

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

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**.



CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE

Dated this 23rd day of September, 2016