

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

UNITED STATES

CRIMINAL ACTION

v.

EDDIE THOMAS, also known as “E”

NO. 12-282

DuBois, J.

May 5, 2015

MEMORANDUM

I. INTRODUCTION

On December 18, 2012, pro se defendant Eddie Thomas plead guilty to two counts of bank fraud, and one count of aggravated identity theft. He is serving a 32-month sentence in federal prison. Presently before the Court is Thomas’s Writ for Habeas Corpus under Title 28 United States [sic] Code Section 2255 (“28 U.S.C. § 2255 Motion”). For the reasons that follow, Thomas’s 28 U.S.C. § 2255 Motion is dismissed as time-barred.

II. BACKGROUND

On June 7, 2012, a Grand Jury in this District returned a four-count Indictment against Thomas, charging him with two counts of bank fraud, in violation of 18 U.S.C. § 1344, and two counts of aggravated identity theft, in violation of 18 U.S.C. § 1028A. On December 18, 2012, Thomas plead guilty, pursuant to a Plea Agreement, to two counts of bank fraud, and one count of aggravated identity theft. The Government agreed to dismiss one count of aggravated identity theft, with its associated mandatory minimum two-year term of imprisonment, as part of the Plea Agreement. The Plea Agreement also included a written waiver by Thomas of his right to “appeal or collaterally attack [his] conviction, sentence, or any other matter relating to this prosecution, whether such a right to appeal or collateral attack arises under 18 U.S.C. § 3742, 28

U.S.C. § 1291, 28 U.S.C. § 2255, or any other provision of law.” (Gov’t’s Opp. Def.’s Mot., Ex. A, ¶ 8.)

On May 1, 2013, the Court imposed a within-Guidelines range sentence of 32-months-imprisonment. Thomas did not file a direct appeal. On June 3, 2014,¹ Thomas filed a Motion to Modify Pursuant to 28 U.S.C. § 1651(a) for Constitutional Violation (Not § 2255) (“28 U.S.C. § 1651(a) Motion”), in which he challenged the legality of his sentence in light of the recent Supreme Court decision Alleyne v. United States, 133 S.Ct. 2151 (2013). By Order dated January 16, 2015, the Court dismissed Thomas’s Motion without prejudice, concluding that Thomas may not pursue his claim under the All Writs Act because it is cognizable under 28 U.S.C. § 2255. The Court granted Thomas leave to file a habeas corpus motion pursuant to 28 U.S.C. § 2255 within the one-year statute of limitations established by that statute, and directed that Thomas file any such motion on the § 2255 form approved by the Court.²

On January 23, 2015,³ Thomas filed the 28 U.S.C. § 2255 Motion presently before the Court. In his Motion, Thomas argues that his trial counsel was ineffective: 1) in negotiating his

¹ “The federal ‘prisoner mailbox rule’ provides that a document is deemed filed on the date it is given to prison officials for mailing.” Pabon v. Mahanoy, 654 F.3d 385, 391 (3d Cir. 2011). Thus, the Court deems Thomas’s 28 U.S.C. § 1651(a) Motion filed on June 3, 2014, the date Thomas signed it. Butler v. Walsh, 846 F. Supp. 2d 324, 329 (E.D. Pa. 2012) (DuBois, J.); see Hodge v. Klopotoski, No. 08-455, 2009 WL 3572262, at *15 (W.D. Pa. Oct. 26, 2009) (“In the absence of contrary evidence, a court will typically assume that a prisoner presented his or her petition to prison authorities for filing on the same date that he or she signed it.”).

² The Order further provided that the Clerk of Court shall furnish Thomas with a blank copy of the Court’s current standard form for filing a motion pursuant to 28 U.S.C. § 2255 bearing the above-captioned criminal action number.

³ Although there is a six week discrepancy between the date Thomas signed his 28 U.S.C. § 2255 Motion, and the date on which the Court received it, the Court gives Thomas the benefit of the prison mailbox rule without conducting a deeper inquiry because, as discussed infra, even assuming arguendo that the 28 U.S.C. § 2255 relates back to Thomas’s 28 U.S.C. § 1651(a) Motion, it is untimely filed.

plea agreement; 2) for failing to secure all of the Government's evidence; 3) for failing to argue against sentencing enhancements imposed by the Court; and 4) for failing to challenge the Government's aggravated identity theft evidence. On March 23, 2015, the Government filed its response, contending that 1) Thomas failed to file his 28 U.S.C. § 2255 Motion on the Court's approved § 2255 form, as directed by the Order dated January 16, 2015; and 2) the Motion should be dismissed on the ground that it is time-barred.

III. DISCUSSION

Rule 9.3 of the Local Rules of Civil Procedure provides as follows:

All petitions for writs of habeas corpus and all motions pursuant to 28 U.S.C. 2255 shall be filed on forms provided by the Court and shall contain the information called for by such forms. The required information shall be set concisely and legibly. Ordinarily, the court will consider only those matters which are set forth on the forms provided by the court. Any attempt to circumvent this requirement by purporting to incorporate by reference other documents which do not comply with this Rule may result in dismissal of the petition.

In accordance with Local Rule 9.3, the Court, in its January 16, 2015 Order, granted Thomas leave to file a habeas corpus motion pursuant to 28 U.S.C. § 2255 on the § 2255 form approved by the Court. Although Thomas was furnished with the required form by the Clerk of Court,⁴ he failed to use it in filing his 28 U.S.C. § 2255 Motion, in violation of this Court's Order and Rule 9.3. The Court nevertheless considers Thomas's 28 U.S.C. § 2255 Motion, because, even excusing these violations, the Motion must be dismissed as time-barred.

28 U.S.C. § 2255 provides a one-year period of limitations for habeas corpus motions. Pursuant to 28 U.S.C. § 2255f(1), the one-year period runs from the date on which the movant's

⁴ By Order dated January 16, 2015, the Court further directed the Clerk of Court to furnish Thomas with the current standard § 2255 form.

judgment of conviction became final.⁵ “If a defendant does not pursue a timely direct appeal to the court of appeals, his or her conviction and sentence become final [for purposes of a § 2255 motion], and the statute of limitation begins to run, on the date on which the time for filing such an appeal expired.” Kapral v. United States, 166 F.3d 565, 577 (3d Cir. 1999); Moshier v. United States, 402 F.3d 116, 118 (2d Cir. 2005). In this case, Thomas was sentenced on May 1, 2013, and the Judgment was docketed on May 3, 2013. Thomas had fourteen days from that date in which to file a notice of appeal, Fed. R. App. P. 4(b)(1)(A), but failed to do so. Thus, Thomas’s conviction and sentence became final on May 17, 2013, and the limitations period to file a 28 U.S.C. § 2255 motion expired one year later, on May 17, 2014.

Affording Thomas the benefit of the prison mailbox rule, he filed his 28 U.S.C. § 2255 Motion on January 23, 2015, more than eight months after the expiration of the one-year statute

⁵ The limitations period begins to run from a later date only in circumstances not present in this case: where illegal Government action prevented defendant from timely filing a motion, where the Supreme Court recognized and made retroactively applicable to cases on collateral review a new right asserted by defendant, or where defendant’s claims were supported by new facts that could not have been discovered earlier through the exercise of due diligence. See 28 U.S.C. §§ 2255(f)(2), (3), and (4). Thomas does not argue, nor is there any evidence, that any of the conditions which, in essence, toll the running of the one-year limitations period are present in this case.

Although Thomas’s 28 U.S.C. § 1651(a) Motion relies on Alleyne v. United States, 133 S.Ct. 2151 (2013), that decision does not trigger a later start date for the limitations period because the Third Circuit has held that the rule of criminal procedure announced in Alleyne cannot be applied retroactively to cases on collateral review. United States v. Winkelman, 746 F.3d 134, 136 (3d Cir. 2014); United States v. Reyes, 755 F.3d 210, 213 (3d Cir. 2014); see also Powell v. United States, No. 14-6050, 2014 WL 5439607, at *2 (D.N.J. Oct. 24, 2014) (“Because the Supreme Court has not made Alleyne retroactive to cases on collateral review, [defendant’s] statute of limitations to file a § 2255 motion is governed by § 2255(f)(1)”); United States v. Muzychka, No. 13-4532, 2014 WL 2579293, at *2 (E.D. Pa. June 9, 2014) (“Alleyne, does not, therefore, constitute a right under § 2255(f)(3) which would permit the filing of a § 2255 motion later than the date permitted by § 2255(f)(1).”).

of limitations. Even assuming arguendo that Thomas's claims in the present Motion relate back to Thomas's 28 U.S.C. § 1651(a) Motion, those claims would still be time-barred. Under the prison mailbox rule, the Court deems Thomas's 28 U.S.C. § 1651(a) Motion filed on June 3, 2014,⁶ more than two weeks after the one-year limitations period expired.

Finally, the Court concludes that equitable tolling does not apply. Equitable tolling is intended to be utilized in the rare case where a defendant has "in some extraordinary way . . . been prevented from asserting his or her rights." Miller v. New Jersey Department of Corrections, 145 F.3d 616, 618 (3d Cir. 1998). Other courts have ruled that equitable tolling is appropriate only "if extraordinary circumstances beyond a prisoner's control make it impossible to file a petition on time." Calderon v. United States District Court, 163 F.3d 530, 541 (9th Cir. 1998). Thomas does not present any evidence which would warrant equitable tolling of the one-year statutory time limit. Thus, the Court dismisses Thomas's 28 U.S.C. § 2255 Motion as time-barred.

IV. Certificate of Appealability

In the Third Circuit, a certificate of appealability is granted only if defendant makes: "(1) a credible showing that the district court's procedural ruling was incorrect; and (2) a substantial showing that the underlying habeas petition [or motion] alleges a deprivation of constitutional rights." Morris v. Horn, 187 F.3d 333, 340 (3d Cir. 1999); see also Slack v. McDaniel, 529 U.S. 473, 484 (2000); 28 U.S.C. § 2253(c)(2) ("A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right."). The Court concludes that Thomas has not made such a showing. Thus, the Court will not issue a certificate of appealability.

⁶ See supra note 1.

V. CONCLUSION

For the foregoing reasons, the 28 U.S.C. § 2255 Motion filed by pro se defendant Eddie Thomas is dismissed as untimely filed.

An appropriate order follows.

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ORDER

AND NOW, this 5th day of May, 2015, upon consideration of pro se defendant’s Writ for Habeas Corpus Under Title 28 United States [sic] Code Section 2255 (Document No. 71, filed March 10, 2015); United States Opposition to Defendant’s Motion for Relief Pursuant to 28 U.S.C. § 2254 (Document No. 73, filed March 23, 2015); and Petitioner’s Reply to the Government’s Recommended Denial of his 28 United States Code Section 2255 Petition (Document No. 74, filed April 15, 2015), for the reasons stated in the accompanying Memorandum dated May 5, 2015, **IT IS ORDERED** that pro se defendant’s Writ for Habeas Corpus Under Title 28 United States [sic] Code Section 2255 (Document No. 71, filed March 10, 2015) is **DISMISSED** as time-barred.

IT IS FURTHER ORDERED that a certificate of appealability will not issue because reasonable jurists would not debate this Court’s procedural ruling as required under 28 U.S.C. § 2253(c)(2). See Slack v. McDaniel, 529 U.S. 473, 484 (2000).

IT IS FURTHER ORDERED that the Clerk of Court shall **MARK** the case **CLOSED**.

BY THE COURT:

/s/ **Hon. Jan E. DuBois**

DuBOIS, JAN E., J.