

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES FRAZIER,

Defendant.

ORDER

06-cr-221-bbc

10-cv-732-bbc

On November 22, 2010, defendant James Frazier filed a motion for post conviction relief under 28 U.S.C. § 2255 contesting his conviction and sentence on the grounds that he was forced improperly to represent himself at trial, that his trial counsel failed to investigate the facts of his case and that his appellate counsel was ineffective for failing to raise critical issues on appeal. On February 10, 2011, I denied defendant's motion. Defendant appealed and his appeal is pending.

Now defendant has filed another motion for post conviction relief under 28 U.S.C. § 2255 and a request for appointment of counsel. I cannot consider defendant's motion for two reasons.

First, absent extraordinary circumstances, the district court should not consider any

motions while an appeal is pending. United States v. Robinson, 8 F.3d 398 (7th Cir. 1993). Defendant has not alleged any extraordinary circumstances that require re-consideration of his motion while his appeal is pending. Second, 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.” Because this motion is defendant’s second attempt to challenge his sentence, the court lacks authority to consider the claims raised in defendant’s motion without certification by the court of appeals.

ORDER

IT IS ORDERED that defendant James Frazier’s motion brought under 28 U.S.C. § 2255 is DISMISSED for lack of jurisdiction and his request for appointment of counsel is DENIED.

Entered this 16th day of March, 2011.

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