

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

MARIAM COULIBALY

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No. 2:09-cr-294-06

OPINION

**Defendant’s Motion to Vacate/Set Aside/Correct Sentence Under 28 U.S.C. § 2255, ECF
No. 435–Denied**

Government’s Motion to Dismiss Defendant’s Motion, ECF No. 452–Granted

**Joseph F. Leeson, Jr.
United States District Judge**

December 4, 2017

Defendant Mariam Coulibaly was sentenced to prison in June 2010 after being convicted of health care fraud, conspiracy to obstruct a federal investigation, and making false statements. In October 2016, she filed a motion under 28 U.S.C. § 2255 seeking reduction of her sentence. The Court concludes that Defendant’s motion is untimely under the statute of limitations for Section 2255 motions. Even if the Court construes the motion as a request for a reduction of sentence under 18 U.S.C. § 3582(c), Defendant’s reasons for relief, an amendment to the Sentencing Guidelines and Defendant’s poor health, do not entitle her to a reduction of her sentence. Accordingly, the Court denies Defendant’s motion.

I. BACKGROUND

In June 2010, following a jury trial, Defendant Mariam Coulibaly was sentenced to 135 months in prison for her participation in a scheme to defraud the government in connection with services to at-risk children in Philadelphia. After an unsuccessful appeal, ECF No. 384, and a petition for writ of certiorari to the United States Supreme Court, *see* 568 U.S. 861 (2012), she filed an unsuccessful motion under Rule 35. ECF Nos. 426, 430.

On September 6, 2016, Defendant filed a motion under 28 U.S.C. § 2255, ECF No. 433. After this Court directed the Clerk of Court to provide Defendant with the standard form for such motions, Defendant refiled the instant motion on October 27, 2016. ECF No. 435. After this Court ordered a response, ECF No. 451, the government filed a motion to dismiss Defendant’s motion as untimely. ECF No. 452. On November 15, 2017, Defendant sent a letter to the Court requesting that the court take into consideration her rehabilitation in prison and deteriorating health, and approve her release. ECF No. 435.

II. ANALYSIS

A. Statute of Limitations for Motion under Section 2255

Generally, a petitioner must file a Section 2255 motion within a one-year limitations period. The one year 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.

28 U.S.C.A. § 2255(f). In this case, Defendant’s conviction became final when the Supreme Court denied her petition for a writ of certiorari in October 2012. Defendant did not file within one year of this date, but instead nearly four years later in October 2016. None of the alternative calculations of the limitations period in subsections (2) through (4) apply. Defendant states that she could not have filed within a year because she brings a claim based on an amendment to the Sentencing Guidelines that took effect in November 2015. However, a change in the Guidelines is not the removal of a state-created impediment under subsection (2) or a right newly recognized by the Supreme Court under subsection (3). Nor is a change in law a “fact” within the meaning of subsection (4). *See Gines v. Garman*, No. CV 15-5422, 2016 WL 8201042, at *3 (E.D. Pa. June 28, 2016), *report and recommendation adopted*, No. CV 15-5422, 2017 WL 467638 (E.D. Pa. Feb. 3, 2017), *certificate of appealability denied sub nom. Gines v. Superintendent Rockview SCI*, No. CV 17-2042, 2017 WL 5438879 (3d Cir. Oct. 10, 2017).

Further, this case does not present the type of extraordinary circumstances that warrant equitable tolling of the statute of limitations. *See Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005) (holding that a litigant seeking equitable tolling bears the burden of establishing that she has been pursuing her rights diligently and that some extraordinary circumstance stood in her way). Therefore, Defendant’s motion is untimely.

B. Reduction of Sentence Based on Amendment to Sentencing Guidelines

In the alternative, this Court can treat Defendant’s motion liberally, as is appropriate for a pro se filing, and construe it as a motion for reduction of sentence under 18 U.S.C. § 3582(c)(2). *See United States v. Cobb*, 248 F. Supp. 3d 637, 638–39 (E.D. Pa. 2017) (construing Section 2255 motion as Section 3582(c)(2) motion); *United States v. Kuran*, Nos. 16–4575, 13–160, 2017 WL 914816, at *4 (E.D. Pa. Mar. 8, 2017) (same). Even if this Court does so, though, Defendant cannot obtain relief. Section 3582(c)(2) permits a district court to exercise its discretion to reduce a sentence only if: (1) the sentence is “based on” a Guidelines range that has

subsequently been lowered; and (2) a sentence reduction would be consistent with the Sentencing Commission's policy statements. *United States v. Thompson*, 825 F.3d 198, 200 (3d Cir. 2016). The relevant policy statement, Section 1B1.10(a) of the Guidelines, permits a reduction of sentence under § 3582(c)(2) only when the amendment that reduces the applicable guidelines range is among those listed in Section 1B1.10(d) of the Guidelines. *See United States v. Wise*, 515 F.3d 207, 221 & n.11 (3d Cir. 2008). Defendant relies on Amendment 794 (amending Section 3B1.2 of the Sentencing Guidelines, concerning "minimal" or "minor" participants in a crime), which is not among the retroactive amendments listed in Section 1B1.10(d). Therefore, Defendant cannot obtain a sentence reduction based on a retroactive application of Amendment 794. *See United States v. Brown*, 694 F. App'x 62, 64 (3d Cir. 2017) (summarily affirming a district court order denying reduction of sentence based upon retroactive application of an amendment not listed in Section 1B1.10(d) and observing that Amendment 794 is not listed in Section 1B1.10(d) either); *Cobb*, 248 F. Supp. 3d at 640 (denying motion for reduction of sentence based upon retroactive application of Amendment 794).

C. Reduction of Sentence Based on Health of Defendant

In both her motion and her letter to the Court, Defendant requests modification of her sentence because of her poor health. Regardless of whether this Court construes Defendant's Section 2255 motion as a request for compassionate release under 18 U.S.C. § 3582(c)(1)(A), Defendant asks for relief that this Court has no power to give. A district court may not reduce a federal inmate's sentence under 18 U.S.C. § 3582(c)(1)(A) based upon special circumstances without a motion from the Bureau of Prisons. *See Share v. Krueger*, 553 F. App'x 207, 209 (3d Cir. 2014); *see also In re Morris*, 345 F. App'x 796, 797–98 (3d Cir. 2009) (recognizing that Bureau of Prisons motion required for compassionate release and that BOP has in place administrative remedy program and procedures for requesting compassionate release).

III. CONCLUSION

For the foregoing reasons, Defendant's motion under Section 2255 is untimely. And even if the motion is construed as a request for reduction of sentence under 18 U.S.C. § 3582(c), Defendant is not entitled to relief. Accordingly, the Court denies Defendant's motion and grants the government's motion to dismiss. A separate Order follows.

BY THE COURT:

/s/ Joseph F. Leeson, Jr.
JOSEPH F. LEESON, JR.
United States District Judge