

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,
Plaintiff,

vs.

MERRILL W. ANDREWS,
a/k/a Kamanda Kamangeni,
Defendant.

Case No. 02-10073-JTM

Case No. 07-1315-JTM

MEMORANDUM AND ORDER

On March 14, 2008, the court denied defendant-petitioner Merrill Andrews's motion (Dkt. No. 74), filed pursuant to 28 U.S.C. § 2255, seeking to vacate his sentence for armed robbery. (Dkt. No. 68). Andrews argued that his criminal history was improperly calculated, because he was innocent of a murder for which he had been convicted in state court. The court denied the motion, following *Daniels v. United States*, 532 U.S. 374 (2001) (holding that challenges to the validity of state court convictions must be challenged in state courts, rather than through § 2255 motions).

Andrews has recently filed a motion for the court "to REVERSE and REMAND" its earlier order, allegedly based on newly discovered evidence. (Dkt. No. 75, at 1). He also requests appointment of counsel (Dkt. No. 76) and leave to proceed *in forma pauperis* (Dkt. No. 77).

Nothing in Andrews' most recent motion, which merely sets forth further alleged deficiencies in his state criminal history, justifies the relief sought in light of *Daniels*. Further, in its prior order,

the court granted leave for Andrews to proceed *in forma pauperis*; it need not repeat that ruling. The court also explicitly denied appointment of counsel, and that ruling is again appropriate here.

IT IS ACCORDINGLY ORDERED this 19th day of December, 2008, that the defendant's Motions for Reconsideration and Appointment of Counsel (Dkt. Nos. 75, 76) are denied; his Motion for Leave to Proceed *in forma pauperis* (Dkt. No. 77) is denied as moot in light of the court's prior order.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE