

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

UNITED STATES OF AMERICA	:	
	:	
v.	:	CRIMINAL NO. 02-584
	:	
OLUGBEMIGA ADEGOKE OLUSAJO	:	

MEMORANDUM AND ORDER

On March 14, 2005, Petitioner filed a “motion for vacation and correction of sentence.” As pointed out in the government’s response, Petitioner waived his right to collaterally attack his sentence, which he is doing in this petition which, while not citing 28 U.S.C. § 2255, is what it is fairly characterized as by the government.

Aside from the waiver matter, the petition is untimely. Petitioner’s judgment of conviction became final in October of 2003 when his time to file an appeal from the September 26, 2003 sentence expired without an appeal being filed by him. Of course, Section 2255 does allow for the filing of a motion within a year of new right recognized by the Supreme Court that it is retroactively applied to collateral review.

Petitioner argues that such a new right was recognized by the Supreme Court in United States v. Shepard, 125 S.Ct. 1254 (2005). It is unlikely that Shepard would be given retroactive applicability, but even if it were, Petitioner in this case could not prevail. He never challenged the computation of his criminal history category and cited no objections to any facts or calculations in the presentence report other than those with which the court dealt, not in any way dealing with the criminal history category computation.

An order follows:

AND NOW, this 5th day of May, 2005, upon consideration of Petitioner's Motion for Vacation and Correction of Sentence (Docket No. 53), and the government's response thereto, it is hereby **ORDERED** that Petitioner's Motion is **DISMISSED**.

BY THE COURT:

RONALD L. BUCKWALTER, S.J.