

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

<b>UNITED STATES</b>	:	
	:	<b>CIVIL ACTION</b>
	:	<b>98-1392</b>
<b>v.</b>	:	
	:	<b>CRIMINAL NO.</b>
	:	<b>94-189</b>
<b>LUIS ANGEL</b>	:	

**MEMORANDUM**

**Broderick, J.**

**April 15, 1998**

Petitioner Luis Angel has filed a request to proceed in forma pauperis and seeks a writ of habeas corpus. As it appears that Plaintiff is unable to pay the costs of commencing this action, leave to proceed in forma pauperis will be granted. However, the Court will deny Angel's petition for relief on the ground that Plaintiff has failed to comply with the one year period of limitation provided in 28 U.S.C. § 2255, as amended by the Anti-Terrorism and Effective Death Penalty Act.

In August, 1994, following a trial by jury, Petitioner Angel was convicted of one count of possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1). On December 13, 1994, this Court sentenced Angel to 235 months imprisonment followed by three years supervised release. Angel appealed, and on August 9, 1995, the Third Circuit affirmed this Court's judgment. Angel petitioned for a writ of certiorari, and the petition was denied on December 11, 1995. Angel filed the instant motion for relief on March 16, 1998.

Although he has styled his motion as an application for a writ habeas corpus under 28

U.S.C. § 2241, Angel’s petition is more properly construed as a petition for relief from judgment under 28 U.S.C. § 2255. Section 2255 provides that “[a]n application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section [2255], shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.” As the Third Circuit has recognized, an application for a writ of habeas corpus under § 2241 is appropriate “where petitioner challenges the effect of events ‘subsequent’ to his sentence,” while § 2255 provides the “remedy to correct erroneous sentences resulting from events in the trial court at or before sentencing.” Gomori v. Arnold, 533 F.2d 871, 874 (3d Cir.), cert. denied 429 U.S. 851 (1976). Angel has never previously challenged his conviction or sentence by a motion under § 2255. He bases the instant motion for relief on allegations that the Court wrongly refused to ask prospective jurors about Angel’s need for an interpreter at trial, and allegations that the Court lacked subject matter jurisdiction because Angel’s possession of a firearm did not affect interstate commerce as required under 18 U.S.C. § 922(g). Accordingly, Angel’s instant motion for relief challenges his conviction and sentence, not the subsequent execution of the sentence. Angel has made no allegations that a motion under § 2255 would be inadequate or ineffective to test the legality of his detention, and his motion for relief is thus properly handled as a motion to vacate or set aside his sentence under 28 U.S.C. § 2255.

The Anti-Terrorism and Effective Death Penalty Act (“AEDPA”), which became effective on April 24, 1996 amended Section 2255 to include the following provision:

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run 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.

Federal prisoners who were convicted before the effective date of the AEDPA had one year from the date of enactment to file petitions for relief under § 2255. In Burns v. Morton, 134 F.3d 109, 111-112 (3d Cir. 1998), the Third Circuit stated that application of the one year period of limitations to all prisoners on the date of the AEDPA's enactment would be impermissibly retroactive. Recognizing that all prisoners were entitled to one full year with notice of the limitations period, the Third Circuit held that "2255 motions filed on or before April 23, 1997, may not be dismissed for failure to comply with § 2255's one-year period of limitations." Id. Accordingly, all federal prisoners who were convicted on or before the date of the AEDPA's enactment were required to file their § 2255 motions on or before April 23, 1997.

In the instant case, Angel's motion for relief, which was filed well after the April 23, 1997 deadline, does not comply with § 2255's one-year period of limitations. Angel's conviction became final when his petition for certiorari was denied on December 11, 1995. Angel was therefore entitled to one year following enactment of the AEDPA to file a § 2255 motion for relief, and could have filed such a motion on or before April 23, 1997. Angel's motion, filed on

March 12, 1998, is clearly barred by § 2255's one year limitation period.

The Court will thus dismiss Angel's motion for failure to comply with § 2255's one year period of limitations.

An appropriate order follows.