

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MICHAEL S. PICH,)
Petitioner,)
vs.) Case No. 4:13CV02512 SNLJ
UNITED STATES OF AMERICA,)
Respondent.)

MEMORANDUM AND ORDER

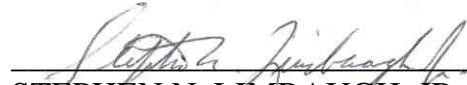
This matter is before the Court on a motion under 28 U.S.C. § 2255 to vacate, set aside or correct sentence by Michael S. Pich, a person in federal custody. On September 6, 2012, pursuant to a plea agreement, Michael Pich pled guilty to one count of conspiracy to possess pseudoephedrine with the intent to manufacture methamphetamine. In his plea, Pich, waived his right “to contest the conviction or sentence in any post-conviction proceeding, including one pursuant to Title 28, United States Code, Section 2255, except for claims of prosecutorial misconduct or ineffective assistance of counsel.” This Court approved the agreement and accepted the plea. On December 5, 2012, this Court sentenced Pich to 57 months, well below the guideline range of 87 to 108 months, by way of a downward variance. He did not appeal. Pich now claims that this court “committed plain error by lengthening my prison sentence to promote rehabilitation.”

Section 2255 provides that a prisoner may claim “the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose the sentence, or that

the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack.” Pich has failed to present any ground for relief pursuant to Section 2255. Furthermore, no hearing is necessary on this matter because “the motion, files and records conclusively show movant is not entitled to relief.” *Arnold v. United States*, 63 F.3d 708, 709 (8th Cir. 1995), *United States v. Duke*, 50 F.3d 571, 576 (8th Cir.), *cert. denied*, 516 U.S. 885 (1995). For these reasons, the motion is **DENIED**.

IT IS FURTHER ORDERED this Court will not issue a certificate of appealability because Pich has not made a substantial showing of the denial of a federal constitutional right.

SO ORDERED this 16th day of January, 2015.



STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE