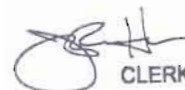


FILED

OCT 31 2011

  
CLERKUNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 WESLEY CHUCK JACOBS, )  
 )  
 Defendant. )

CR 09-50095

11-5084

MOTION UNDER 28 USC § 2255  
TO VACATE, SET ASIDE, OR  
CORRECT SENTENCE

1. Movant's name is Wesley Chuck Jacobs, hereafter Jacobs, and he was convicted in this Court in Criminal Number 09-50095.

2. I am presently confined at the Fort Worth, Texas, FCI, and my mailing address and inmate number is Wesley Chuck Jacobs, 10873-073, Houston Unit, Federal Correctional institution, Post Office Box 15330, Ft. Worth, Texas 76119.

3. I was convicted in the United States District Court, District of South Dakota, Western Division, Rapid City, South Dakota, Criminal Number 09-50095.

4. The date of the judgment of conviction was July 20, 2010; the date of my sentence was July 19, 2010.

5. I was sentenced to 36 months of imprisonment and 3 years of supervised release.

6. The nature of the crime was assault with dangerous weapon.

7. I entered a plea of guilty to assault with a dangerous weapon under 18 USC § 113 (a) (3) and 1153.

8. There was no trial and I did not testify at any hearing except sentencing.

9. I appealed my conviction.

10. The name of appeals court was: (a) the Eighth Circuit Court of Appeals (b) docket number in that Court is 10-2705 (c) the conviction was affirmed (d) date of conviction was May 2, 2011 (e) citation to the Eighth Circuit decision is 638 F3d 567 (f) the grounds raised was whether jurisdiction under the Major Crimes Act, 18 USC 1151, can be sustained without compliance with Article I, ¶ 3, and Article 5 of the 1868 Ft. Laramie Treaty, and (g) petition for certiorari was not filed.

11. Other than the above direct appeal, no other motions, petitions, or applications concerning the judgment of conviction have been filed.

12. My ground for this complaint is that (a) I was first originally charged in the Oglala Sioux Tribal Court on September 22, 2009, for the incident that occurred on September 21, 2009 involving Jennifer Jacobs, the same incident for which I was sentenced in this federal court. See Exhibit 1. I am an enrolled member of the Oglala Sioux Tribe and resided at all times on the Pine Ridge Indian Reservation. I was charged in Tribal Court with spouse abuse, aggravated weapons offense, and assault in the first degree under the laws of the Oglala Sioux Tribe. On March 15, 2010, I was convicted in the Oglala Sioux Tribal Court of spouse abuse and assault in the second degree and was sentenced by the Oglala Sioux Tribal Court on the same date. See Exhibit 2. My conviction in federal court is barred by 18 USC § 1152 and the Fifth Amendment of the United States Constitution (b) my attorney did not raise this issue in the direct appeal to the Eighth Circuit Court of Appeals and as a consequence I had ineffective assistance of counsel, and (c) I did not raise this issue in any post-conviction motion, petition, or application.

13. The above ground was not previously raised in any federal court. My attorney did not raise the issue in the direct appeal and as a consequence I had ineffective assistance of counsel on that issue.

14. I have no motion, petition, or appeal now pending in any court concerning the judgment that I am now challenging.

15. At all previous times in trial and appeal appearances in federal court, I was represented by Gary G. Colbath, Attorney at Law, Federal Public Defender's Office, 703 Main Street, 2<sup>nd</sup> floor, Rapid City, South Dakota 57701, phone 605-343-5110.

16. I was not sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time.

17. I have no future sentence to serve after I have completed the sentence that I am challenging in this case.

18. My direct appeal was determined on May 2, 2011, and this motion is made within one year from that date and so is timely under 28 USC § 2255.

Therefore, movant asks the Court to assume jurisdiction over this matter, set the matter down for a prompt hearing to determine the facts, set a briefing schedule, overturn my conviction as being in violation of federal law, and to grant such other or further relief to which I may be entitled.

Dated October 21, 2011.

  
Wesley Chuck Jacobs

I state under penalty of perjury that the foregoing is true and correct and that this motion under 28 USC § 2255 was placed in the prison mailing system addressed to Clerk, United States District Court, 515 9<sup>th</sup> Street, #302, Box 6080, Rapid City, South Dakota 57709 on October 21, 2011.

A handwritten signature in cursive script, reading "Wesley Chuck Jacobs", is written over a horizontal line.

Wesley Chuck Jacobs