

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

v.

CASE NO: 8:17-cr-397-CEH-AEP

JOAN CAMILO CASTILLO-
CASTILLO

ORDER

This matter comes before the Court on its Sealed Order, dated October 30, 2023 (Doc. 131) (“the October 30 Order”), which directed Defendant Joan Camilo Castillo-Castillo to file a response, supplement, or amendment to his Motion to Withdraw Plea and/or Specific Performance of Plea Agreement (Doc. 115) within sixty days.

The October 30 Order observed that the relief Castillo-Castillo requested in his Motion to Withdraw Plea is cognizable in a collateral motion pursuant to 28 U.S.C. § 2255. *See* Doc. 131 at 6, citing *U.S. v. Al-Arian*, 514 F.3d 1184, 1191 (11th Cir. 2008); *see also U.S. v. Stossel*, 348 F.3d 1320, 1322 n.2 (11th Cir. 2003) (“Federal courts are obligated to look beyond the label of a *pro se* inmate’s motion to determine if it is cognizable under a different statutory framework.”).¹ Before recharacterizing a *pro se* motion as an initial § 2255 motion, however, this Court is required to “notify the *pro se* litigant that it intends to recharacterize the pleading, warn the litigant that this

¹ The October 30 Order also found that, to the extent the Motion to Withdraw Plea seeks to compel the Government to file a motion to reduce his sentence, the Court does not have the authority to provide that relief. Doc. 131 at 4-5. As such, his motion is due to be denied to the extent it seeks that relief.

recharacterization means that any subsequent § 2255 motion will be subject to the restrictions on ‘second or successive’ motions, and provide the litigant an opportunity to withdraw the motion or to amend it so that it contains all the § 2255 claims he believes he has.” Doc. 131 at 6-7, quoting *Castro v. U.S.*, 540 U.S. 375, 383 (2003). The October 30 Order provided Castillo-Castillo the requisite notice and opportunity to amend, supplement, or withdraw his motion. Castillo-Castillo did not respond.

Accordingly, the Court will construe the Motion to Withdraw Plea as a collateral motion pursuant to 28 U.S.C. § 2255. The construed § 2255 motion will be decided by separate order.

It is **ORDERED**:

1. The Clerk is directed to open a new civil case, assign it to the undersigned, and docket the Motion to Withdraw Plea (Doc. 115) in the civil case as a construed motion pursuant to § 2255. The Clerk is further directed to terminate the Motion to Withdraw Plea in the criminal case.

DONE and ORDERED in Tampa, Florida on May 15, 2024.


Charlene Edwards Honeywell
United States District Judge

Copies furnished to:

Counsel of Record
Unrepresented Parties