

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Criminal No. 4-89-82(5) (DSD)

United States of America,  
Plaintiff,

v.

**ORDER**

John Gregory Lambros,  
Defendant.

This matter is before the court upon the motion of defendant John Gregory Lambros to vacate a judgment due to intervening change in controlling law. After a review of the file, record and proceedings in the matter and for the reasons stated, defendant's motion is denied.

**BACKGROUND**

On January 27, 1994, defendant was sentenced to a term of life imprisonment, along with concurrent terms of 120 and 360 months on the other counts of conviction. On February 10, 1997, defendant was re-sentenced by Senior United States District Judge Robert G. Renner to a term of 360 months imprisonment. Defendant subsequently filed various motions to vacate the judgment and on several occasions unsuccessfully sought relief from the sentence pursuant to 28 U.S.C. § 2255. Defendant's first collateral attack purportedly sought relief pursuant to Rule 33 of the Federal Rules

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of Criminal Procedure, but was construed as a § 2255 motion. Defendant's second attempt was denied both as a successive § 2255 motion and for want of merit. Defendant's third attempt was denied for lack of jurisdiction, because defendant had failed to obtain permission from the court of appeals to file a successive habeas petition, as required by 28 U.S.C. § 2255.<sup>1</sup>

Defendant now moves the court to vacate the February 1997 judgment<sup>2</sup> due to an alleged intervening change in the law. Defendant also requests permission to file an initial § 2255 motion.

#### DISCUSSION

Defendant argues that a recent United States Supreme Court holding requires this court to vacate Judge Renner's February 1997 judgment and allow defendant to file an initial § 2255 motion. The Supreme Court held that when a district court recharacterizes a pro

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<sup>1</sup> Defendant has since moved (1) to vacate all judgments and orders by Judge Robert G. Renner pursuant to Fed. R. Civ. P. 60(b)(6), (2) for a certificate of appealability ("COA") of the dismissal of the purported Rule 60(b) motion, (3) to vacate the judgment denying his Rule 60(b) motion due to alleged intervening changes in the law, (4) to alter or amend the order refusing to vacate, pursuant to Fed. R. Civ. P. 59 and (5) for a certificate of appealability ("COA") of the dismissal of the second Rule 60(b) motion.

<sup>2</sup> It is unclear whether defendant requests the court to vacate the re-sentencing judgment or the denial of his Rule 33 motions. However, as described herein, the alleged change in law does not apply to defendant, so no basis exists for either form of relief.

se litigant's motion as a first § 2255 motion, the court must (1) notify the litigant of its intent to recharacterize, (2) warn the litigant that such recharacterization will subject any subsequent § 2255 motion to the "second or successive" restriction and (3) provide the litigant the opportunity to withdraw or amend the motion. Castro v. United States, 124 S. Ct. 786, 792 (2003). At defendant's re-sentencing hearing on February 10, 1997, the district court did recharacterize defendant's purported Rule 33 motions as a § 2255 motion.<sup>3</sup> However, defendant was not a pro se litigant, but rather was represented by attorney Colia Ceisel at the re-sentencing. "[B]ecause he was represented by counsel and thus in the same position as other litigants who rely on their attorneys," defendant was not entitled to a legal explanation from the court. Burgs v. Johnson County, 79 F.3d 701, 702 (8th Cir. 1996) (Supreme Court holding that a pro se prisoner's notice of appeal is timely filed upon delivery to prison authorities does not apply to prisoner represented by counsel, even though prisoner filed notice pro se). The Castro rule therefore does not apply to defendant.

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<sup>3</sup> The court reasoned that rather than dismiss defendant's motions as untimely or not directly related to the proceedings, it could address the merits of the motions pursuant to § 2255.

**CONCLUSION**

Accordingly, **IT IS HEREBY ORDERED** that defendant's motion to vacate judgment due to intervening change in controlling law [Docket No. 275] is denied.

Dated: November 15, 2004



David S. Doty, Judge  
United States District Court