

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

UNITED STATES OF AMERICA : CRIMINAL ACTION No. 96-336-1
 :
 v. : CIVIL ACTION No. 06-cv-3142
 :
 TYRONE BRIGGS :
 :

MEMORANDUM

Juan R. Sánchez, J.

March 7, 2014

Petitioner Tyrone Briggs asks this Court to vacate his conviction and sentence pursuant to 28 U.S.C. § 2255. Briggs argues that the United States Sentencing Guidelines were incorrectly applied to his sentence for various charges including carjacking and using a firearm in relation to a crime of violence. Specifically, he asserts: (1) a five-level weapons enhancement for one of the carjacking counts was improper double counting, (2) the one-level enhancements for the values of the cars involved in the attempted carjackings were inappropriate, and (3) the two-level enhancements because the offenses involved carjacking were improper double counting. Because the record conclusively shows Briggs is not entitled to relief on any of these claims, his motion will be denied without an evidentiary hearing. *See United States v. McCoy*, 410 F.3d 124, 134 (3d Cir. 2005) (explaining no hearing is required if the record clearly resolves the merits of the § 2255 motion).

FACTS

On August 1, 1996, a federal grand jury sitting in the Eastern District of Pennsylvania returned a seven count indictment charging defendant Tyrone Briggs and two codefendants with numerous offenses resulting from three carjackings that took place within a week of each other. Briggs was charged with conspiracy to commit carjacking, in violation of 18 U.S.C. § 371

(Count One); carjacking and/or attempted carjacking, in violation of 18 U.S.C. § 2119 (Counts Two, Four, and Six); and using a firearm in relation to a crime of violence, in violation of 18 U.S.C. § 924(c) (Counts Three and Seven). The firearms charge in Count Three resulted from the carjacking charged in Count Two, and the firearms charge in Count Seven resulted from the carjacking charged in Count Six. The attempted carjacking in Count Four was not linked to any firearms charges. On November 15, 1996, Briggs was convicted on all counts.

Prior to sentencing, the United States Probation Office completed a presentence report (PSR) for Briggs. In calculating the sentencing guideline for the Count Four attempted carjacking, the probation officer, pursuant to U.S.S.G. § 2B3.1(b)(2)(C) (1997),¹ adjusted Briggs's offense level up five levels because Briggs's coconspirator, Tevin Lewis, brandished a firearm during the commission of the offense.² The probation officer applied this five-level enhancement to Count Four only. Briggs received two one-level sentencing enhancements for the carjackings in Counts Four and Six, pursuant to § 2B3.1(b)(6) of the 1996 Sentencing Guidelines Manual, due to the value of the cars involved in the offense. Briggs also received two level carjacking enhancements for each count of carjacking (Counts Two, Four, Six) pursuant to U.S.S.G. § 2B3.1(b)(1)(B).

The probation officer determined Briggs fell within criminal history category IV and had a total offense level of 30. As a result, Briggs was subject to between 135 and 168 months

¹ The current version of U.S.S.G. § 2B3.1(b)(2)(C) is now found at U.S.S.G. § 2B3.2(b)(3)(A)(iii), and provides that in calculating a defendant's sentencing guidelines offense level, "if a firearm was brandished," the offense level should increase by five levels.

² The probation officer stated Lewis's conduct was "reasonably foreseeable" and "well within the scope of [Briggs's] jointly undertaken criminal activity." Presentence Investigation Report 5, January 28, 1997.

imprisonment on Counts One, Two, Four, and Six, plus an additional consecutive 300 months imprisonment on the two § 924(c) firearms violations in Counts Three and Seven.

On March 7, 1997, Briggs was sentenced to 449 months imprisonment. His sentence consisted of 149 months on the carjacking counts (Counts Two, Four, and Six) and 60 months on the conspiracy count (Count One), which was to run concurrently with the 149-month sentence. He was also sentenced to a total of 300 months for the firearms charges (Counts Three and Seven), to be served consecutive to the 149-month carjacking sentence. *See* Judgment as to Tyrone Briggs, *United States v. Briggs*, No. 96-336 (E.D. Pa. Mar. 7, 1997). Briggs's conviction and sentence were affirmed on appeal. *United States v. Briggs*, 135 F.3d 767 (3d Cir. 1997).

On March 5, 2007, Briggs filed a petition for relief from his sentence pursuant to 28 U.S.C. § 2255, on the grounds that his sentence was improper and unconstitutional.³

DISCUSSION

Pursuant to 28 U.S.C. § 2255, a prisoner in federal custody may seek to have his sentence vacated, set aside, or corrected if it was imposed in violation of the Constitution or laws of the United States, or is otherwise subject to collateral attack. Relief may be granted only if an error of law or fact occurred, and such error constitutes “a fundamental defect which inherently results in a complete miscarriage of justice.” *United States v. Eakman*, 378 F.3d 294, 298 (3d Cir. 2004) (quoting *Hill v. United States*, 368 U.S. 424, 428 (1962)).

Briggs argues the total offense level calculated by the Court was too high as the result of three separate miscalculations. First, he asserts that the five-level firearm increase he received pursuant to U.S.S.G. § 2B3.1(b)(2)(c) was unconstitutional as a result of Amendment 599,

³ The Court has reviewed Briggs's petition on the merits, but notes it is also barred by the statute of limitations governing habeas petitions, 28 U.S.C. § 2255(f). *See supra* note 8.

U.S.S.G. Supplement to App. C, at 66 (2000), which went into effect on November 1, 2000, and was made retroactive pursuant to U.S.S.G. § 1B1.10. *See United States v. Willis*, 467 F. App'x 111, 112 n.1 (3d Cir. 2012). The purpose of Amendment 599 is to “clarify under what circumstances defendants sentenced for violations of 18 U.S.C. § 924(c) in conjunction with convictions for other offenses may receive weapons enhancements contained in the guidelines for those other offenses.” U.S.S.G. Supplement to App. C, at 69. Specifically, “the amendment directs that no guideline weapon enhancement should be applied when determining the sentence for the crime of violence . . . underlying the 18 U.S.C. § 924(c) conviction.” *Id.* However, the weapon enhancements may be applied “when determining the sentence for counts of conviction outside the scope of relevant conduct for the underlying offense.” *Id.*

Here, the five-level enhancement was applied because Briggs’s coconspirator brandished a firearm during the carjacking charged in Count Four. A court may enhance a defendant’s sentence for his coconspirator’s use of a firearm that did not form the basis of the defendant’s separate firearm conviction. *See, e.g., United States v. Pringle*, 350 F.3d 1172, 1181 (11th Cir. 2003). Briggs’s use of a firearm during the carjackings in Counts Two and Six did not trigger an enhancement because those counts were paired with 18 U.S.C. § 924(c) violations. The underlying offense that received the enhancement—the carjacking charged in Count Four—was different than offenses that formed the basis of Briggs’s 18 U.S.C. § 924(c) convictions. Because the Court applied the firearms enhancement solely to the Count Four carjacking and Amendment 599 only prohibits the enhancement for crimes of violence underlying 18 U.S.C. § 924(c) convictions, Briggs’s five-level increase for weapons enhancement was proper.⁴

⁴ Briggs asserts if the Court finds his motion to be untimely, the Court should construe the motion as one pursuant to 18 U.S.C. § 3582(c)(2), which states that a court may modify a term of imprisonment if his term of imprisonment was based on a sentencing range that has been

Second, Briggs contends he should not have received the one-level sentencing enhancements for the carjackings in Counts Four and Six, pursuant to § 2B3.1(b)(6) of the 1996 Sentencing Guidelines Manual, due to the value of the cars involved in the offense.⁵ He argues the guideline only applies to actual loss; here, there was no actual loss because his attempted carjackings were unsuccessful. Alternatively, he asserts because the guideline applies to intended loss, it should not apply to him since the Government did not explicitly produce evidence at trial that he had a specific intent to cause the victims a loss in excess of \$10,000.

First, Briggs's actual loss argument is meritless. Briggs was sentenced on March 7, 1997, in accordance with the sentencing guidelines that went into effect on November 1, 1995. Guideline § 2B3.1(b)(6), the robbery guideline, provided for the offense level to increase "if the loss exceeded \$10,000," and subsection (B) provided an increase of one level if the loss is more than \$10,000, but less than \$50,000. U.S.S.G. § 2B3.1(b)(6)(B) (1995). The commentary instructed "valuation of loss is discussed in the Commentary to § 2B1.1," which covered theft crimes. *Id.* U.S.S.G. § 2B3.1, comment. n.3. For the offenses at issue, Briggs was convicted of attempted carjacking. In considering attempts, the notes to § 2B1.1 stated, "[i]n the case of a partially completed offense . . . the offense level is to be determined in accordance with the

subsequently lowered by the Sentencing Commission. *See* 18 U.S.C. § 3582(c)(2). However, the basis of a motion pursuant to this statute is his claim that Amendment 599 applies to his case, which, as explained above, is meritless.

⁵ This enhancement was applied to the sentencing calculations for both Counts Four and Six. However, in his Petition, Briggs references only one application of this enhancement and does not specify the count to which it applies. The Government, in response, analyzes his claim in terms of Count Six only. Although the PSR refers to Count Four as "carjacking" and Count Six as "attempted carjacking," the Indictment describes both Counts Four and Six as attempted carjackings. The Court will assume Briggs is contesting the application of the enhancement to both Counts because in both offenses the carjacking was not completed—the victims escaped in the cars and the values of those cars formed the basis for the enhancements.

provisions of § 2X1.1 (Attempt, Solicitation, or Conspiracy).” U.S.S.G. § 2B1.1, comment. n.2 (1995). Under § 2X1.1, the base offense level was the same for attempt as the base offense level “for the substantive offense, plus any adjustments from such guidelines for any intended offense conduct that can be established with reasonable certainty.” U.S.S.G. § 2X1.1(a) (1995). A three-level decrease was permitted for an attempt crime unless “the circumstances demonstrate that the defendant was about to complete all such acts but for apprehension or interruption by some similar event beyond the defendant’s control.” *Id.* Application note 1 to § 2X1.1 observed that certain attempts are expressly covered by other offense guidelines and cited a number of such guidelines. The guideline for carjacking, U.S.S.G. § 2B3.1(a) was not mentioned. *See* U.S.S.G. § 2X1.1, comment. n.1 (1995). Thus, the base offense level for carjacking applied to Counts Four and Six, plus any enhancements from intended offense conduct established with reasonable certainty.

For the Count Four offense, Briggs and his coconspirators approached a 1996 Nissan Altima occupied by Anthony Mayer and passenger Richard Laughlin and parked in a gas station parking lot. Briggs’s codefendant, Tevin Lewis, pulled out a handgun and placed it on Laughlin’s shoulder. Mayer then put the Nissan in reverse, but Lewis chambered a round and pointed the gun at Laughlin’s neck, stating “you move another inch and I’ll cap your boy.” Mayer then floored the accelerator and fled. For the Count Six offense, Briggs and his coconspirators approached a Dodge Intrepid in a Budget Rent-A-Car parking lot. A security guard was inside the car, and Lewis moved toward the driver’s side and fired a shot at the security guard’s head. Lewis then ordered the security guard out of the car, at which point the guard slammed on the accelerator and sped away. It is reasonably certain that, but for the acts of the victims leaving the scenes in the respective cars, Lewis and Briggs would have obtained

possession of cars each valued at over \$10,000. Because Lewis and Briggs completed all of the necessary acts to carjack the Nissan Altima and the Dodge Intrepid, they were sentenced as if the carjackings were successful, and the loss enhancement for the values of the cars was appropriate.

Briggs also argues the Government did not prove he intended to take a vehicle of a certain value. At the time of sentencing, one of the leading Third Circuit cases on loss was *United States v. Kopp*, in which the Court explained that intended loss refers to the defendant's subjective expectations. *See* 951 F.2d 521, 529-31 (3d Cir.1991). The Court explained "in a theft case, the thief *intends* to steal whatever he or she takes; the amount taken is the loss the defendant intended to inflict (even though the defendant may not have known exactly the value on the market or to the victim of the things taken)." *Id.* at 530-31. Because Briggs was convicted for attempted carjacking and it is clear he intended to take both the Nissan Altima and the Dodge Intrepid, then he intended to inflict the loss of the actual values of the cars, whether or not he knew the values of the cars.⁶ Thus, the one-level enhancements for the values of the vehicles were properly applied.⁷

⁶ The analysis under the modern guidelines regarding loss calculation would be slightly different, but with the same result that an actual loss need not exist for expected or intended loss to be considered during sentencing. "Intended loss refers to the defendant's subjective expectation, not to the risk of loss to which he may have exposed his victims." *United States v. Geever*, 226 F.3d 186, 192 (3d Cir. 2000) (quoting *United States v. Yeaman*, 194 F.3d 442, 460 (3d Cir.1999)); *see id.* (holding the District Court did not err when it treated the face value of fraudulent checks to be the intended loss, even though the actual loss was less). To determine the defendant's subjective intention, a court "can draw inferences from the nature of the crime that he sought to perpetrate." *Id.*; *see e.g., United States v. Mershon*, 322 Fed. App'x. 232, 235-36 (3d Cir. 2009) (upholding a two-level sentencing enhancement for value of loss when robbery of \$50,000-\$250,000 worth of electronics was disrupted before occurring).

⁷ Although it is not clear from Briggs's petition, the Government asserts Briggs also argues the Government never proved the value of the vehicles, so he cannot be given an enhancement as a result of the vehicles' values. The PSR states "pursuant to § 2B3.1(b)(6), because the Nissan Altima and the Dodge Intrepid's respective NADA values were between \$10,000 and \$50,000, the offense level shall be increased by one." Presentence Investigation Report ¶ 44, January 28,

Finally, Briggs argues that his two level carjacking enhancement for Counts Two, Four, Six, pursuant to U.S.S.G. § 2B3.1(b)(1)(B), was improper double counting because carjacking formed the basis for his underlying conviction. In November 1993, § 2B3.1, the robbery guideline, was amended to include a specific reference to carjacking, a crime that had been added to the criminal code a year earlier. The statutory provisions section of the commentary to § 2B3.1 included 18 U.S.C. § 2119, the carjacking statute under which Briggs was convicted, as one of the statutory provisions to which § 2B3.1 applied. *See* U.S.S.G. § 2B3.1, statutory provisions (1993). The Guideline were also amended to state if “the offense involved carjacking, increase by 2 levels.” U.S.S.G. § 2B3.1(b)(1)(B) (1993). Briggs argues that applying the enhancement to the substantive offense of carjacking is impermissible double counting because, based on the fact the Sentencing Committee used the word “involved” as opposed to the word “was” or “is,” in order to apply this two-level enhancement, the separate substantive offense must be something other than carjacking. In his case, the robbery was the carjacking, and thus this substantive offense cannot also serve as the ground for enhancement.

The Sentencing Guidelines specify when double counting is forbidden and explicitly identify which enhancements may not be applied. *United States v. Wong*, 3 F.3d 667, 670 (3d Cir. 1993). Therefore, “[a]n adjustment that clearly applies to the conduct of an offense must be imposed unless the Guidelines exclude its applicability.” *Id.* at 671; *cf. id.* (“[O]nly when the Guidelines *explicitly* prohibit double counting will it be impermissible to raise a defendant’s

1997. When asked whether anything in the PSR was incorrect, Briggs responded “no not to my knowledge.” Sentencing Hr’g Tr. 3, March 7, 1997. Without an objection from the defendant, the facts in the PSR are considered to be true for sentencing purposes. *United States v. Gibbs*, 190 F.3d 188, 207 n.10 (3d Cir. 1999) (“[A] conclusion in the presentence investigation report which goes unchallenged by the defendant is, of course, a proper basis for sentence determination.” (quoting *United States v. McDowell*, 888 F.2d 285, 290 n.1 (3d Cir.1989))). Briggs admitted that the cars were each valued between \$10,000 and \$50,000, obviating the need for the Government to produce evidence of the cars’ values.

offense level under one provision when another offense Guideline already takes into account the same conduct.”). In this case, there is no prohibition to applying the two-level enhancement to a carjacking offense. Through the amendments to U.S.S.G. § 2B3.1, it is clear that “the Sentencing Commission intended to apply the two point enhancement to the base robbery offense level of 20 for convictions under § 2119, the carjacking statute.” *United States v. Naves*, 252 F.3d 1166, 1168 (11th Cir. 2001); *see United States v. Cleveland*, 413 F. App’x 445, 448 (3d Cir. 2011) (acknowledging the two-level enhancement to the base offense level for a carjacking conviction under 18 U.S.C. § 2119); *United States v. Mershon*, 322 F. App’x 232, 234 (3d Cir. 2009) (same); *United States v. Wilson*, 198 F.3d 467, 471 (4th Cir. 1999) (same); *see also United States v. Cummings*, 105 F.3d 654 (5th Cir. 1996) (per curiam) (holding the district court did not err when it increased the defendant’s base offense level for carjacking by two-levels pursuant to § 2B3.1(b)(1)(B)); *United States v. Fuentes-Vazquez*, 52 F.3d 394, 398 (1st Cir. 1995) (mentioning the amendment to the robbery guideline and the application of the two-level enhancement to the defendant’s carjacking conviction). Otherwise, a defendant convicted of robbery involving a carjacking would have a base offense level of 22, but a defendant convicted of carjacking, which is categorized as a robbery offense in the Guidelines, would have a base offense level of only 20. Therefore, the two-level sentencing enhancement for carjacking was proper. Accordingly, Briggs’s sentence was calculated correctly, and his petition will be denied.⁸

⁸ Briggs is also not entitled to relief because his petition is untimely. The Antiterrorism and Effective Death Penalty Act of 1996 imposes a one-year limitations period on applications for writs of habeas corpus. 28 U.S.C. § 2255(f). Generally, the limitations period begins on the date the petitioner’s judgment of sentence became final. 28 U.S.C. § 2255(f)(1). A petitioner may, however, establish that the limitation period begins after the final judgment date by showing that one of three alternative start dates applies to his claims. In this case, Briggs asserts his start date should be “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” because he “was prevented from making a motion by such governmental action.” 28 U.S.C. § 2255(f)(2).

In addition to statutory tolling, the limitations period is also subject to equitable tolling. A habeas petitioner is entitled to equitable tolling if he shows ““(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way’ and prevented timely filing.” *Holland v. Florida*, 130 S. Ct. 2549, 2562 (2010) (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)); see also *Miller v. N.J. State Dep’t of Corr.*, 145 F.3d 616, 618, 616 n.1 (3d Cir. 1998). “Mere excusable neglect is not sufficient” and the petitioner must show “he or she ‘exercised reasonable diligence in investigating and bringing [the] claims.’” *Miller*, 145 F.3d at 618-19 (alteration in original) (quoting *New Castle Cnty. v. Halliburton NUS Corp.*, 111 F.3d 1116, 1125 (3d Cir. 1997)). The petitioner “bears the burden of proof as to all facts, procedural and substantive, demonstrating entitlement to relief.” *Adams v. Palackovich*, No. 06-966, 2007 WL 1650677, at *3 (E.D. Pa. June 4, 2007).

Briggs and his codefendants were convicted on November 15, 1996, and Briggs was sentenced on March 7, 1997. Briggs timely appealed, and the Third Circuit affirmed his conviction and sentence on December 22, 1997. See *United States v. Briggs*, 135 F.3d 767 (3d Cir. 1997). Briggs’s judgment of sentence became final on March 22, 1998, upon expiration of the time in which Briggs could seek review by the United States Supreme Court (ninety days after the Third Circuit’s denial). Therefore, the limitation period ended March 22, 1999. Briggs filed the instant habeas petition on February 25, 2007 (the date appearing on the petition), almost seven years after the deadline.

In support of his tolling arguments, Briggs states he was incarcerated at SCI Graterford, a Pennsylvania correctional institution, from June 18, 1996 to May 11, 2005, on state charges, at which time he was transferred to federal custody at the Federal Detention Center in Philadelphia, Pennsylvania. He stayed at the FDC Philadelphia until June 28, 2005. He was then transferred to USP Canaan, where he was placed in administrative housing pending a Captain’s Review, which is required before being housed in a permanent housing area. He was released from administrative housing on July 7, 2005.

Briggs asserts his limitations period did not begin when his conviction became final because he was prevented from making a motion by the government and thus qualifies for a later start date pursuant to 28 U.S.C. § 2255(f)(2). Briggs claims while he was incarcerated at SCI Graterford and while he was in administrative housing at USP Canaan, he lacked access to resources concerning federal statutes and federal rules of procedure, and thus he could not learn how to file federal habeas corpus petitions or otherwise comply with federal habeas corpus procedures. He asserts he could not have reasonably pursued a federal remedy when the state institution’s library was inadequately equipped for federal prisoners. Further, once he was released from administrative housing at USP Canaan, he could not access the law library until he received his password on July 14, 2005. Even when he was released from administrative housing, however, he claims the library lacked the necessary forms and applications for habeas petitions.

Briggs’s assertion that he lacked access to the necessary resources to file his habeas petition provides no basis for relief from the one-year statute of limitations. Briggs has cited no authority suggesting limited access to federal legal materials constitutes the type of “governmental action” impeding timely filing contemplated by § 2255(f)(2). He also does not allege any intentional misconduct or that any governmental entity actively prevented him from filing a § 2255 motion. See, e.g., *United States v. Skiba*, No. 01-291-2, 2012 WL 6203193, at *2

An appropriate order follows.

BY THE COURT:

/s/ Juan R. Sánchez

Juan R. Sánchez, J.

(W.D. Pa. Dec. 12, 2012) (finding misplacement, or even confiscation, of documents by the Bureau of Prisons does not constitute relief from the limitations period pursuant to § 2255(f)(2)).

Briggs's allegations also do not rise to a level sufficient to invoke equitable tolling. Although Briggs's time in state custody may have made it more difficult to file a timely § 2255 motion, "increased difficulty does not, by itself, satisfy the required showing of extraordinary circumstances." *United States v. Thomas*, 713 F.3d 165, 174-75 (3d Cir. 2013). For example, courts in this district have held that inadequate help from prison library staff or failure to obtain trial transcripts does not entitle a petitioner to equitable tolling. *See, e.g., Cookman v. Barone*, No. 08-4980, 2009 WL 5736746, at *6 & n.8 (E.D. Pa. June 11, 2009), *report and recommendation adopted*, No. 08-4980, 2010 WL 331705 (E.D. Pa. Jan. 26, 2010). Further "routine aspects of prison life such as lockdowns, lack of access to legal resources, and disturbances must be taken into consideration by a prisoner in deciding when to file a federal petition, because these do not constitute extraordinary circumstances sufficient to equitably toll the statute of limitations." *Garrick v. Vaughn*, No. 00-4845, 2003 WL 22331774, at *4 (E.D. Pa. Sept. 5, 2003) (citation and internal quotation marks omitted) (collecting cases), *aff'd sub nom. Garrick v. DiGuglielmo*, 162 F. App'x 122 (3d Cir. 2005).

Furthermore, even assuming Briggs's circumstances could warrant either statutory or equitable tolling, his petition is still barred by the statute of limitations. Briggs received his library password on July 14, 2005, and filed a habeas petition with the Court dated July 7, 2006, leaving seven days remaining in the one-year limitations period. However, on August 31, 2006, the Court ordered Briggs to sign and return his petition within thirty days or else his action would be dismissed. Forty-three days later, on October 13, 2006, the Court dismissed Briggs's petition because he neglected to sign and return the petition. Thus, the statute of limitations clock resumed on the date of dismissal, and the one-year limitations period expired October 20, 2006. The habeas petition at issue here is dated February 25, 2007, several months after the expiration of the later limitations period.

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	:	
TYRONE BRIGGS	:	

ORDER

AND NOW, this 7th day of March, 2014, for the reasons set forth in the accompanying Memorandum, it is ORDERED Petitioner Tyrone Briggs's Motion to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255 (Document 188) is DENIED. There has been no substantial showing of the denial of a constitutional right warranting the issuance of a certificate of appealability. The Clerk of Court is DIRECTED to mark both cases CLOSED.

BY THE COURT:

/s/ Juan R. Sánchez
Juan R. Sánchez, J.