

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Criminal No. 4:89-82(5) (DSD)

United States of America,  
Plaintiff,

v.

ORDER

John Gregory Lambros,  
Defendant.

This matter is before the court upon defendant's motions to stay, for appointment of counsel, for production of records, to clarify that defendant was proceeding pro se on February 10, 1997, to alter or amend the court's order dated November 15, 2004 and for relief from judgment due to a change in controlling law. After a review of the file, record and proceedings in the matter and for the reasons stated, defendant's motions are denied.

**I. Motion to Alter or Amend**

On November 15, 2004, the court denied defendant's motion "to vacate February 10, 1997, judgment due to intervening change in controlling law." In support of his motion to amend the court's order, defendant repeats the legal arguments already presented to the court in his original motion for relief from judgment. The court finds no reason to depart from its earlier ruling. Therefore, defendant's motion is denied.

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## II. Motion to Clarify that Defendant was Proceeding Pro Se

Defendant argues that he proceeded pro se during his resentencing hearing on February 10, 1997. However, defendant admits, and the record shows, that he "appeared in this District Court with his appointed counsel on February 10, 1997, for resentencing." (Def.'s Mot. Clarify, Doc. No. 286, at 2.) Therefore, defendant did not appear pro se. His motion to clarify is denied.

## III. Motion for Relief from Judgment

Defendant argues that he is entitled to relief from judgment pursuant to Rule 60(b) "due to intervening change in controlling law, Crawford v. Washington, 158 L. Ed. 2d 177 (March 8, 2004)."

Defendant does not state what judgment or order he seeks relief from, but his reference to allegedly unconstitutional trial proceedings indicates that his motion is a collateral challenge to a federal conviction or sentence. His motion is therefore patently a successive motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. United States v. Lloyd, 398 F.3d 978, 979-80 (7th Cir. 2005) (filing his motion under § 2255 if substantively within section regardless whether captioned "motion for a new trial, arrest of judgment, mandamus, prohibition, coram nobis, coram vobis, audita querela, certiorari, capias, habeas corpus, ejectment, quare impedit, bill of review, writ of error, or an application for a Get-Out-of-Jail-Card"). Therefore, his motion

is subject to summary dismissal. See Boyd v. United States, 304 F.3d 813, 814 (8th Cir. 2002) (court should dismiss Rule 60(b) motion construed as successive habeas petition for failure to obtain authorization from court of appeals).<sup>1</sup>

#### CONCLUSION

Accordingly, **IT IS HEREBY ORDERED** that:

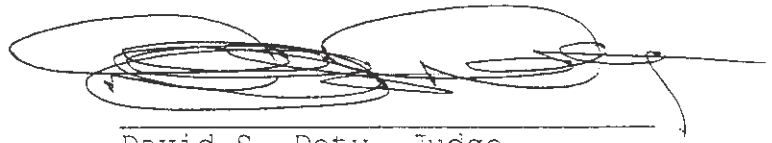
1. Defendant's motion to stay [Doc. No. 281] is denied as moot.
2. Defendant's motion to alter or amend [Doc. No. 283] is denied.
3. Defendant's motion for appointment of counsel [Doc. No. 284] is denied as moot.
4. Defendant's motion for production of records [Doc. No. 285] is denied as moot.
5. Defendant's motion to clarify [Doc. No. 286] is denied.

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<sup>1</sup> Defendant argues that a change in the law warrants relief pursuant to Rule 60(b), citing numerous Eighth Circuit and Supreme Court opinions. However, most of the cases he cites pre-date the Antiterrorism and Effective Death Penalty Act of 1996, which established the limitation on second or successive habeas corpus applications. See 28 U.S.C. § 2255. Furthermore, the language defendant cites from Gonzalez v. Secretary for Department of Corrections, 366 F.3d 1253, 1309 (11th Cir. 2004), appears in a dissenting opinion and does not support his position. See id. at 1309 n. 42 (Tjoflat, J., specially concurring in part and dissenting in part) (Rule 60(b) does not apply to all attacks based upon change in law, but rather those based upon "integrity of a district court's habeas judgment").

6. Defendant's motion for relief from judgment or order  
[Doc. No. 287] is dismissed.

Dated: July 11, 2005

A handwritten signature in black ink, appearing to read "David S. Doty", written over a horizontal line. The signature is somewhat stylized and scribbled.

David S. Doty, Judge  
United States District Court