

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

SHIRLEY EILEEN SCHMITT,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Defendant.

No. C15-4240-MWB

No. CR12-4076-MWB

**ORDER REGARDING  
PETITIONER'S *PRO SE* MOTION  
TO ALTER OR AMEND ORDER  
DENYING PETITIONER'S MOTION  
TO VACATE, SET ASIDE, OR  
CORRECT SENTENCE**

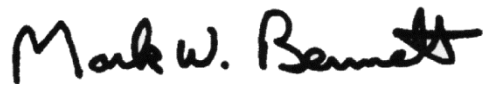
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This case is before me on petitioner Shirley Eileen Schmitt's *pro se* Motion to Alter or Amend the November 30, 2015, Order Denying Her Motion to Vacate Sentence (docket no. 5). In her motion, Schmitt claims that she is entitled to relief because my order dismissing her *pro se* Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 was based on a "misapprehension of fact." Mot. at 2. In her § 2255 motion, Schmitt claims that she is entitled to relief because her defense attorney provided ineffective assistance of counsel by failing to adequately argue Schmitt's eligibility for safety-valve relief under 18 U.S.C. § 3553(f). I determined that Schmitt was not entitled to relief, and summarily dismissed her § 2255 motion with prejudice because the issue of Schmitt's eligibility for safety valve relief was raised and rejected on direct appeal. As a result, she was procedurally barred from raising it again, here because she could not use a § 2255 proceeding, in the guise of ineffective assistance of counsel, to relitigate issues decided adversely to her on direct appeal. *See Boeckenhaupt v. United States*, 537 F.2d 1182, 1183 (4th Cir. 1976) (stating that a defendant may not "recast under the guise of a collateral attack, questions fully considered by this court [on direct appeal]").

After reviewing Schmitt's motion and the record, I can find no grounds which warrant modifying my prior order denying Schmitt's § 2255 motion or the judgment entered in this case. Therefore, Schmitt's *pro se* Motion to Alter or Amend the November 30, 2015, Order Denying Her Motion to Vacate Sentence is denied.

**IT IS SO ORDERED.**

**DATED** this 27th day of May, 2016.

A handwritten signature in black ink that reads "Mark W. Bennett". The signature is written in a cursive style with a horizontal line underneath it.

MARK W. BENNETT  
U.S. DISTRICT COURT JUDGE  
NORTHERN DISTRICT OF IOWA