

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

United States of America,

Plaintiff,

v.

Case No. 02-20015-JWL

Julian Fuel,

Defendant.

ORDER

On March 6, 2002, Julian Fuel was charged in a three-count indictment with possession with intent to distribute crack cocaine and cocaine powder. On June 24, 2002, Mr. Fuel entered a plea of guilty to Count III of the indictment and Counts I and II were dismissed pursuant to the plea agreement. On August 23, 2004, Mr. Fuel filed a “Motion for the District Court to Take Judicial Notice” in which he requested that the court “take judicial notice” of the Supreme Court’s decision in *Blakely v. Washington*, 124 S. Ct. 2531 (2004) and “apply the same” to his case. Mr. Fuel’s motion could only be construed as a § 2255 motion. Because the motion would have been Mr. Fuel’s first § 2255 motion, the court, consistent with Tenth Circuit case law, offered Mr. Fuel the opportunity to withdraw the motion rather than have it construed as a § 2255 motion. Mr. Fuel has not notified the court as to whether he wants to withdraw the motion or whether he wants the motion construed as a § 2255 motion. As explained in the previous order, then, the court denies without prejudice Mr. Fuel’s motion to take judicial notice. To be clear, the court has not construed Mr. Fuel’s filing as a § 2255 motion.

IT IS THEREFORE ORDERED BY THE COURT THAT Mr. Fuel's motion to take judicial notice (doc. 24) is denied without prejudice.

IT IS SO ORDERED.

Dated this 29th day of April, 2005, at Kansas City, Kansas.

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge