

certiorari petition is filed, conviction becomes final when time to seek review via certiorari expires.)

Richards moved to vacate his sentence under 28 U.S.C. § 2255, claiming that his counsel was ineffective in allowing him to plead guilty. In May 2003, his motion was denied and he appealed. Before the appeal was decided, he asked the Second Circuit for an order authorizing this court to consider a successive § 2255 motion. See Doc. # 1045. The Second Circuit responded by vacating this court's order and remanding the matter with instructions that the request be treated as a motion to amend the § 2255 motion. Id. Subsequently, Richards filed the present motion to amend.

Discussion

Under Rule 15 of the Federal Rules of Civil Procedure, which applies to this motion, see Ching v. United States, 298 F.3d 174, 177 n.2 (2d Cir. 2002), leave to amend may be denied if the proposed amendment would be futile, see Foman v. Davis, 371 U.S. 178, 182 (1962), which is undoubtedly the case here. It is now clear that the Booker decision does not apply to cases "on collateral review where the defendant's conviction was final as of January 12, 2005, the date that Booker issued." Guzman v. United States, 404 F.3d 139, 140 (2d Cir. 2005). As just mentioned, the judgment in this case became final in December 2002. It is also clear that Blakely does not apply to cases

decided under the Federal Sentencing Guidelines. See Blakely, 542 U.S. at 305 n.9 (stating that the "Federal Guidelines are not before us, and we express no opinion on them.").

Conclusion

Accordingly, the motion to amend is hereby denied, and the court adheres to its previous decision on the § 2255 motion, which is once again denied.

So ordered.

Dated at Hartford, Connecticut this 19th day of November 2005.

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Robert N. Chatigny
United States District Judge