

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

JOVAN ALEXANDER,

Petitioner,

v

ORDER
03-CR-006-S-02
05-C-192-S

UNITED STATES OF AMERICA,

Respondent.

Petitioner moves to vacate his sentence under 28 U.S.C. § 2255. He also moved for a hearing. The government responded on May 6, 2005 and petitioner replied on May 31, 2005.

Respondent moves to dismiss the petition as untimely because petitioner's appeal in this case is presently pending. Absent extraordinary circumstances, the district court should not consider a 2255 motion while a direct appeal is pending. See United States v. Taglia, 922 F.2d 413, 417 (7th Cir), *cert. denied*, 500 U.S. 927 (1991). Whether extraordinary circumstances exist depends upon the balancing of the need for speedy relief against the need for conservation of judicial resources. United States v. Davis, 604 F.2d 474, 485 (7th Cir. 1979).

Petitioner has not alleged the presence of any extraordinary circumstances meriting consideration of his motion under 28 U.S.C. §2255 petition before the appeal is decided, whereby the conviction

is final. The Court will dismiss petitioner's motion without prejudice to his refiling after an appellate decision.

ORDER

IT IS ORDERED that petitioner's motion under 28 U.S.C. § 2255 is DENIED without prejudice as premature.

Entered this 1st day of June, 2005.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge