

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

LAWRENCE MAHER,)
)
v.)
) Civil No. 09-321-P-S
UNITED STATES OF AMERICA,)
)
)

RECOMMENDATION OF DISMISSAL WITHOUT PREJUDICE

Lawrence Maher has filed a pleading captioned: “MOTION REQUESTING TO MODIFY AN IMPOSED TERM OF IMPRISONMENT PURSUANT TO 18 U.S.C. 3582(c)(1)(b) PREDICATED UPON ANOTHER MODIFYING STATUTE (28 U.S.C. 2255).” In the header of this pleading he identifies his criminal case in this district, Crim. No. 04-93-P-S, and the case number of his previous 28 U.S.C. § 2255 motion, Civ. No. 07-195-P-S.

Upon receipt of this ambiguous filing the clerk’s office elected to open a new 28 U.S.C. § 2255 proceeding. Maher cannot proceed with a second 28 U.S.C. § 2255 motion without obtaining certification from the First Circuit Court of Appeals. See 28 U.S.C. § 2255(h). Maher has not done so. I now recommend that this case be dismissed without prejudice. However, as this pleading could have been intended for filing in Maher’s criminal case, I direct the clerk to docket this motion in Criminal No. 04-93-P-S as an 18 U.S.C. § 3582 request to be addressed by the sentencing judge.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

July 23, 2009.