

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

EUGENE DOKES,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent,

No. 4:16-CV-1490 CEJ

MEMORANDUM AND ORDER

This matter is before the Court on the motion of Eugene Dokes to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. The motion is denied without prejudice.

Movant pled guilty to theft of government funds, in violation of 18 U.S.C. § 641. On September 19, 2016, he was sentenced to a five-year term of probation and ordered to pay restitution in the amount of \$45,835.60. Movant filed a notice of appeal that same day.

Movant filed the instant motion to vacate on September 20, 2016. "Ordinarily resort cannot be had to 28 U.S.C. § 2255 or habeas corpus while an appeal from conviction is pending." *Masters v. Eide*, 353 F.2d 517, 518 (8th Cir. 1965). An exception to this rule exists for "extraordinary circumstances." Adv. Comm. Notes to Rule 5 of the Rules Governing § 2255 Proceedings. "Whether extraordinary circumstances exist is a question the answer to which depends upon the need for speedy relief against the need for conservation of judicial resources." *United States v. Davis*, 604 F.2d 474, 485 (7th Cir. 1979). In this case, there is no demonstrated

need for speedy relief. As a result, the motion will be denied without prejudice as premature.

Additionally, the Court finds that Movant has not made a substantial showing of the denial of a constitutional right. Therefore, the Court will not issue a certificate of appealability. See 28 U.S.C. § 2253.

Accordingly,

IT IS HEREBY ORDERED that the motion of Eugene Dokes to vacate, set aside, or correct sentence [Doc. # 1] is **denied without prejudice**.

A handwritten signature in cursive script, appearing to read "Carol E. Jackson", is written above a horizontal line.

CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE

Dated this 23rd day of September, 2016