

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 00-40104-01/02-RDR

WILLIAM LEONARD PICKARD  
and CLYDE APPERSON,

Defendants.

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O R D E R

This matter is presently before the court upon defendants' motion for ruling or order showing cause. Having carefully reviewed the motion, the court is now prepared to rule.

The defendants were convicted of conspiracy to manufacture lysergic acid diethylamide (LSD) in violation of 21 U.S.C. §§ 841 (a)(1), (b)(1)(A), and 846, and one count of possession with intent to distribute LSD in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A). Apperson was sentenced to thirty years' imprisonment, and Pickard received a life sentence. See United States v. Pickard, 298 F.Supp.2d 1140 (D.Kan. 2003); United States v. Apperson, 298 F.Supp.2d 1149 (D.Kan. 2003). The convictions and sentences were affirmed by the Tenth Circuit. United States v. Apperson, 441 F.3d 1162 (10<sup>th</sup> Cir. 2006), cert. denied, 549 U.S. 1117 (2007) and 549 U.S. 1150 (2007). The defendants then filed motions to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. These motions were denied on April 6, 2009. United

States v. Pickard, 2009 WL 939050 (D.Kan. 2009). The defendants then filed notices of appeal. On July 2, 2009, this court denied defendants' motions for certificates of appealability. While their appeals were pending, the defendants filed some additional motions, including several motions under Fed.R.Civ.P. 60(b). Given the pendency of the appeals, the court declined to consider any of these matters. On October 5, 2010, the Tenth Circuit denied defendants' certificate of appealability on their § 2255 motions and dismissed their appeals. United States v. Pickard, 2010 WL 3862877 (10<sup>th</sup> Cir. 2010). The court then considered the pending motions and denied part of them and transferred part of them to the Tenth Circuit pursuant to 28 U.S.C. § 2244(b)(3) on January 24, 2011. Following this ruling, the defendants filed two more motions on March 24, 2011: (1) motion for relief under Fed.R.Civ.P. 60(b)(1) [Doc. # 656]; and (2) motion to unseal document [Doc. # 657]. The defendants then filed notices of appeal on March 25, 2011.

In the instant motion, the defendants request that the court rule on the motion to unseal document or show cause why it has not done so. The court must again decline to rule on the motion due to the pendency of the appeals. In earlier proceedings in this case, the Tenth Circuit informed the defendants that the filing of an appeal generally divests the district court of jurisdiction to decide pending motions. See United States v. Pickard, 396

Fed.Appx. 568, 571 (10<sup>th</sup> Cir. 2010). The court believes that the pendency of the appeals precludes the court from ruling on the motion to unseal.

**IT IS THEREFORE ORDERED** that defendants' motion for ruling or order showing cause (Doc. # 682) be hereby denied.

**IT IS SO ORDERED.**

Dated this 7<sup>th</sup> day of September, 2011 at Topeka, Kansas.

s/Richard D. Rogers  
United States District Judge