

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

UNITED STATES OF AMERICA                   :                   CRIMINAL  
  :                   :  
  :                   :  
  :                   :  
RANDOLPH CHARLES                         :                   NO. 96-602-2

MEMORANDUM AND ORDER

Fullam, Sr. J.

April 7 , 2005

Defendant is a federal prisoner currently incarcerated at the United States Penitentiary in Lewisburg, Pennsylvania. On September 8, 1997 defendant was sentenced to a term of 168 months in prison based on the applicable sentencing guidelines. On June 16, 1999 defendant filed a motion to correct his sentence pursuant to 28 U.S.C. § 2255. This Court denied that motion on January 24, 2000.

Defendant has now filed a motion under Fed. R. Civ. P. 60 (b) to correct his sentence, arguing that the Supreme Court's decision in Blakely v. Washington, 124 S. Ct. 2531 (2004), has rendered his sentence unconstitutional. Because defendant's motion was filed well beyond the time period prescribed by Rule 60, and because the Blakely decision does not have retroactive application, the motion will be denied.

Fed. R. Civ. P. 60(b) states that a court may grant a motion for relief from judgment upon a showing of mistake, newly discovered evidence or fraud, provided that such a motion is made

"not more than one year after judgment, order, or proceeding was entered or taken." In addition, a court may grant a motion for relief for any other reason justifying relief so long as the motion is "made within a reasonable time."

In this case, the Court imposed sentence on September 8, 1997. The instant motion was filed on January 18, 2005, clearly beyond both the one year and reasonable time requirements imposed by the Rule. It has been over seven years since defendant's sentence and given this lengthy passage of time this motion cannot be considered to have been filed within a reasonable time.

However, should the Court consider the substance of the motion, it is clear that defendant's reliance on Blakely is without merit. Courts that have considered the issue have concluded that Blakely has no retroactive application to sentences imposed prior to the Blakely decision. See United States v. Price, 400 F.3d 844, 849 (10<sup>th</sup> Cir. 2005)(Blakely not retroactively applicable to a conviction that was final before Blakely was decided); Varela v. United States, 400 F.3d 864 (11<sup>th</sup> Cir. 2005)(Blakely does not apply retroactively to cases on collateral review); Cook v. United States, 386 F.3d 949 (9<sup>th</sup> Cir. 2004); United States v. Aikens, - F.Supp.2d- (E.D. Pa. 2005). Since the Blakely decision cannot be applied to defendant's case, his motion will be denied.

An Order follows.

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ORDER

AND NOW, this 7th day of April 2005, upon consideration of defendants's motion to correct sentence, IT is ORDERED that the motion is DENIED.

/s/ John P. Fullam  
John P. Fullam, Sr. J.