

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHERYL McNAMEE,

Defendant.

ORDER

11-cr-142-bbc

On August 16, 2012, defendant Cheryl McNamee filed a motion for post conviction relief under 28 U.S.C. § 2255, alleging that her restitution was not calculated correctly at the time of sentencing. The motion is being briefed.

Now defendant has filed a motion to withdraw her § 2255 motion. In most cases a defendant has only one opportunity to file a § 2255 motion. Because the motion is in the early stages of briefing, I will grant defendant's motion and will not consider it as her first § 2255 motion.

Defendant should know that if she chooses to file another motion for modification of her sentence under 28 U.S.C. § 2255 motion, she will have only one opportunity to do so and she must do so within the statutory time limit. She should be aware that whatever

motion she chooses to file should contain all the claims she wishes to raise under § 2255. It is likely that any subsequent motion will be her one opportunity to file such a motion without receiving permission from the court of appeals for a second filing. Defendant must set out any and all reasons why she believes that her sentence was illegal or unconstitutional. Defendant should keep in mind that, because she did not appeal from her sentence, she will have to show that she had cause for not appealing and that she will be prejudiced if she is not allowed to bring her challenge to her sentence in a post conviction motion under § 2255.

ORDER

IT IS ORDERED that the defendant Cheryl McNamee's motion to withdraw her §2255 motion is GRANTED. If defendant wishes to file a subsequent § 2255 motion, she should do so within the statutory time period.

Entered this 29th day of August, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge