

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JESSE MATEO RODRIGUES,

Defendant.

ORDER

05-cr-164-bbc

Defendant Jesse Mateo Rodrigues has filed a “motion to resentence pursuant to supreme court decision in *Alleyne v. United States.*” He contends he is entitled to a new sentencing because at his original one the court took into account several factual matters that had not been found by a jury.

Unfortunately, this court has no jurisdiction to hear his motion because it is an attempt to avoid the bar to filing a second motion for relief under 28 U.S.C. § 2255. Defendant filed his first § 2255 motion on February 4, 2009. It was denied on May 14, 2009. Although the present motion has a new title, it is in fact a second motion for post conviction relief. He is making the same contention that he made in 2009, which is that his sentence was illegal. The law prohibits defendants from filing a second motion for post conviction relief unless they obtain certification of the motion from a panel of the Court of Appeals for the Seventh Circuit. § 2255(h). To obtain such certification defendant must

show that the motion rests on newly discovered evidence or a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable to him. Id.

ORDER

IT IS ORDERED that defendant Jesse Mateo Rodrigues's "motion to resentence pursuant to supreme court decision in *Alleyne v. United States*" is DISMISSED for lack of jurisdiction.

Entered this 19th day of December, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge