

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

DONALD HEISLER,

Defendant.

ORDER

04-C-0707-C

02-CR-0135-C-01

Defendant Donald Heisler has filed a timely motion pursuant to 28 U.S.C. § 2255, contending that his June 19, 2003 conviction was unconstitutional in a number of respects. He alleges that his conviction was obtained by coercion because both the government and his court-appointed counsel threatened to prosecute his innocent brother if he did not plead guilty; he was not given constitutionally adequate representation both before and during his appeal, because his attorney told him repeatedly that if he did not dismiss his appeal the government would prosecute his brother; and at sentencing, the court relied on facts that had not been found by a jury beyond a reasonable doubt. He raises another issue relating to the adequacy of the indictment but this issue is subsumed in his challenge to the adequacy of

his representation. A valid plea of guilty waives any defects in the indictment; if defendant's plea is found to be valid, he will have no basis on which to attack the indictment. If his plea is found to be invalid, he will have all of the rights he would have had before he entered his plea of guilty in 2003, including the right to a non-defective indictment.

ORDER

IT IS ORDERED that plaintiff United States of America may have until October 25, 2004, in which to file and serve a brief in response to defendant Donald Heisler's motion. Defendant may have until November 15, 2004, in which to file and serve a reply brief.

Entered this 4th day of October, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge