

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 10-10186-01-JWB

RAYMOND L. ROGERS,

Defendant.

**MEMORANDUM AND ORDER**

This matter is before the court on Defendant's "Motion for Order to Recall or Modify a Mandate" (Doc. 256) and motion for appointment of counsel (Doc. 257.) For the reasons stated below, Defendant's motions are DENIED.

Defendant was convicted by a jury on charges of bank robbery, brandishing a firearm during the robbery, and unlawful possession of a firearm by a convicted felon. (Doc. 120.) In 2012, he was sentenced to a controlling term of 234 months imprisonment. (*Id.*) Defendant appealed to the Tenth Circuit Court of Appeals, which affirmed the conviction and sentence in a mandate issued on April 29, 2013. (Doc. 142.) Since that time, Defendant has filed a number of motions that unsuccessfully challenged his conviction and sentence, including multiple requests for relief under 28 U.S.C. § 2255. Defendant has now filed a motion asking this court to recall or modify the mandate of the Tenth Circuit "so as to allow Petitioner new time" to file a petition for rehearing with the Tenth Circuit and a petition for writ of certiorari. (Doc. 256 at 1.) He seeks the appointment of counsel to help in this endeavor. (Doc. 257.)

This court has no authority to recall or modify a mandate of the Tenth Circuit. *See Harte v. Bd. of Commissioners of Cnty. of Johnson, Kansas*, 940 F.3d 498, 510 (10th Cir. 2019) (“The ‘mandate rule,’ an important corollary of the law of the case doctrine, ‘provides that a district court must comply strictly with the mandate rendered by the reviewing court.’”)(citation omitted); *Liberty Bank, F.S.B. v. D.J. Christie, Inc.*, No. 13-4059-CM, 2013 WL 6729830, at \*4 (D. Kan. Dec. 19, 2013) (the mandate rule provides that the mandate is effective upon issuance and the district court lacks authority to modify or alter issues foreclosed by the mandate); *United States v. Rosa*, 372 F.Supp. 1341, 1341 (S.D.N.Y.1974) (“No jurisdictional basis apparently exists for this Court to alter or modify the mandate of the Court of Appeals.”) Defendant has shown no basis for the relief requested and no basis for the appointment of counsel.

### **Conclusion**

Defendant’s “Motion to Recall or Modify a Mandate” (Doc. 256) and motion for appointment of counsel (Doc. 257) are DENIED. IT IS SO ORDERED this 23rd day of September, 2022.

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s/ John W. Broomes  
JOHN W. BROOMES  
UNITED STATES DISTRICT JUDGE