

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

BENJAMIN J. BIESE,

Defendant.

ORDER

02-CR-100-C-01

Defendant Benjamin Biese has submitted a letter dated January 26, 2004, in which he asks “for relief from [his] current situation.” In particular, defendant states that he was sentenced by this court on September 23, 2003 to 37 months’ imprisonment to run consecutive to his state sentences, and that he wants his sentence to be a concurrent sentence so that he can be transferred to the Federal Medical Center in Rochester and treated for his mental illnesses.

Once a court imposes a sentence, it loses authority to modify the sentence, except in very limited respects and then only within 7 days of sentencing. Fed. R. Civ. P. 35(a). Defendant did not file his motion until February 2, 2004; the judgment and commitment order was entered on September 23, 2003.

The only way in which a sentencing court can modify a sentence after it has been imposed is on remand from the court of appeals or upon motion by the government made within one year of sentencing. Fed. R. Civ. P. 35(b). The government has not made a motion on defendant's behalf. Moreover, defendant has not filed an appeal from his sentence, although in the letter presently under consideration he makes the statement, "I wish to appeal." Taken in context, I do not understand defendant to be asking for permission to challenge the legality of his sentence in the Court of Appeals for the Seventh Circuit. Indeed, defendant does not contend that his sentence is legally flawed. Rather, he appears to "appealing" to this court's good graces to change his sentence so that he can be transferred out of the Columbia Correctional Institution to a federal treatment facility. Because I have no authority to act on such a request, the request must be denied.

In addition to requesting that I modify his sentence to make it run concurrently with his state sentences, defendant asks for 1) an "order to FMC Rochester for another evaluation"; 2) recommendation of placement to [Wisconsin Resource Center]; and 3) "Recommendation to DHFS to placement back at Mendota Mental Health Institution."

When I sentenced defendant, I recommended that the Bureau of Prisons provide defendant an opportunity to participate in psychological counseling and arrange for a psychological or psychiatric evaluation of defendant no more than nine months before he is released from confinement so that defendant's probation officer can take this information

into account in supervising him. Defendant appears to be asking me to require the state Attorney General, defendant's present custodian, to insure that plaintiff is receiving psychological counseling by recommending his transfer to the Wisconsin Resource Center or Mendota Mental Health Institution. These requests must be denied. I have no authority to make recommendations for modification of defendant's state sentences to match the terms of his federal sentence.

To the extent that defendant is asking me to order his return to Rochester "for another evaluation," there is no legal basis on which to grant such a request. Defendant was evaluated in connection with the charges brought against him in this case pursuant to 18 U.S.C. § 4241(b), 4242(a), 4247(b) and 4247(c). The purpose of the evaluation was to determine his competency to stand trial and the level of his sanity at the time he committed the charged offense. The need for the evaluation is over. Defendant pleaded guilty to the offense charged and has been sentenced. Therefore, there is no need to consider whether he requires a new evaluation.

ORDER

IT IS ORDERED that defendant Benjamin Biese's request for modification of his sentence is DENIED for lack of jurisdiction.

Further, IT IS ORDERED that defendant's requests for 1) an "order to FMC Rochester for another evaluation"; 2) a recommendation of placement to [Wisconsin Resource Center]; and 3) a "Recommendation to DHFS to placement back at Mendota Mental Health Institution" are DENIED.

Entered this 5th day of February, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge