

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JACQUELINE MARTINSON,

Defendant.

ORDER

05-cr-48-bbc

07-cv-664-bbc

On May 24, 2010, defendant Jacqueline Martinson filed a motion to modify her sentence under 18 U.S.C. § 3742. In her motion, she alleged that the district court imposed an improper sentence on her in 2005, when it erred in applying the sentence enhancement under U.S.S.G. 3B1.4 for using a minor to commit a crime.

On June 1, 2010, while defendant's May 24 motion was still under advisement in this court, defendant filed a notice of appeal and application for certificate of appealability. At that time it was unclear what defendant was trying to appeal since no order had been entered on her § 3742 motion. On June 8, 2010, I entered an order characterizing that motion as one brought pursuant to 28 U.S.C. § 2255. I dismissed it for lack of jurisdiction because

defendant had filed a § 2255 motion in 2007 that had been dismissed as untimely and she had not obtained certification from the court of appeals to file a second motion under § 2255.

On June 10, 2010, defendant filed another notice of appeal along with a request for appointment of counsel and supporting memorandum. Again, she has not identified which order she is appealing. Neither her June 1, 2010 notice of appeal nor her more recent one was accompanied by a filing fee or a request for a certificate of appealability. However, it is necessary to decide whether a certificate of appealability should issue and whether defendant is entitled to proceed in forma pauperis. I conclude that the answer is “no” to both questions.

According to Fed. R. App. P. 24(a), a defendant who is found eligible for court-appointed counsel in the district court may proceed on appeal in forma pauperis without further authorization “unless the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed” Defendant had court-appointed counsel at trial. Therefore, she can proceed on appeal unless I find that her appeal is taken in bad faith. In this case, a reasonable person could not suppose that the appeal has some merit, as is required in order for the appeal to be taken in good faith. The law is clear on the subject of successive appeals. It is not debatable that defendant may not file repeated motions to vacate her sentence pursuant to 28 U.S.C. §

2255 without obtaining advance permission to do so from the court of appeals.

I certify that defendant's appeal is not taken in good faith and that for this reason, she is not entitled to proceed in forma pauperis on appeal. Further, I decline to issue a certificate of appealability. Under Fed. R. App. P. 22(b), if a district judge denies an application for a certificate of appealability, the defendant may request a circuit judge to issue the certificate.

ORDER

IT IS ORDERED that defendant Jacqueline Martinson's implied requests for certificates of appealability and motions for leave to appeal in forma pauperis related to her appeals of June 1, 2010 and June 10, 2010 are DENIED. Her motion for appointment of counsel is DENIED as unnecessary.

Further, IT IS ORDERED that if defendant files any further documents in this case, the clerk of court is directed to forward them to me before filing. If I determine that the document includes a challenge to defendant's conviction or sentence and is not accompanied by an order of the Court of Appeals for the Seventh Circuit permitting the filing, then I will

place the document in the file of this case and make no response to it.

Entered this 15th day of June, 2010.

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