

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DOREEN M. HENDRICKSON,

Defendant.

Criminal Action No.: 13-cr-20371

Honorable Victoria A. Roberts

**GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION FOR
STAY OF EXECUTION OF SENTENCE**

The United States of America, by and through undersigned counsel, submits the following memorandum in opposition to the defendant's Motion for the Stay of Execution of Sentence, The Vacating of Her Conviction and Other Relief (Doc # 169). The defendant asks the Court to vacate her conviction for criminal contempt. Because the defendant's meritless claim is procedurally precluded, the Court should deny it.

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ISSUE

Whether the defendant is procedurally barred from collaterally attacking her conviction with claims that this Court lacked jurisdiction because it was committing a crime by ordering her to file amended tax returns as a special condition of supervised release.

STATEMENT OF MOST APPROPRIATE AUTHORITY

The most appropriate authority for this issue is 28 U.S.C. § 2255(a).

LEGAL STANDARD

A prisoner sentenced by a federal court may move the court which imposed the sentence to vacate, set aside or correct the sentence when “the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack.” 28 U.S.C. § 2255(a).

The defendant claims that the Court lacked jurisdiction. This is the type of post-conviction claim that falls within the scope of § 2255. The defendant was warned by the Court that it could “rightfully construe her motion to be a § 2255 motion.” Doc. # 175 at 4. The Court also gave “Hendrickson the opportunity to withdraw, or amend her motion to include any and all § 2255 claims she believes she has.” Id. The defendant failed to amend or withdraw her motion by the

deadline set by the Court. Accordingly, the Court should decide her claim under the terms of § 2255 and it will be subject to the restrictions on subsequent or successive § 2255 motions provided in that section. See In re Shelton, 295 F.3d 620, 621-22 (6th Cir. 2002).

DISCUSSION

On April 9, 2015, after the defendant was convicted by a jury of one count of criminal contempt, the Court sentenced the defendant to 18 months in prison followed by one year of supervised release. As a special condition of her supervised release, the Court ordered:

While on supervised release, defendant is to fully cooperate with the IRS by filing all delinquent or amended returns within 60 days of the release on supervision and to timely file all future returns that come due during the term of supervised release. On these returns defendant shall not alter the jurats, add disclaimers, or otherwise make it impossible for the IRS to properly process them and they cannot be based on any theory contained in Cracking the Code.

Id.

At a hearing held on September 8, 2017, after considering testimony and other evidence, the Court found that the defendant violated the terms of her supervised release by failing to file the required tax returns. See Judgment Doc. # 168. The Court sentenced her to four months in prison with no supervised release to follow. Id.

In the instant motion,¹ the defendant petitions the Court to vacate her conviction due to the Court's purported lack of jurisdiction over her criminal case. Specifically, the defendant claims that the Court's order that she file amended returns as a special condition of supervised release somehow violated 26 U.S.C. § 7206(2), a criminal provision of the Internal Revenue Code. The defendant maintains that "Congress has *expressly criminalized* the seeking, issuance, and enforcement of exactly the so-called 'amended return' order" that she was "found to have disobeyed in a violation of her supervised release." Doc. # 169 at 4. The defendant goes on to claim that the Court itself committed a crime in violation of § 7206(2): "it is thus an expressly criminal act for a court to order the creation and submission of the so-called 'amended returns' at issue" in her case. Id. at 6. Somehow, according to the defendant, this alleged crime by the Court served to deprive it of jurisdiction. See id at 7.

Motion Should be Decided Under § 2255

Under 28 U.S.C. § 2255, "A prisoner in custody under sentence of a [federal] court . . . claiming the right to be released . . . may move the court which imposed the sentence to vacate, set aside, or correct the sentence." A motion brought under

¹ The defendant also asks the Court, apparently pursuant to Federal Rule of Civil Procedure 62(b)(4), to stay the sentence it imposed on September 8, 2017. The Court has delayed the defendant's prison reporting date until January 29, 2018 (Doc. #179) thereby likely rendering this request moot.

§ 2255 must allege one of three bases as a threshold standard: (1) an error of constitutional magnitude; (2) a sentence imposed outside the statutory limits; or (3) an error of fact or law that was so fundamental as to render the entire proceeding invalid. See United States v. Addonizio, 442 U.S. 178, 185-86 (1979). The substance of the defendant's motion challenges her conviction and seeks a stay of the execution of her sentence "due to the Court's lack of jurisdiction throughout all proceedings." Doc. # 169 at 1. Accordingly, the motion falls within the parameters of § 2255 because it claims that the court was without jurisdiction to impose such sentence. 28 U.S.C. § 2255(a).

Motion is Procedurally Barred

To obtain relief under Title 28, Section 2255, the defendant must show that "the sentence was imposed in violation of the Constitution or laws of the United States, the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack." 28 U.S.C. § 2255. "Relief under 28 U.S.C. § 2255 is reserved for transgressions of constitutional rights and for a narrow range of injuries that could not have been raised on direct appeal and would, if condoned, result in a complete miscarriage of justice." United States v. Frady, 456 U.S. 152, 167-68 (1981).

Issues that the defendant could and should have raised on direct appeal, but failed to do so, are ordinarily considered to be waived absent a showing by the

movant of cause and prejudice for the default or her actual innocence. Ray v. United States, 721 F.3d 758, 761 (6th Cir.2013) (“It is well-established that a § 2255 motion ‘is not a substitute for direct appeal.’”) (citing Regalado v. United States, 334 F.3d 520, 528 (6th Cir.2003)). The defendant never raised her claim that the Court’s purported criminal violation of § 7206(2) deprived it of jurisdiction at the trial of this case and she never raised it on direct appeal. See United States v. Hendrickson, 822 F.3d 812 (6th Cir.), cert. denied, 137 S. Ct. 341 (2016). Indeed, in a related vein, the Sixth Circuit emphasized that the defendant did “not claim on appeal that the district court lacked jurisdiction to enter the underlying order,” establish that the “order was transparently invalid[,] or [that the order] only had a frivolous pretense to validity.” Id. at 818.

Claims that could have been raised on direct appeal, but were not, will not be entertained via a motion under § 2255 unless the petitioner shows: (1) cause and actual prejudice to excuse her failure to raise the claims previously; or (2) that she is “actually innocent” of the crime. Bousley v. United States, 523 U.S. 614, 622 (1998). The Sixth Circuit has adhered to this cause and actual prejudice test in § 2255 cases. See, e.g., Murr v. United States, 200 F.3d 896, 900 (6th Cir.2000) (recognizing the “failure to raise an argument at trial or on direct appeal is waived on collateral review under § 2255, absent the showing of both cause and actual prejudice.”) The Sixth Circuit has observed that “[t]his hurdle is an intentionally

high one for the petitioner to surmount, for respect for the finality of judgments demands that collateral attack generally not be allowed to do service for an appeal.” Elzy v. United States, 205 F.3d 882, 884 (6th Cir. 2000).

However, the defendant has not even tried to excuse her failure to raise her § 7206(2) claim earlier in these proceedings or adduced any new facts to claim “actual innocence.” Instead, she merely observes that her § 7206(2) claim has “recently come to Mrs. Hendrickson’s attention.” Doc. # 169 at 4. Section 7206 of the Internal Revenue Code was enacted in 1954. See 68A Stat. 852. Accordingly, the defendant has no valid excuse at this late stage for taking notice of and misapplying the statute in this collateral attack.

Claim is Without Merit

Of course, even if it were not procedurally barred, defendant’s claim is without merit. Her fanciful claim is that there was no jurisdiction for the Court to sentence her for violating the terms of her supervised release because the Court was committing a crime by ordering her to file correct tax returns. The defendant is wrong. She cites no cases that support her contention that courts may be deprived of jurisdiction under a criminal statute forbidding people to aid in the filing of false tax returns. To the contrary, as the Court stated in its Order denying one of her previous motions in this connection, “the Court’s requirement that Hendrickson

file the amended returns is the equivalent of the Court requiring Hendrickson to obey the law.” Doc. # 135 at 2.

No Hearing is Necessary

In reviewing a § 2255 motion in which a factual dispute arises, “the habeas court must hold an evidentiary hearing to determine the truth of the petitioner's claims.” Valentine v. United States, 488 F.3d 325, 333 (6th Cir. 2007) (citations omitted). However, no hearing is required if the petitioner's allegations “cannot be accepted as true because they are contradicted by the record, inherently incredible, or conclusions rather than statements of fact.” Arredondo v. United States, 178 F.3d 778, 782 (6th Cir. 1999).

In this case, the defendant's claims, to the extent that they are factual in nature, are inherently incredible and conclusory in nature under Arrendondo. At all events, her claim relies on the application of a criminal statute to the record of her case. A hearing would not assist the Court in determining the merits of her position.

CONCLUSION

The defendant's claim is procedurally barred and meritless. The Court should deny her motion without a hearing.

Respectfully submitted,

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Dated: December 6, 2017

CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2017, I electronically filed the foregoing document with the Clerk of the Court using the ECF system and sent it via electronic mail to *pro se* defendant Doreen Hendrickson.

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