

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID L. SCHWAB,

Defendant.

ORDER

06-C-0531-C

05-CR-0096-C-01

Defendant David L. Schwab has filed a motion pursuant to 28 U.S.C. § 2255, in which he raises one ground for relief that reads in full as follows:

The District Court failed to establish a complete restitution order.

My sentencing attorney was ineffective in that he did not raise a sentencing issue of an complete restitution order. The manner and the schedule of payments was not done at my sentencing and the 90 day time frame has long passed.

Defendant does not say what relief he is requesting. Presumably, he wants to be relieved of his obligation to make restitution.

Defendant's motion is perplexing. The judgment and commitment order entered in this case shows that defendant was ordered to make full restitution no later than July 1,

2006 and that while he was incarcerated and until July 1, 2006, he was to make payments of either quarterly installments of a minimum of \$25 if he was working in a non-UNICOR position or a minimum of half of his monthly earnings if he was working in a UNICOR position. Defendant's terse challenge does not include any explanation of how such an order fails to satisfy the provisions of 18 U.S.C. § 3664(f)(3)(A).

In any event, it is irrelevant whether defendant has a ground for his contention that the restitution order was improper. Under Barnickel v. United States, 113 F.3d 704, 706 (7th Cir. 1997), he cannot raise a challenge to a restitution order in a § 2255 motion. In that case, the court of appeals held that persons in custody may not use § 2255 for the purpose of challenging the restitution portion of their sentences. Section 2255 requires a showing that the claimant has a "right to be released." Seeking relief from a restitution order is not the equivalent of asserting a right to be released. Thus, this court has no jurisdiction to entertain his motion.

ORDER

IT IS ORDERED that defendant David L. Schwab's motion for post-conviction relief

under 28 U.S.C. § 2255 is DENIED for lack of jurisdiction.

Entered this 6th day of October, 2006.

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