

Appendix C

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JUN 15 2001

Robert W. March
CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CV-01-0500 LH/WWD
CR-95-014 LH

SEBASTIAN ECCLESTON,

Defendant.

FINAL ORDER OF DISMISSAL

This matter is before the Court for preliminary consideration of Defendant's motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 filed May 4, 2001. Rule 4(b) Governing Section 2255 Proceedings.

Defendant's motion is barred under the one-year period of limitations in § 2255. Defendant's appeal from his conviction was dismissed December 17, 1997. His conviction thus became final ninety days later in March 1998. *United States v. Burch*, 202 F.3d 1274, 1276 (10th Cir. 2000) (after appeal, conviction becomes final at expiration of 90-day deadline for certiorari petition). The motion was filed May 4, 2001, more than three years after the conviction became final, and is not timely.

Furthermore, the motion makes no allegation implicating the statutory provisions which allow restarting the limitation period after a conviction becomes final. The statute provides:

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

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(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. § 2255. Defendant does not allege an impediment to his motion was removed, a new right was recognized, or new facts were discovered. He claims his plea was involuntary and his conviction and sentence were the result of ineffective assistance of counsel. These are not newly discovered claims, and Defendant has had abundant time to file his motion. He is not entitled to relief, Rule 4(b), and the motion will be dismissed.

IT IS THEREFORE ORDERED that Defendant's motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 filed May 4, 2001 (CV Doc. #1; CR Doc. #93), is DISMISSED with prejudice, and this civil proceeding is DISMISSED.



UNITED STATES DISTRICT JUDGE