

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 05-2960

United States of America,

Appellee,

v.

Kenneth Howard,

Appellant.

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* Appeal from the United States

* District Court for the

* Eastern District of Missouri.

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* [UNPUBLISHED]

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Submitted: February 21, 2006

Filed: February 23, 2006

Before MURPHY, HANSEN, and COLLOTON, Circuit Judges.

PER CURIAM.

Kenneth Howard was sentenced to a prison term in July 2000; he did not appeal. In May 2005, he filed a motion to vacate his sentence, citing 28 U.S.C. § 2244. The district court¹ denied the motion, and Howard appeals.

We affirm because the relief sought is not available under section 2244. We do not construe the motion as one brought under 28 U.S.C. § 2255 in the absence of appropriate warnings to Howard about the effect of such a recharacterization. See

¹The Honorable Charles A. Shaw, United States District Judge for the Eastern District of Missouri.

Castro v. United States, 540 U.S. 375, 384 (2003). Thus, to the extent Howard may be able in the future to assert a section 2255 claim that is not time-barred, he need not request permission to file a second or successive motion. See 28 U.S.C. § 2255; Castro, 540 U.S. at 384. We also grant the motion that our opinion not be published.
