

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

RICKY PETTY,

Defendant.  
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ORDER

10-cr-188-bbc

On October 18, 2013, defendant Ricky Petty filed a motion for post conviction relief under 28 U.S.C. § 2255, alleging that the United States had no jurisdiction to try him for a crime committed in Wood and Portage County, Wisconsin. On October 24, 2013, I dismissed defendant's motion as untimely because it was not filed within one year from the date his conviction became final.

Defendant has now filed a document titled "Motion for An Injunction Pursuant to Federal Rules of Civil Procedure, Rule 65 and 28 U.S.C. § 2284" in which he seeks an injunction against the United States, asserting that it had no jurisdiction to try him for a crime committed in Wood and Portage County, Wisconsin. Although defendant's motion was filed within the time required to file a motion for reconsideration of the court's October

24, 2013 order, I am not construing it as such because defendant's motion seeks relief under a different federal statute. Even if I were to construe defendant's submission as a motion for reconsideration of the October 24, 2013, order, the motion would be denied because it is well established that a defendant has only one year from the date his conviction becomes final to file a motion under 28 U.S.C. § 2255, with certain exceptions that do not apply in defendant's case.

Although defendant did not label his current motion as one brought under 28 U.S.C. § 2255, the law is clear that I must treat it as one brought under that statute. 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 a Writ of Quo Warranto and Habeas Corpus 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.")

As with defendant's previous motion, his current motion must be dismissed as untimely because it was not filed within one year from the date his conviction became final.

ORDER

IT IS ORDERED that defendant Ricky Petty's Motion for An Injunction Pursuant to Fed. R. Civ. P. 65 and 28 U.S.C. § 2284 is construed as a motion for post conviction relief under 28 U.S.C. § 2255 and is DENIED as untimely. Defendant is not entitled to a certificate of appealability because he has not made a substantial showing of the denial of a constitutional right.

Entered this 29th day of October, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge