

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CRIMINAL ACTION
)	
v.)	No. 06-10044-01
)	
BRUCE WITHROW,)	
)	
Defendant.)	
_____)	

MEMORANDUM AND ORDER

Before the court are the following:

1. Defendant's motion to withdraw his guilty plea filed October 9, 2007 (Doc. 24);
2. Defendant's application to proceed in forma pauperis (Doc. 25);
3. Government's response (Doc. 29); and
4. Defendant's reply (Doc. 30).

Defendant was charged by indictment filed March 8, 2006 with various counts of weapon and drug violations (Doc. 1). On October 23, 2006, defendant entered a plea of guilty to a violation of 21 U.S.C. § 841(a)(1) and (b)(1)(a) charging possession with the intent to distribute more than 50 grams of methamphetamine. The plea was made pursuant to a written agreement and in accordance with Fed. R. Crim. P. 11(c)(1)(C) calling for a prison sentence of 180 months (Doc. 16). At the conclusion of the plea hearing, the court stated: "If I sentence the defendant, the parties may assume that I have accepted the Rule 11(c)(1)(C) plea agreement." (Doc. 26 at 12). Thereafter, on January 8, 2007, the court sentenced defendant to 180 months confinement in accordance with the plea agreement (Doc. 27).

Defendant did not appeal.

Withdrawal of a guilty plea after sentence is governed by Fed. R. Crim. P. 11(e) which provides:

Finality of a Guilty or Nolo Contendere Plea.

After the court imposes sentence, the defendant may not withdraw a plea of guilty or nolo contendere, and the plea may be set aside only on direct appeal or collateral attack.

The Advisory Committee Notes state, in pertinent part, that "[t]he provision [11(e)] makes it clear that it is not possible for a defendant to withdraw a plea after sentence is imposed."

Defendant's motion is untimely and is therefore denied. Because defendant's motion relates to his criminal case, his application to proceed in forma pauperis is superfluous and is therefore denied.

IT IS SO ORDERED.

Dated this 28th day of November 2007, at Wichita, Kansas.

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