

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JERRAD MALLORY,)	
)	
Movant,)	
)	
v.)	No. 4:12CV1581 RWS
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before the Court upon its own motion. Movant submitted a “motion for a reduction of sentence pursuant to 18 U.S.C. § 3582(b)(3) and 18 U.S.C. § 3742(a)(2). In the motion, movant seeks to attack the validity of his sentence as imposed. The motion was filed in the criminal action. After reviewing the motion, however, the Court concluded that the motion would be more properly filed as a motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255, and therefore, the Court ordered the Clerk to open the motion as a new case.

Before the Court may *sua sponte* characterize the instant filing as a § 2255 motion, however, movant must be given the opportunity to either consent to the classification or withdraw the filing. See Morales v. United States, 304 F.3d 764, 767 (8th Cir. 2002).

Movant is warned that if he consents to the classification of the instant filing as a motion under § 2255, any future § 2255 motion will be subject to the restrictions on filing second or successive motions. That is, movant will not be permitted to bring a second or successive § 2255 motion unless the United States Court of Appeals for the Eighth Circuit certifies that the second or successive motion meets the requirements set forth in § 2255(h)(1)-(2). Furthermore, movant is warned that § 2255 motions are subject to a one-year limitations period. See 28 U.S.C. § 2255(f).

If movant consents to the characterization of the instant filing as a § 2255 motion, he must inform the Court of his decision, in writing, within thirty days of the date of this Order. Furthermore, if movant consents to the characterization, then he must file an amended § 2255 motion on the Court-provided form within thirty days of the date of this Order.

If movant opposes the characterization, or if movant fails to respond to this Order, then the Court will dismiss the action without prejudice and without characterizing the filing as a § 2255 motion.

Accordingly,

IT IS HEREBY ORDERED that movant shall have thirty (30) days from the date of this Order to formally consent, in writing, to the Court's characterization of the instant filing as § 2255 motion.

IT IS FURTHER ORDERED that if movant consents to the characterization, then he must file an amended § 2255 motion on the Court-provided form within thirty (30) days of the date of this Order.

IT IS FURTHER ORDERED that if movant does not consent to the characterization of the instant filing as a § 2255 motion, or if movant fails to timely respond to this Order, then the Court will dismiss the action without prejudice and without characterizing the filing as a § 2255 motion.

IT IS FURTHER ORDERED that the Clerk shall mail to plaintiff a copy of the Court's form motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255.

Dated this 5th day of September, 2012.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE