

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

KENNEDY M. RUSSELL,

Defendant.

No. 10-cr-30196-DRH

MEMORANDUM and ORDER

HERNDON, Chief Judge:

Pending before the Court is Russell's May 10, 2013 motion for partial stay of judgment or modification of judgment (Doc. 92). Russell argues that pursuant to Fed.R.Civ.P. 62(b) that the Court should stay the portion of his criminal judgment relative to the "one (1) year probation" as he is likely to prevail to prevail on the merits of his pending 28 U.S.C. § 2255.¹ Based on the following, the Court dismisses Russell's motion for lack of jurisdiction.

Once a district court enters final judgment it lacks jurisdiction to continue to hear related issues, except to the extent authorized by statute or rule. See *Carlisle v. United States*, 517 U.S. 416 (1996). The following post-judgment motions are allowed if timely filed. Under Federal Rule of Criminal Procedure 35, revision is proper only within 7 days, unless the prosecutor files an appropriate

¹ The Court assumes that Russell was referring to supervised release and not probation. The Court sentenced Russell to "Supervised Release for 1 year on each of counts 1, 2, 3, 4 & 5, all such terms to run concurrently."

motion or the court of appeals remands. Further, a Rule 33 motion for new trial based on evidence must be brought within 3 years after the verdict and a Rule 33 motion for new trial based on other grounds must be brought within 7 days after the verdict. Lastly, a collateral attack under 28 U.S.C. § 2255 which has a 1 year statute of limitations.

Here, Russell does not cite any case law or statute which allows the Court to consider his motions. Rule 35 is inapplicable because these motions are brought over 1 ½ years *after* the sentencing and Judgment (September 16, 2011 & September 19, 2011, respectively); the motions do not appear to be brought to correct the sentence arithmetical, technical or other clear error and the government has not filed a motion to reduce. Likewise, Rule 33 does not apply because the motions do not appear to be brought on newly discovered evidence and they were not filed within 7 days of the verdict to be timely to be brought based on other reasons. Therefore, the only other possible procedural avenue that Russell could bring these motions is a § 2255 collateral attack.

However, Russell does have a pending § 2255 action. *See Russell v. United States*, 12-1016-DRH. The Court notes on March 12, 2013 in the § 2255 petition, Russell appealed the Court's order denying leave to amend his petition to add additional claims and defendants and that this appeal is still pending. *Id.* at Doc. 38. Further, the Court notes that Russell brings this motion under a *civil* rule and that this is a criminal matter. Because the Court finds that Russell's motion does not fall under any of the exceptions authorized by statute or rule, the Court

lacks jurisdiction to entertain the motion. Even if the Court had jurisdiction to consider the motion, the Court finds that the motion is without merit as it is not appropriate at this point to speculate as to the outcome of his appeal.

Accordingly, the Court dismisses for want of jurisdiction Russell's motion for partial stay of judgment (Doc. 92).

IT IS SO ORDERED.

Signed this 13th day of May, 2013.

  David R. Herndon
2013.05.13
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**Chief Judge
United States District Court**