

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case Number 06-20172

Honorable Thomas L. Ludington

ROBERT JAMES OCAMPO,

Defendant.

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**ORDER DENYING WITHOUT PREJUDICE A CERTIFICATE OR APPEALABILITY**

Defendant Robert James Ocampo was convicted after a jury trial of seven narcotics and firearms counts on November 20, 2007. On July 7, 2009 he was sentenced to more than thirty years in prison. [Dkt. # 223]. Two days later, he filed a notice of appeal to the Sixth Circuit, which is still pending. *See* case # 08-1930; [Dkt. # 221]. On March 27, 2009, Defendant, acting pro se, filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. The motion asserts the following grounds for vacating the sentence: (1) ineffective assistance of counsel, (2) misapplication of the United States Sentencing Guidelines, (3) violation of his fourth amendment rights, and (4) violation of his due process rights secured by the fifth amendment. [Dkt. # 266 at 4–5].

On April 13, 2009, this Court denied the § 2255 motion without prejudice because Defendant had yet to exhaust his remedies on direct appeal. *See Capaldi v. Pontesso*, 135 F.3d 1122, 1124 (6th Cir. 1998); [Dkt. # 268]. On April 27, 2009, Defendant moved for reconsideration, arguing that he may advance his ineffective assistance of counsel claim pursuant to § 2255 before completing his direct appeal. [Dkt. # 270]. The Court denied the motion, noting once again that filing a notice of direct appeal deprives this Court of jurisdiction to hear a § 2255 claim except in “extraordinary

circumstances.” *Capaldi*, 135 F.3d at 1124; [Dkt. # 274]. On August 24, 2009, Defendant filed a notice of his intention to appeal the Court’s order denying reconsideration. [Dkt. # 277].

The Court’s orders [Dkt. # 268 & 274] denying without prejudice Defendant’s § 2255 motion were not “final” orders. 28 U.S.C. § 2253(a). Consequently, those orders are not appealable. *Id.* Defendant will have an opportunity to file a § 2255 motion when the direct appeal is completed. If he does, this Court will consider the merits of his motion. A certificate of appealability will not be issued, if ever, until after the Court has considered the motion and determined whether Defendant has made a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

Accordingly, it is **ORDERED** that a certificate of appealability is **DENIED WITHOUT PREJUDICE**.

s/Thomas L. Ludington  
THOMAS L. LUDINGTON  
United States District Judge

Dated: October 20, 2009

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on October 20, 2009.

s/Tracy A. Jacobs  
TRACY A. JACOBS