

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

TARIK YAMADIN

v.

UNITED STATES OF AMERICA

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CRIMINAL ACTION

No. 12-496

MEMORANDUM

PRATTER, J.

AUGUST 15, 2018

Four years after his guilty plea before this Court, Tarik Yamadin now petitions the Court to modify his sentence under 28 U.S.C. § 2255. He alleges that his counsel was ineffective, that he impermissibly received excessive criminal history points, and that one of his predicate crimes is no longer a crime of violence under the sentencing guidelines. Mr. Yamadin’s claims are all time-barred, and he has failed to show why the Court should disregard the one-year limitation to file a § 2255 petition. Therefore, his petition is dismissed.

BACKGROUND

On January 28, 2013, Mr. Yamadin pled guilty to one count of possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1). He had a total offense level of 21 and was in criminal history category V, which put his guideline range at 70 to 87 months. On June 20, 2013, the Court sentenced Mr. Yamadin to 78 months in prison. He did not appeal.

Fifteen months later, in September 2014, Mr. Yamadin sent a “petition for allowance of appeal application for a writ of Habeas Corpus,” *see* Doc. No. 25, which the Court construed as an improperly-filed § 2255 petition. *See* Doc. No. 26. The Court ordered the Clerk of Court to

supply Mr. Yamadin with the proper petition and instructed him to submit the petition within 30 days. *Id.* Mr. Yamadin did not submit a petition.

Nearly two years later, in June 2016, Mr. Yamadin again filed a § 2255 petition. Before the Court could rule, he requested to voluntarily withdraw the petition, and the Court granted his request. Doc. No. 32. Two months later, in June 2017, Mr. Yamadin sent another letter to the Court, which the Court construed as a § 2255 petition. After the Clerk of Court provided him with the appropriate paperwork, Mr. Yamadin filed the present petition to modify his sentence in August 2017, four years and two months after his sentence was imposed.

DISCUSSION

A criminal defendant has one year to file a motion to vacate, set aside, or correct a sentence under 28 U.S.C. § 2255. *Lloyd v. United States*, 407 F.3d 608, 611 (3d Cir. 2005). The clock begins to run “on the date on which the time for filing [a direct] appeal expired.” *Kapral v. United States*, 166 F.3d 565, 577 (3d Cir. 1999). In this case, Mr. Yamadin had until July 7, 2013 to file a direct appeal. Consequently, he had until July 7, 2014 to file his motion under § 2255. The first time he filed anything with the Court was September 2014 (two months late) and he did not file the instant motion until August 2017. Therefore, Mr. Yamadin is over three years past his deadline to file a § 2255 petition.

Mr. Yamadin claims that the Supreme Court decision in *Mathis v. United States*, 136 S. Ct. 2243 (2016) restarted the clock for him to file a petition, and, thus, he is not time-barred. This argument relies on AEDPA subsection (f)(3), which allows prisoners to file claims within one year from “the date on which the right asserted [in the petition filed] was initially recognized by the Supreme Court.” 28 U.S.C. § 2255(f)(3). However, this only applies to cases where the

“right has been *newly recognized* by the Supreme Court and made retroactively applicable to cases on collateral review.” *Id.* (emphasis added).

Mathis gave guidance to lower courts on how to determine whether prior convictions under the Armed Career Criminal Act (ACCA) satisfied the statute’s 15-year mandatory minimum sentence. *Mathis*, 136 S. Ct. at 2248; *see also* 18 U.S.C. § 924(e)(1). Specifically, the *Mathis* Court held that the “modified categorical approach” applied to a statute that set forth different offenses with different elements, but not to a statute that set forth alternative ways of proving the same elements. *Id.* The Court was explicit that this conclusion was compelled by precedent. *See id.* at 2257 (“Our precedents make this a straightforward case. For more than 25 years, we have repeatedly made clear that application of ACCA involves, and involves only, comparing elements.”). Therefore, *Mathis* did not create new rule sufficient to restart the one-year limitation period. *See* 28 U.S.C. § 2255(f)(3); *see also Teague v. Lane*, 489 U.S. 288 (1989) (discussing the old and new rule distinction in the federal habeas context).

Even if *Mathis* had created a new rule, “a new rule is not ‘made retroactive to cases on collateral review’ unless the Supreme Court holds it to be retroactive.” *Tyler v. Cain*, 533 U.S. 656, 663 (2001) (quoting AEDPA). The Supreme Court has not done so here. Therefore, *Mathis* is not retroactive. *See Dawkins v. United States*, 829 F.3d 549, 551 (7th Cir. 2016) (“*Mathis* did not announce [a new] rule; it is a case of statutory interpretation.”); *United States v. Taylor*, 672 Fed. App’x 860, 864 (10th Cir. 2016) (“*Mathis* did not announce a new rule. And courts applying *Mathis* have consistently reached the same conclusion.”). Because *Mathis* is not retroactive, and Mr. Yamadin filed his claim more than four years after his conviction, his claim is time-barred.

Given that Mr. Yamadin has failed to make “a substantial showing of the denial of a constitutional right,” 28 U.S.C. § 2253(c)(2), the Court declines to grant a certificate of appealability. When a claim is dismissed on procedural grounds, as here, a certificate of appealability shall only issue if jurists of reason could disagree on the Court’s procedural ruling and the underlying constitutional claims. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Given that multiple courts are in accord with the Court’s interpretation of *Mathis*, and Mr. Yamadin is otherwise time-barred, the Court concludes that no “jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Therefore, a certificate of appealability is not warranted

CONCLUSION

For the reasons cited above, Mr. Yamadin’s petition for a writ of habeas corpus is denied, and the Court declines to issue a certificate of appealability. An appropriate order follows.

BY THE COURT:

/s/ Gene E.K. Pratter
GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE

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| TARIK YAMADIN | : | No. 12-496 |
| | : | |

ORDER

AND NOW, on this 15th day of August, 2018, upon consideration of Tarik Yamadin’s Motion to Vacate or Modify Sentence under 28 U.S.C. § 2255 (Doc. No. 33), the Response in Opposition (Doc. No. 37), and the Reply in Support (Doc. No. 38), it is **ORDERED** that the Motion to Vacate or Modify (Doc. No. 33) is **DENIED** as outlined in the Court’s August 15, 2018 Memorandum Opinion. Furthermore, because Mr. Yamadin has not made a substantial showing of the denial of a constitutional right, no certificate of appealability shall issue.

The Clerk of Court is directed to **CLOSE** this case for all purposes, including statistics.

BY THE COURT:

/s/ Gene E.K. Pratter
GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE