

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN W. SANDERS,

Defendant.

ORDER

06-C-0028-C

03-CR-0097-C-01

On January 13, 2006, defendant John W. Sanders filed a motion for post conviction relief pursuant to 28 U.S.C. § 2255, stating that he was doing so to preserve his right to raise claims under United States v. Booker, 125 S. Ct. 738 (2005), and that he would be amending his motion within 45 days to clarify the precise claims he intends to raise. More than 45 days have passed and defendant has not filed any amendments.

In the unamended motion, defendant argues that he was denied his Sixth Amendment rights when the court sentenced him on the basis of facts not found by the jury. Defendant did not raise this issue at the time he was sentenced but he did raise it on appeal. In response, the court of appeals remanded his case to this court for the purpose of

determining whether I would have imposed the same sentence on defendant had I realized that the sentencing guidelines were not constitutional if they were considered to be mandatory. I concluded that the original sentence was the same one that I would impose post-Booker and so advised the court of appeals, which dismissed defendant's appeal.

The United States Supreme Court has not addressed Booker's retroactivity and has given no indication that it intends to take up the question. Even if it were to do so and were to find it retroactive, the only relief to which defendant would be entitled is a re-sentencing at which he would be sentenced as if the sentencing guidelines were not mandatory. In effect, he has had that "re-sentencing" by virtue of the court of appeals' remand. He has shown no ground for any additional relief under § 2255.

ORDER

IT IS ORDERED that defendant John W. Sanders's motion for post conviction relief pursuant to 28 U.S.C. § 2255 is DENIED for defendant's failure to show that his conviction or sentence is illegal in any respect.

Entered this 16th day of March, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge