

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

UNITED STATES OF AMERICA	:	
Petitioner,	:	CIVIL ACTION
	:	NO. 01-4268
v.	:	
	:	CRIMINAL ACTION
ALI MORRIS	:	NO. 98-133-01
Respondent.	:	
	:	

**MEMORANDUM AND ORDER**

YOHN, J.

APRIL\_\_\_\_, 2002

Ali Morris (“Morris”) plead guilty to drug charges and was sentenced to 190 months imprisonment and five years supervised release on November 19, 1999. Morris filed a timely appeal, which the Third Circuit denied on August 16, 2000.

On August 22, 2001, Morris filed a pro se motion under 28 U.S.C. § 2255 to have his sentence vacated, set aside or corrected. Morris filed a timely amendment of his § 2255 motion on October 12, 2001. On January 22, 2002, Morris filed a motion for leave to file another amendment of his habeas petition. It is this motion that is presently before the court.

Because the statute of limitations for filing amended habeas petitions has expired and Morris’ proposed amendment does not “relate back” to the claims raised in his original timely amended § 2255 petition, I will deny Morris’ motion for leave to file an amended pleading of his habeas petition.

## DISCUSSION

Under the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), a one-year limitations period applies to petitions for writs of habeas corpus brought by persons in federal custody. 28 U.S.C. § 2255. However, “a District Court may, in its discretion, permit an amendment to *provide factual clarification or amplification* after the expiration of the one-year period of limitations, as long as the petition itself was timely filed and the petitioner does not seek to add an entirely new claim or new theory of relief.” *United States v. Thomas*, 221 F.3d 430, 436 (3d Cir. 2000) (emphasis added). Thus, the critical inquiry in the context of any motion to amend a habeas petition following the expiration of the statute of limitations is whether the proposed amended claims constitute new claims or theories, or whether they instead merely clarify or amplify the claims contained within the original petition. *See Thomas*, 221 F.3d at 436; *United States v. Duffus*, 174 F.3d 333, 337 (3d Cir. 1999); *Abu-Jamal v. Horn*, 2001 WL 16097601 at \*4 ( E.D. Pa. December 18, 2001). This inquiry is an embodiment of the “relation back” doctrine, as codified in Fed. R. Civ. P. 15(c). *Abu-Jamal*, 2001 WL 16097601 at \*2. The idea underlying this provision is that even where the proposed amendment would transpire after the expiration of the pertinent statute of limitations, that statute “will not bar an amendment when ‘the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading.’” *Belle v. Varner*, 2001 WL 1021135, at \*9 n.11 (E.D. Pa. Sept. 5, 2001) (quoting Fed. R. Civ. P 15(c)(2)).

There is no dispute that more than one year has passed since Morris’ conviction became final, and that the statute of limitations for him to file an amendment to his habeas petition has

expired.<sup>1</sup> As such, the court will only grant Morris leave to amend his habeas petition if the claim raised in his proposed amended petition amplifies or clarifies the claims raised in his timely amended petition.

Morris' proposed amended claim is that his sentence for drug distribution exceeded the maximum sentence provided for by the sentencing guidelines because he plead guilty to an "indeterminate quantity of drugs."<sup>2</sup> This claim is entirely distinct from the ineffective assistance of counsel claims that Morris raised in his timely amended § 2255 petition: (1) that his trial counsel was ineffective when he allowed the court to misstate the mandatory minimum term of supervised release that attached to Morris's drug offenses, and (2) that under the Supreme Court's decision in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the district court erred in omitting drug quantity from its recitation of the elements of the drug trafficking offense with which Morris was charged, and that his appellate counsel was ineffective in not raising this error on appeal. Morris' claim of a sentencing guideline violation represents, at best, a new theory as

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<sup>1</sup> The Third Circuit denied Morris' appeal of his sentence on August 16, 2000 and Morris' sentence became final on November 14, 2000. Thus, under the AEDPA statute of limitations, Morris had until November 14, 2001 to file a timely habeas petition. Morris did just that on August 22, 2001 and on October 12, 2001 he filed a timely amendment to his habeas petition. However, Morris' recent motion to file an amended pleading was not filed within this one-year window. Rather, this motion was filed on January 22, 2002, about two months after the one-year period of limitations had expired.

<sup>2</sup> Because the court will deny Morris leave to amend his complaint, the merits of Morris' proposed amended claim need not be reached. I note, however, that Morris' proposed amended claim appears to be frivolous. Morris did not plead guilty to an indeterminate quantity of drugs as he contends. In his guilty plea agreement and guilty plea colloquy, Morris admitted to possession of a specific quantity of "crack" cocaine. Guilty Plea Agreement at ¶ 9(a) ("[D]efendant's Sentencing Guideline range should be calculated on the basis of at least 150 grams but less than 500 grams of 'crack.'"); Guilty Plea Colloquy at 13 (noting that the amount of crack cocaine possessed by Morris was 230 grams, 128 grams from his first arrest and 102 grams from his second arrest).

to Morris' right to have his sentence set aside or vacated. It is plainly evident that the relation back standard of Fed. R. Civ. P. 15(c) is unsatisfied here, as it cannot legitimately be said that this claim amplifies or clarifies Morris' existing claims. Accordingly, the AEDPA's one-year limitations period prevents Morris from amending his habeas petition with this claim.

An appropriate order follows.

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**ORDER**

And now this \_\_\_\_\_ day of April, 2002, upon consideration of petitioner’s motion for leave to file an amended pleading (Doc. No. 65); the government’s response (Doc. No. 69); and petitioner’s reply thereto (Doc. No. 72); it is hereby ORDERED that petitioner’s motion to amend is DENIED and the court’s memorandum and order filed February 13, 2002 denying the petitioner’s motion to vacate, set aside or correct his sentence under 28 U.S.C. § 2255 is reinstated effective this date. No certificate of appealability shall issue.

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William H. Yohn, Jr., Judge