

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

<u>UNITED STATES OF AMERICA</u>	:	
	:	CRIMINAL ACTION NO. 08-71
v.	:	
	:	CIVIL ACTION NO. 12-4235
AQUIL WALKER,	:	
Defendant.	:	

MEMORANDUM OPINION

RUFE, J.

APRIL 15, 2013

Before the Court is Defendant Aquil Walker’s Motion to Vacate, Set Aside, or Correct his Sentence pursuant to 28 U.S.C. § 2255¹ and the Government’s Motion to Dismiss the same.²

On October 15, 2008, after a lengthy colloquy of Defendant and upon finding that Defendant was competent and capable of entering a plea, that he had entered into the plea agreement with the Government knowingly and voluntarily, and that there was an independent factual basis to support each of the essential factual elements of the offenses to which Defendant sought to plead guilty, the Court accepted Defendant’s guilty plea in this case.³ Defendant was thereafter sentenced to 48 months of imprisonment and three years supervised release, and was ordered to pay \$40,963.45 in restitution and a special assessment of \$500.⁴ The Judgment of Conviction was entered on March 26, 2009.⁵

¹ Doc. No. 69.

² Doc. No. 73.

³ 3/15/2008 Plea Hr’g 52 (Doc. No. 57).

⁴ Doc. No. 64.

⁵ Id.

More than three years later, Defendant filed his habeas Petition, arguing, contrary to this Court's explicit findings, that the plea agreement was not knowingly and voluntarily entered into and that he did not fully understand the rights he was waiving. The Government moves to dismiss the Petition arguing, *inter alia*, that the Petition is barred by the statute of limitations.

Title 28, United States Code, § 2255(f) imposes a one-year statute of limitation on the filing of a habeas petition under § 2255.⁶ The one-year limitations period runs “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 governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a 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.⁷

Here, Defendant does not assert that there was some impediment that prevented him from making his motion, that there is a newly recognized right supporting his Petition, or that newly-discovered facts support his entitlement to relief. Therefore, the most common limitations period applies: the one-year limitations period that runs from the date on which his judgment of conviction became final.⁸ “If a defendant does not pursue a timely direct appeal to the court of appeals, his or her conviction and sentence become final, and the statute of limitation begins to run, on the date on which the time for filing such an appeal expired.”⁹

⁶ See generally United States v. Brown, 456 F. App'x 79, 82 (3d Cir. 2012).

⁷ 28 U.S.C. § 2255(f).

⁸ See United States v. Brown, 456 F. App'x 79, 82 (3d Cir. 2012) (citing 28 U.S.C. §2255(f)(1)).

⁹ Kapral v. United States, 166 F.3d 565, 577 (3d Cir. 1999).

Defendant's sentence was imposed on March 24, 2009 and was formalized by the Judgment of Conviction on March 26, 2009.¹⁰ At the time, he had ten business days to file a notice of appeal.¹¹ He did not file a direct appeal. Therefore, his judgment of conviction became final on April 9, 2009.¹² The statute of limitations expired one year from this date, on April 9, 2010. The current Petition was filed more than two years after this limitations period expired and is therefore untimely.

While there are exceptions to the one-year limitations period, there is no apparent basis for equitable tolling in this case.¹³ Defendant does not present any basis to support an exception being made and his general position that there was inequality of bargaining power between him and the Government in entering the plea agreement does not provide such a basis. Consequently, the Court finds that the Petition is barred by the statute of limitations. Accordingly, the Government's Motion to Dismiss will be granted and the Petition will be dismissed as untimely.¹⁴

An appropriate Order follows.

¹⁰ Doc. No. 64.

¹¹ United States v. Simmons, 329 F. App'x 358, 359 n.1 (3d Cir. 2009) (citing Fed. R. App. P. 4(b) (2009)).

¹² Fed. R. App. P. 26.

¹³ See generally United States v. Thomas, --- F.3d ----, 2013 WL 1442489, at *7-8 (3d Cir, April 10, 2013).

¹⁴ Additionally, Defendant knowingly and voluntarily waived his right to collaterally attack his sentence, and upholding this waiver does not result in a fundamental miscarriage of justice. Thus, even if the Petition were timely, waiver bars his claims. Moreover, the Court rejects the underlying basis of the Petition---that the plea agreement in this case was not knowingly and voluntarily entered into. To accept Defendant's assertion, the Court would be required to disregard the explicit findings it made on the record at Defendant's change of plea hearing; there is no basis to do so.

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

UNITED STATES OF AMERICA	:	
	:	CRIMINAL ACTION NO. 08-71
v.	:	
	:	CIVIL ACTION NO. 12-4235
AQUIL WALKER,	:	
Defendant.	:	

ORDER

AND NOW, this 15th day of April 2013, upon consideration of Defendant’s Motion to Vacate, Set Aside, or Correct his Sentence pursuant to 28 U.S.C. § 2255 (Doc. No. 69) and the Government’s Motion to Dismiss the same (Doc. No. 73), and for the reasons stated in the accompanying Opinion, it is hereby **ORDERED** that:

1. The Government’s Motion to Dismiss is **GRANTED**;
 2. Defendant’s Motion to Vacate, Set Aside, or Correct his Sentence pursuant to 28 U.S.C. § 2255 is **DISMISSED as untimely**; and
 3. The Court finds no ground upon which to issue a certificate of appealability.¹
- The Clerk of Court is directed to **CLOSE** this case.

It is so **ORDERED**.

BY THE COURT:

/s/ **Cynthia M. Rufe**

CYNTHIA M. RUFÉ, J.

¹ See 28 U.S.C. § 2253(c)(2).