

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRIAN JACOBSON,

Defendant.

ORDER

06-C-0751-C

05-CR-0117-C-01

In an order entered January 3, 2007, I directed the government to respond to defendant's motion for relief pursuant to 28 U.S.C. § 2255 no later than January 24, 2007. The government has now moved for a suspension of that order, pending submission by defendant of a motion signed under oath or accompanied by an affidavit.

Technically, the government is correct. Rule 2(b)(5), Rules Governing Section 2255 Proceedings for the United States District Courts does require that motions for postconviction relief be submitted under oath or accompanied by an affidavit. The necessity of an oath or affidavit is at its nadir in a motion such as defendant's, however, because defendant is not alleging any errors or omissions that depend on matters within defendant's

personal knowledge. He is alleging that defendant failed to undertake a proper investigation of the evidence in the case and failed to raise objections to comments made by the court and prosecutor. Nevertheless, in order to comply with Rule 2(b)(5), I will suspend the briefing in this matter until defendant has complied with the prerequisites of the rule. Assuming that defendant does comply, the government shall have three weeks in which to respond. Defendant may have ten days in which to file and serve a reply.

ORDER

IT IS ORDERED that briefing is suspended in this case until defendant has submitted an amended motion that complies with Rule 2(b)(5) Rules Governing Section 2255 Proceedings for the United States District Courts. If such a motion is filed, the government may have three weeks in which to file and serve its response; defendant may have ten days following receipt of the response in which to file and serve his reply brief.

Entered this 8th day of January, 2007.

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