

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

LARRY HENDRIX,

Defendant.

ORDER

08-cv-274-bbc

06-cr-54-bbc

Defendant Larry Hendrix has filed a document titled “Motion Requesting Relief from a Judgment or Order Pursuant to 60(b)(4)” dated May 2, 2011. Any motion that is filed in the sentencing court that is substantively within the scope of § 2255 must be filed as a § 2255 motion. United States v. Carraway, 478 F.3d 845, 848 (7th Cir. 2007)(“The fact that [petitioner] labeled his motion as a request for relief under civil Rule 60(b) rather than section 2255 is immaterial; it is the substance of the petitioner’s motion that controls how his request for relief should be treated.”)

Section 2255 prohibits a defendant from filing a second or successive motion under § 2255 without certification by the court of appeals that the new motion contains newly

discovered evidence or “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court.” This motion is defendant’s third attempt (which tends to explain his effort to avoid labeling it as a § 2255 motion). He filed a motion under § 2255 on May 19, 2008; that motion was denied in its entirety on June 10, 2008. On July 11, 2008, defendant filed a document entitled “Motion to Alter or Amend Judgment Pursuant to Fed. Rules Civil Pro. 15(c)(2)” which was dismissed on December 17, 2009. Defendant’s latest motion is a third attempt to reconsider his sentence. As before, this court lacks authority to consider the claims raised in his motions without certification by the court of appeals.

ORDER

IT IS ORDERED that defendant Larry Hendrix’s motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b)(4) is DENIED for lack of jurisdiction.

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 9th day of May, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge