

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

TIMOTHY SCHUMANN,

Defendant.

ORDER

05-C-0743-C

05-CR-0084-C-01

Defendant Timothy Schumann filed a § 2255 motion on December 22, 2005, alleging that his sentence was illegal. In an order entered on January 3, 2006, I denied outright two of the claims that he had raised and explained to him that if he wanted to pursue his claim that he had been denied due process in connection with his conviction and sentencing, he would have to advise the court by January 20, 2006, what due process rights he thought had been violated and how and why he has cause for raising this issue in a post-conviction motion after he failed to take a direct appeal of his sentence.

In a document filed on January 19, 2006, entitled “Due Process Motion,” defendant says that he is seeking the court’s permission to “appeal,” although he does not say what it

is he intends to appeal. In addition, he says that he had “objections” that he discussed with his appointed attorney but which she did not raise on his behalf and that his rights under the Fifth Amendment were violated because he “never received Blakely or Booker Procurements” in his sentence.

Defendant’s submission falls far short of compliance with the court’s January 3 order. Defendant has identified no due process rights that were violated and he has said nothing about what cause he might have had for not taking an appeal. It is not enough for him to say that he did not know what he might have appealed until he got to prison. (“Once I got to Federal Prison and was able to check out my Case and the New Laws that were put into Procedure and the Process that I was not allowed; I find that I was wrongly misled and not given the opportunity to Fight for my Rights.” Dkt. #26.) He must be specific about his legal claims.

Defendant has not shown that he was denied any due process rights in connection with his sentencing or conviction and he has not shown that even if he was denied such rights he has cause for not raising the issue on a direct appeal of his sentence. Therefore, his § 2255 motion will be denied.

One other matter should be addressed. In his January 19 filing in response to this court’s order, defendant began by saying, “Here comes Timothy Schumann asking the Court’s Permission to Appeal my Sentence.” Seeing this statement, the clerk of court treated

it as a notice of appeal. I do not believe that defendant intended his response to the court's order to be a notice of appeal from the January 3, 2006 order. It is more likely that he was merely saying that he wanted an opportunity to be heard on his claim that his sentencing was improper. Moreover, at the time he submitted it, he had nothing to appeal; the time to file an appeal from his conviction and sentence had passed; he had a motion pending that I had construed as a § 2255 motion; and the January 3 order was not yet final because defendant's initial submission was incomplete. If defendant wants to appeal *this* order, which *is* a final order on his § 2255 motion, he should file a document clearly entitled "Notice of Appeal" and should accompany it with a request for a certificate of appealability. (I express no opinion on the likelihood that I would issue such a certificate.) He was represented in this court by appointed counsel so he need not submit a statement showing his inability to pay or to give security for fees or costs but he must state the issues he intends to present on appeal.

ORDER

IT IS ORDERED that defendant Timothy Schumann's motion for post conviction relief, filed pursuant to 28 U.S.C. § 2255, is DENIED for defendant's failure to show that his sentence is illegal in any respect. The clerk of court is directed to docket defendant's

January 19, 2006 submission as a response to the court's order of January 3, 2006.

Entered this 21st day of February, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge