

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL ACTION
 :
 v. :
 :
 WAYNE ANTHONY SMITH : NO. 90-296-18
 : (99-CV-6117)

MEMORANDUM

Ludwig, J.

June 2, 2000

On September 14, 1998, defendant Wayne Anthony Smith pleaded guilty to conspiracy to distribute cocaine base (Cr. No. 90-296-18) and illegal reentry after deportation (Cr. No. 98-423-01), and on November 5, 1998 was sentenced to 120 and 24 months imprisonment, respectively – to run concurrently. On November 16, 2000, the judgment of conviction was entered and became final on November 26, 1998, no appeal being taken within 10 days.¹ Fed. R. App. P. 4(b)(1)(A)(I). On December 2, 1999, defendant filed this § 2255 motion.

¹ In its motion, the United States notes that the judgments in Cr. No. 98-423-01 and Cr. No. 90-296-18 were docketed on November 10, 1998 and November 12, 1998 – and adopts November 12, 1998 as the effective date of judgment. However, while the judgment in Cr. 90-296-18 was signed on November 12, 1998, it was not entered until November 16, 1998.

In addition, the judgment in Cr. No. 98-423-01 was amended on December 22, 1998 to rectify a clerical mistake. However, even assuming the amendment altered the running of the limitations period, the lesser sentence was to run concurrently with the 120 months imposed in Cr. 90-296-18, and consequently, a favorable decision on the merits would have no effect on the sentence.

A motion under § 2255 must be filed within one year from the latest

of:

(1) the date on which the judgment of conviction becomes final;

(2) the date on which the impediment to making a motion created by the governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making the motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2255.

Here, defendant's conviction became final on November 26, 1998, and his petition was filed on December 2, 1999. A pro se prisoner's § 2255 motion is deemed filed at the moment of delivery to prison officials for mailing, Burns v. Morton, 134 F.3d 109 (3d Cir.). Since it could not be determined when the defendant delivered his habeas petition to the appropriate prison official, defendant was granted additional time to supplement the record. Order, April 10, 2000.

In his supplement, defendant concedes that his petition was filed on November 29, 1999 – three days after the limitations period had expired.

However, defendant argues that the limitation period was extended until his FOIA request was processed on December 21, 1999.² The government's processing of a prisoner's FOIA request may delay the running of the limitations period. See Edmond v. United States Attorney, 959 F. Supp. 1 (D.D.C. 1997).

[I]n accordance with the ADEPA, the one year limitation would not run until "the date on which the impediment to making a motion created by governmental action in violation of the Constitution of laws of the United States is removed." 28 U.S.C. § 2255(2). Therefore, if Plaintiff is claiming that the government is holding exculpatory material, the one year limitation would not begin to run until Plaintiff receives that evidence. Additionally, section 2255(4) provides another caveat to the one year period of limitation. The period of limitation does not begin until "the date on which the facts supporting the claim or claims discovered through the exercise of due diligence." By filing a FOIA request and further filing these proceedings, Plaintiff has demonstrated due diligence in attempting to obtain these materials. Therefore, plaintiff would not be subject to the period of limitation until after his FOIA request is processed.

Id. at 3-4.

The later limitation date, however, applies only if the government's failure to process the FOIA request prejudiced the defendant in filing his petition.

Felix v. Artuz, Civ. No. 98-6703, 2000 WL 278077 at *2-3. ("Petitioner has not

² On May 17, 1999, defendant made his FOIA request asking for all documents "in possession of your agency on myself or which makes reference to myself." Petitioner's response, Exh. A. On May 26, 1999, defendant was informed that since his request was a "Project Request" – a request for information about myself in a criminal case – the processing takes approximately nine months. Id., Exh. B. On June 6, 1999, defendant narrowed his request. Id. On December 21, 1999, defendant's request was processed and he received the requested documents.

established how his failure to receive those transcripts has impeded or prevented him from filing his habeas petition in a timely manner Moreover, there is no rational basis for the Petitioner's assertion that the factual predicate for his claim could not have been discovered earlier due to his being deprived access to the transcripts.")

Defendant's petition makes three claims – two concerning his rights under the Vienna Convention Act and one claim for ineffective assistance of counsel. It is unclear how the delay in receiving the FOIA materials would have prejudiced defendant in making these claims. However, as defendant has not submitted argument on this point, he will be given additional time to do so.

Edmund V. Ludwig, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
WAYNE ANTHONY SMITH	:	NO. 90-296-18
	:	(99-CV-6117)

ORDER

AND NOW, the 2nd day of June, 2000, the following is ordered:

By July 3, 2000, defendant may submit additional argument as to the applicability of the limitations period, including any prejudice resulting from the government's processing of his FOIA request. 28 U.S.C. § 2255. Otherwise, if further argument is not made, this action will be dismissed on the basis of the present record.

Edmund V. Ludwig, J.