

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CRIMINAL ACTION
)	
v.)	No. 99-10107-01
)	
SAJCHA HOBBS,)	
)	
Defendant.)	
)	

ORDER

Before the court is defendant's "Notice of Motion and Motion With Affidavit in Support of Motion for Modification of Sentence (Ex-Parte)" (Doc. 39).

The file reflects defendant plead guilty pursuant to a plea agreement filed April 24, 2000 to a violation of 18 U.S.C. § 924(c)(1)(a) (Doc. 31). On July 14, 2000, defendant was sentenced to ten years imprisonment (Doc. 36). Defendant did not appeal.

Defendant states that he is entitled to relief pursuant to 18 U.S.C. § 3582 but it is clear from the document attached to defendant's motion that he is relying on United States v. Booker, 125 S. Ct. 738 (2005). Booker does not apply retroactively to convictions that were final at the time it was decided. United States v. Bellamy, 411 F.3d 1182 (10th Cir. 2005).

Pursuant to United States v. Kelly, 235 F.3d 1238 (10th Cir. 2000), the court finds that defendant's motion could be considered as made under 28 U.S.C. § 2255. Because of the statutory prohibitions regarding second or successive motions pursuant to 28 U.S.C. § 2255 (see 28 U.S.C. § 2244), defendant shall have the

opportunity to withdraw his motion. If the motion is not withdrawn by August 31, 2005, defendant's motion will be treated as one brought pursuant to 28 U.S.C. § 2255 and relief will be denied for the reasons stated herein without further order.

IT IS SO ORDERED.

Dated this 5th day of August 2005, at Wichita, Kansas.

s/ Monti Belot
Monti L. Belot
UNITED STATES DISTRICT JUDGE