

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID DRONE,

Defendant.  
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ORDER

03-CR-0089-C  
06-C-325-C

On July 28, 2006, defendant David Drone filed an unsigned notice of appeal from this court's July 17, 2006 dismissal of his motion pursuant to 28 U.S.C. § 2255. Three days later, on July 31, 2006, defendant filed a motion for reconsideration pursuant to Fed. R. Civ. P. 59. Rule 59 motions must be made within ten days of the date of entry of the judgment in a case. (Weekends and holidays are excluded from the calculations.) Defendant's timely filed motion has the effect of suspending the operation of the judgment. That means that the notice of appeal defendant filed will not take effect until the Rule 59 motion has been resolved. Fed. R. App. P. 4(a)(4)(A)(iv), (B)(I). Until then the appeal is suspended. Florian v. Sequa Corporation, 294 F.3d 828 (7th Cir. 2002), citing Otis v. City of Chicago, 29 F.3d

1159, 1166 (7th Cir. 1994) (en banc).

Nothing in defendant's motion convinces me that it was a mistake to deny his § 2255 motion. Therefore, the motion will be DENIED.

Fed. R. App. P. 4(a)(4)(B)(ii) applies to a party who has filed both a notice of appeal and a post-judgment motion pursuant to Fed. R. Civ. P. 59. Pursuant to that rule, if defendant intends to challenge this court's ruling on his Rule 59 motion as well as the ruling on his § 2255 motion, he must amend his notice of appeal to include a challenge to the denial of his Rule 59 motion and he must do so within 30 days of the date of entry of this order. If, within 30 days of the date of this order, defendant does not file an amended notice of appeal, I will rule on his request for leave to proceed in forma pauperis on appeal from the dismissal of his § 2255 motion only and consider his request for a certificate of appealability with respect to that motion. If defendant does file an amended notice of appeal within the time allowed, I will rule on his request for pauper status on appeal and for a certificate of appealability at that time.

#### ORDER

IT IS ORDERED that defendant David Drone's motion for reconsideration pursuant

to Fed. R. Civ. P. 59 is DENIED.

Entered this 9th day of August, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge