

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN HIGH,

Defendant.

ORDER

07-cr-91-bbc

11-cv-627-bbc

Defendant John High has filed a motion for post conviction relief under 28 U.S.C. § 2255(f) based upon the Supreme Court decision in Alleyne v. United States, 133 S. Ct. 2151 (2013). He contends he is entitled to a new sentencing because at his original one the court took into account several factual matters that had not been found by a jury.

Defendant's motion must be dismissed because this court has no jurisdiction to hear it. The present motion is defendant's second motion for relief filed under 28 U.S.C. § 2255. He filed the first one on September 9, 2011; it was denied on November 28, 2011. He is prohibited from filing a second motion for post conviction relief unless he first obtains certification to do so from a panel of the Court of Appeals for the Seventh Circuit. § 2255(h).

If defendant wishes to pursue his motion, he will have to persuade the court of appeals that his motion rests on newly discovered evidence or a new rule of constitutional

law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable to him. Id. Unless and until the Supreme Court makes Alleyne retroactive, he will not be likely to obtain such certification.

It is probably unnecessary to consider the question of issuing a certificate of appealability. To complete the record, however, I find under Rule 11 of the Rules Governing Section 2255 Proceedings, that defendant has not made a "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2); Tennard v. Dretke, 542 U.S. 274, 282 (2004), so no certificate will issue.

ORDER

IT IS ORDERED that defendant John High's motion for post conviction relief under 28 U.S.C. § 2255 is DISMISSED for lack of jurisdiction. No certificate of appealability shall issue.

Entered this 8th day of January, 2014.

BY THE COURT:

Barbara B. Crabb
BARBARA B. CRABB
District Judge