

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

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

10-cv-584-bbc
08-cr-102-bbc

v.

ODELL DOBBS,

Defendant.

With the help of another inmate, defendant Odell Dobbs has moved under 28 U.S.C. § 2255 for vacation or modification of his conviction and sentence, contending that he was denied the effective assistance of counsel in connection with his plea and his sentencing. He raises three grounds of alleged ineffectiveness by counsel: (1) giving him erroneous advice about pleading guilty; (2) not challenging the sufficiency of the indictment and failing to investigate and challenge the legality of defendant's arrest; and (3) not challenging the use of a misdemeanor conviction in determining defendant's career offender status.

After the motion was set for briefing and the government had responded, defendant submitted a "reply motion due to extraordinary circumstances to prevent/cure a serious

miscarriage of justice.” This motion appears to have been filed by a different inmate and raises a new issue hinted at only obliquely in the original § 2255 motion, which is that defendant has a mental illness or severe learning disability that makes him incapable of understanding anything told to him by counsel or the court.

Ordinarily, a court will ignore new matters raised for the first time in a brief. However, this is the only § 2255 motion that defendant can bring to attack his sentence. Therefore, I will err on the side of caution and treat the new motion as one to amend the original § 2255 motion. The government may have until January 10, 2011 in which to respond to the new issue of mental incapacity only.

ORDER

IT IS ORDERED that the government may have until January 10, 2011, in which to respond to defendant’s amended motion for post conviction relief. Defendant may have until January 20, 2011 in which to file and serve a reply.

Entered this 28th day of December, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge