

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALLEN LADD,

Defendant.

OPINION AND ORDER

05-cr-42-bbc

Defendant Allen Ladd has filed what he calls a Letter/motion in which he asks the court to correct information in his presentence report that led to his being found a career offender at the time of his sentencing in this court. Unfortunately for defendant, he is barred by statute from bringing such a motion. He should be aware of this because he has previously had a second motion for post conviction relief under 28 U.S.C. § 2255, dkt. #97, dismissed for lack of jurisdiction. In that case, defendant was told that he was barred under 28 U.S.C. § 2255(h) from filing a second § 2255 motion unless he first obtained certification to do so from a panel of the Court of Appeals for the Seventh Circuit. Dkt. #102.

In his Letter/motion, defendant contends that a lot of the information in his presentence report was inaccurate and asks that the report be corrected to show that two of his prior convictions on which the court relied in finding him a career offender should not have been considered. Ltr./motion, dkt. #103. He adds that the crime of assaulting a police

office with a firearm never happened and that he never pushed an officer down a flight of stairs. Id. This may be true, but as I explained to defendant after he filed his second motion for post conviction relief, this court lacks jurisdiction to hear his new claim until he obtains certification of the motion from a panel of the Court of Appeals for the Seventh Circuit. Dkt. #102 at 1, citing 28 U.S.C. § 2255(h). Defendant has not established that he has such certification although it is clear that, regardless what title he has put on his present filing, it is an effort to achieve post conviction relief. Godoski v. United States, 304 F.3d 761, 763 (7th Cir. 2002) (“A post-conviction filing that fits the description of 2255 ¶ 1 is a motion under § 2255, and subject to its restrictions, no matter what the pleader says.”). Accordingly, the motion is barred under § 2255(h) until and unless defendant obtains certification from a panel of the court of appeals to file it, either by showing he has newly discovered evidence that, if proven, would establish by clear and convincing evidence that no reasonable factfinder would have found him guilty of either of the two prior offenses he is challenging or that a new rule of constitutional law has been retroactive to cases on collateral review by the Supreme Court.

Defendant admits in his letter/motion that he knew at the time he was sentenced that the records of his two prior convictions were inaccurate, but chose not to fight them in order to preserve his plea bargain. This admission would prevent him from proving to the court of appeals that he is relying on newly discovered evidence.

Alternatively, § 2255(h)(2) allows a defendant to seek certification of a successive motion in the event of a new rule of constitutional law, “made retroactive to cases on

collateral review by the Supreme Court, that was previously unavailable.” Defendant has not argued that such a rule has been announced, so I must assume that he has no basis on which to seek certification from the court of appeals to file a successive motion under § 2255.

ORDER

IT IS ORDERED that defendant Allen Ladd’s Letter/motion, dkt. #103, is construed as a motion for post conviction brought under 28 U.S.C. § 2255. Because it is an attempt to bring a successive motion for post conviction relief but it has not been certified by a panel of the Court of Appeals for the Seventh Circuit as containing either newly discovered evidence or a new rule of constitutional law made retroactive to cases in collateral review, the motion is DENIED for lack of jurisdiction.

Entered this 3d day of March, 2016.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge