

II. Timeliness of Valentin's Motion

The clerk's office received Valentin's motion on April 28, 1997, more than two years after his petition for certiorari was denied and his conviction became final. Section 2255(1), as amended by the Anti-Terrorism and Effective Death Penalty Act of April 24, 1996 (hereinafter "AEDPA"), provides a one year limitation period for § 2255 motions and the time period generally runs from the date on which the judgment of conviction became final.

Concerned about the potential constitutional implications of applying the limitation period retroactively, many courts have held that petitioners such as Valentin, whose convictions became final prior to April 24, 1996, should be allowed a "reasonable time" after passage of the Act to file a § 2255 motion. See, U.S. v. Ramos, --F.Supp.--, 1997 WL 404028 * 11, n. 2 (E.D.Pa. July 16, 1997)(citations omitted). Several courts have defined "reasonable time" as one year from the passage of the AEDPA or April 23, 1997. See e.g., United States v. Simmonds, 111 F.3d 737, 744-46 (10th Cir. 1997); Calerdon v. U.S. District Court for the Central District of California, 112 F.3d 386, 389-90 (9th Cir. 1997); Lindh v. Murphy, 96 F.3d 856, 866 (7th Cir. 1996), rev'd on other grounds, 117 S.Ct. 2059 (June 23, 1997). Recently, the Third Circuit (in an unpublished opinion) considering the issue of retroactive application of the

AEDPA held that "for a petitioner whose conviction became final prior to the effective date of the AEDPA, the statute allows a reasonable period of time, not to exceed one year, from the effective date of the AEDPA for filing a habeas petition."

United States v. Urrutia, Civil No. 97-7051 (3d Cir. September 18, 1997).

Because it was not received until April 28, 1997, giving Valentin the benefit of a one year grace period alone does not render his motion timely. However, if this Court, in conjunction with the grace period, were to apply the "mailbox rule" to Valentin's motion, the motion could be deemed as having been filed within the one year limitation period.

Under the "mailbox rule" a notice of appeal submitted by a pro se prisoner is deemed "filed" as of the date the notice is delivered to prison authorities for forwarding to the court. See, Houston v. Lack, 487 U.S. 266 (1988); Fed. R. App. P. 4(c). The rule has been extended to bankruptcy appeals and in forma pauperis applications. See, In re Flanagan, 999 F.2d 753 (3d Cir. 1993) (Bankruptcy appeals); Van Doren v. Mazurkiewicz, 935 F.Supp. 604, 608 (E.D.Pa. 1996) (In forma pauperis applications). Presuming Valentin's motion was given to prisoner authorities on the date on which it was signed, April 22, 1997, his motion could be deemed filed as of that date.

At least two district court opinions (one published and one unpublished) have reached divergent results when faced with the issue of whether the "mailbox rule" should be extended to habeas petitions filed after passage of the AEDPA, but, the question has yet to be resolved by the Third Circuit. See, Burns v. Morton, --F.Supp.--, 1997 WL 405730 (D.N.J. July 18, 1997) ("Mailbox rule" does not apply to habeas petitions subject to AEDPA); United States v. Ortiz, 1997 WL 214934 (E.D.Pa. April 28, 1997) ("Mailbox rule" applied to § 2255 motion subject to AEDPA). In Burns, Judge Orlofsky explained that in the absence of contrary instruction from Congress, Courts of Appeals or the Supreme Court the rule should not be extended beyond the discrete situation it was originally designed for, extending otherwise relatively short (thirty days) appellate filing deadlines for pro se prisoners. Burns, 1997 WL at 405730 *3. Focusing instead on the practical difficulties incarcerated litigants must overcome, Judge Yohn, in Ortiz, reasoned that the rule should be extended because once a prisoner delivers documents to prison officials, the prisoner has no further control over the papers and cannot be responsible for any further delay. Ortiz, 1997 WL at 21493 *3. I agree with Judge Yohn. Granting Valentin a one year grace period and applying the "mailbox rule", his motion is deemed to have been filed on April 22, 1997 and is timely.

III. Merits

Valentin claims that he was denied effective assistance of counsel on three grounds; 1) that counsel failed to argue that Valentin and co-defendants maintained merely a "buyer /seller" relationship, rather than a conspiratorial one ; 2) that counsel allowed the wrong drug quantity to be used in calculating his sentence; and 3) that counsel failed to object to the inclusion of an "illegal special parole term" in the calculation of his criminal history. (Docket No. 478 at 8-21).

In order to prevail on his ineffective assistance of counsel claim Valentin must show both that his counsel's performance was deficient and that this prejudiced his defense. Strickland v. Washington, 466 U.S. 668 (1984).

Counsel's defense strategy was to undermine the credibility of witnesses whose testimony linked Valentin to the drug conspiracy. In her summation, counsel characterized the government's key witness as a drug addict and described other witnesses as having made "sweetheart deals" with the government. (Docket No. 215 at 56-69). Because the government's case against Valentin depended almost entirely on the testimony of these witnesses, counsel's defense strategy was both intelligent and resourceful and should not be second guessed by this Court. Thus, Valentin's claim that counsel was deficient for failing to raise a "buyer/seller" defense is meritless.

Valentin's claim that counsel was ineffective for failing to challenge the amount of heroin involved in the conspiracy also lacks merit. Transcripts from Valentin's sentencing hearing demonstrate that counsel questioned the total amount of heroin used to calculate his sentence, and although ultimately unsuccessful, was commended by this Court for her efforts. (Docket No. 481, Exhibit "A" at 32).

Finally, Valentin has failed to provide this Court with any evidence that an "illegal special parole term" was considered in determining his criminal history for sentencing purpose. Therefore, his third ineffective assistance claim is meritless. Accordingly, Valentin's motion for habeas relief is denied.

An order follows.

