

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

TINA M. BARLOW,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Civil Case No. 16-cv-1046-JPG

Crim. Case No. 12-cr-40054-JPG-4

MEMORANDUM AND ORDER

This matter comes before the Court on petitioner Tina M. Barlow's Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 (Doc. 1). In her motion, she seeks to vacate her sentence because she believes Amendment 794 to the United States Sentencing Guidelines Manual is retroactive on collateral review and entitles her to a lower sentence. Ordinarily, a defendant who believes she is entitled to a lower sentence based on a retroactive guideline amendment will seek such a reduction under 18 U.S.C. § 3582(c)(2), not 28 U.S.C. § 2255.

The Court is concerned that the petitioner is confused and has selected the wrong vehicle for her request and will, as a consequence, subject herself to the second or successive motion filing restrictions contained in 28 U.S.C. § 2255, ¶ 8, that is, she will not be able to file another § 2255 motion without obtaining permission from the Court of Appeals, which grants such permission only in limited circumstances. Rather than proceeding with the petition as filed – clearly labeled as a § 2255 motion – the Court will give the petitioner an opportunity to withdraw the petition and avoid the second or successive motion filing restrictions, and instead have the motion filed in her criminal case under 18 U.S.C. § 3582(c)(2).

The Court therefore **ORDERS** that the petitioner shall have up to and including October 21, 2016, to file a motion to withdraw her § 2255 motion and have it filed instead as a motion for a reduction of sentence under 18 U.S.C. § 3582(c)(2). If the petitioner fails to timely file a motion to withdraw her § 2255 motion, the Court will consider it under § 2255 and will continue with these § 2255 proceedings.

IT IS SO ORDERED.

DATED: September 22, 2016

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE