

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

United States of America,

Plaintiff,

v.

Case No. 09-20119-10-JWL

Alfred Anaya,

Defendant.

MEMORANDUM & ORDER

Defendant Alfred Anaya was indicted on one count of conspiracy to distribute and possess with intent to distribute cocaine, methamphetamine, and marijuana; and on two counts of intimidation of federal witnesses. In February 2011, a jury convicted him on the conspiracy charges related to cocaine and methamphetamine and on both counts of intimidation. In January 2012, the court sentenced Mr. Anaya to 292 months in prison for the conspiracy count and 240 months for the intimidation counts, to run concurrently. Mr. Anaya appealed his conviction and the Tenth Circuit affirmed the conviction. *See United States v. Anaya*, 727 F.3d 1043 (10th Cir. 2013). This court subsequently reduced Mr. Anaya's sentence to 235 months pursuant to Amendment 782.

This matter is presently before the court on a motion that Mr. Anaya has labelled "Motion Pursuant to Rule 52(b) Plain Error." In that motion, Mr. Anaya asserts errors based on the Supreme Court's opinions in *Apprendi*, *Booker* and *Alleyne*. Rule 52(b) provides an avenue for relief on direct appeal but is inapplicable to collateral proceedings. *United States v. Frady*, 456 U.S. 152, 164 (1982). The substance of Mr. Anaya's motion clearly indicates that he is attempting

to collaterally attack the validity of his sentence. Mr. Anaya's Rule 52(b) motion, then, is dismissed for lack of jurisdiction as Rule 52(b) does not provide an independent legal basis for a collateral attack on a final judgment. *See United States v. Lehi*, 208 Fed. Appx. 672, 673-74 (10th Cir. 2006) ("A § 2255 motion provides the proper vehicle for this review. The temporal limits on bringing § 2255 motions cannot be circumvented by dressing up such a motion as a Rule 52(b) motion.").

IT IS THEREFORE ORDERED BY THE COURT THAT Mr. Anaya's motion pursuant to Rule 52(b) (doc. 1179) is dismissed.

IT IS SO ORDERED.

Dated this 8th day of March, 2018, at Kansas City, Kansas.

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