

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

MORRIS BROWN,

Defendant.

ORDER

08-cr-134-bbc
10-cv-47-bbc

On January 22, 2009, defendant Morris Brown pleaded guilty to one count of being a felon in possession of a firearm. He was sentenced on March 19, 2009, to a term of imprisonment of 76 months. On February 1, 2010, defendant filed a motion for post conviction relief under 28 U.S.C. § 2255, contending that he had been denied effective assistance of counsel. The motion was denied in an order entered on February 18, 2010. Defendant appealed to the Court of Appeals for the Seventh Circuit. While the appeal was pending, defendant filed four motions to reopen and amend his 2255 motion. The court denied the motions without prejudice because his case was on appeal. On April 5, 2011 the court of appeals issued an order denying defendant's appeal. After the appeal was dismissed, this court addressed defendant's previously filed motions to reopen and amend. All motions

were denied in an order entered on July 19, 2011, because defendant's motions were successive motions under 2255 and had not been certified by the court of appeals.

Now defendant has filed a motion for relief from judgment under Fed. R. Civ. P. 60(b). His current motion is no different from his previous motions. It is another attempt to challenge his sentence. This court lacks authority to consider it because he has not obtained the required certification by the court of appeals.

Under Rule 11 of the Rules Governing Section 2255 Proceedings, the court must issue or deny a certificate of appealability when entering a final order adverse to a defendant. To obtain a certificate of appealability, the applicant must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); Tennard v. Dretke, 542 U.S. 274, 282 (2004). This means that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 336 (2003) (internal quotations and citations omitted). Defendant has not made a substantial showing of a constitutional right so no certificate will issue.

ORDER

IT IS ORDERED that defendant Morris Brown's motion for relief from judgment under Fed. R. Civ. P. 60(b) is DENIED for lack of jurisdiction. No certificate of appealability

shall issue.

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 8th day of February, 2013.

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