are not cognizable claims in 28 U.S.C. § 2255 motions. Prewitt, 83 F.3d at 816. She is further barred from raising these claims because she has not shown cause nor prejudice for her failure to pursue these claims on appeal. Accordingly, petitioner's motion under 28 U.S.C. § 2255 will be denied.

Petitioner is advised that in any future proceedings in this matter she must offer argument not cumulative of that already provided to undermine this Court's conclusion that her motion under 28 U.S.C. § 2255 must be denied. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that petitioner's motion to vacate her sentence under 28 U.S.C. § 2255 is DENIED.

Entered this 25th day of May, 2005.

BY THE COURT:

/S/

JOHN C. SHABAZ
District Judge