

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

TIMOTHY ROBINSON,

Defendant.

ORDER

08-cr-152-bbc

On March 12, 2009, defendant Timothy Robinson pleaded guilty to one count of possession with intent to distribute 50 grams or more of cocaine base and was sentenced to a term of imprisonment of 120 months. Defendant did not file an appeal of his sentence. On March 29, 2010, defendant filed a motion under 28 U.S.C. § 2255, alleging that his trial counsel failed to file a notice of appeal. After appointing counsel to represent defendant and after having an evidentiary hearing on the matter, I granted defendant's motion, vacated the judgment and reinstated it as of July 21, 2010. On July 28, 2010 defendant filed an appeal of his sentence. The appeal is still pending before the Court of Appeals for the Seventh Circuit.

Now defendant has filed with this court a motion for reduction of sentence. The first question to be decided is whether this court has authority to act on defendant's motion while his appeal is pending. The general rule is that once the notice of appeal is filed, the district court should not take any further action. Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982) (“[A] federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously. The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.”). Therefore, this court will take no action on defendant's motion until the appeal is decided.

ORDER

IT IS ORDERED that defendant Timothy Robinson's motion for modification of his sentence is DENIED as premature.

Entered this 16th day of December, 2010.

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