

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 19-2761

Ervin L. St. Claire

Petitioner - Appellant

v.

United States of America

Respondent - Appellee

No: 19-2222

Ervin L. St. Claire

Petitioner - Appellant

v.

United States of America

Respondent - Appellee

Appeal from U.S. District Court for the District of North Dakota - Bismarck
(1:18-cv-00148-DLH)

JUDGMENT

Before COLLOTON, WOLLMAN, and SHEPHERD, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed. Appellant's

APPENDIX-A

pending motions are denied as moot.

November 08, 2019

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

additional count of abusive sexual contact, for a total of six counts. See Doc. No. 26. St. Claire was found guilty on all six counts after a jury trial. See Doc. No. 40. He was sentenced to concurrent life terms of imprisonment on counts one, two, three, five, and six and a concurrent two-year sentence on count four. See Doc. No. 51. He was also sentenced to a life term of supervised release. See id.

St. Claire appealed his conviction to the Eighth Circuit Court of Appeals. See United States v. St. Claire, 831 F.3d 1039 (8th Cir. 2016). His conviction and sentence were upheld. See id. St. Claire sought certiorari with the United States Supreme Court. His petition for certiorari was denied in April 17, 2017. See St. Claire v. United States, 137 S. Ct. 1604 (2017). St. Claire sought a petition for rehearing, which was denied on July 17, 2017. See St. Claire v. United States, 138 S. Ct. 32 (2017).

St. Claire's motion pursuant to 28 U.S.C. § 2255 was filed on July 16, 2018, and was dated July 10, 2018. See Doc. No. 70. The Court ordered a response, and the United States filed a response on August 16, 2018. See Docs. No. 71 and 72. In October of 2018, St. Claire contacted the Court requesting an update on the status of his petition. See Doc. No. 73. The Government discovered it had failed to send a copy of its response to St. Claire and corrected its error. See Doc. Nos. 74 and 75. St. Claire was given a period of approximately 45 days to file his reply. See Doc. No. 76. St. Claire filed three additional requests for extension of time to respond, all were granted, and no reply was filed. See Doc. Nos. 78, 81, and 83.

II. STANDARD OF REVIEW

A prisoner in custody may move the court which imposed his sentence to vacate, set aside or correct the sentence on the ground that it was imposed "in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack." 28

U.S.C. § 2255(a). “Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall . . . grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto.” 28 U.S.C. § 2255(b). “If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence [her] or grant a new trial or correct the sentence as may appear appropriate.” 28 U.S.C. § 2255(b).

III. LEGAL DISCUSSION

A. ST. CLAIRE’S MOTION IS TIME BARRED

28 U.S.C. § 2255(f) requires a movant to file a motion within one year of the judgment becoming final. Specifically, the statute reads:

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.

28 U.S.C. § 2255(f).

The Supreme Court has made clear that convictions for defendant's who seek review all the way to the Supreme Court "become[] final at the 'conclusion of direct review' – when [the Supreme Court] affirms a conviction on the merits or denies a petition for certiorari." See Gonzalez v. Thaler, 565 U.S. 134, 150 (2012). The Court made no mention that a petition for rehearing from the denial of certiorari is considered part of the "direct review." See id. The Eighth Circuit, as well as numerous other circuits, have held the one-year limitations period to file a motion under Section 2255 begins to run on the date the Supreme Court denies a petition for certiorari, not the date the Supreme Court denies a petition for rehearing of the denial of certiorari. See Campa-Fabella v. United States, 339 F.3d 993 (8th Cir. 2003) (collection of cases). See also, Rosa v. United States, 758 F.3d 856, 859-860 (2nd Cir. 2015); United States v. Aguirre-Ganceda, 592 F.3d 1043 (9th Cir. 2010); Drury v. United States, 507 F.3d 1295 (11th Cir. 2007); Robinson v. United States, 416 F.3d 645 (7th Cir. 2005).

The Supreme Court denied St. Claire's petition for certiorari on April 17, 2017. His 2255 motion was signed on July 10, 2018, and filed on July 16, 2018. Therefore, the Court finds St. Claire's petition was filed beyond the one-year limitation period. and must be denied and dismissed, unless some other statutory provision or equitable tolling applies.

B. STATUTORY PROVISIONS OF 28 U.S.C. § 2255(f)(2-4)

The one-year period within which to file a Section 2255 motion may, in an appropriate case, begin on the date on which an impediment to making the motion is removed. 28 U.S.C. § 2255(f)(2). For this provision to apply, the impediment must have been "created by governmental action in violation of the Constitution or laws of the United States" and the movant must have been "prevented

from making a motion by such governmental action.” Id. The one-year period within which to file may, in an appropriate case, begin on the date on which an asserted right was initially recognized by the United States Supreme Court, “if that right has been newly recognized . . . and made retroactively applicable to cases on collateral review.” 28 U.S.C. § 2255(f)(3). The one-year period within which to file a Section 2255 motion may also, in an appropriate case, begin on 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(f)(4).

St. Claire’s Section 2255 motion alleges no facts supporting any of these grounds which would have extended the limitations period. St. Claire points to no evidence that the Government impeded or prevented him in any way from timely filing his motion. St. Claire alleges no right newly recognized by the United States Supreme Court made retroactively applicable to his case which might support an extension of time to file his motion. Nor does St. Claire allege that he recently discovered new facts supporting his claims or that the factual predicates for his claims could not have been discovered through the exercise of due diligence within the limitations period. Consequently, the Court finds there is no factual basis to find that any of the Section 2255(f)(2)-(4) statutory provisions extend the one-year filing period beyond the date St. Claire’s conviction became final.

C. EQUITABLE TOLLING

The Eighth Circuit has recognized that the doctrine of equitable tolling is available to a Section 2255 movant, but only “under limited conditions, for example, where extraordinary circumstances beyond a prisoner’s control prevent the timely filing.” See Gassler v. Bruton, 255 F.3d 492, 495 (8th Cir. 2001); United States v. Martin, 408 F.3d 1089, 1092 (8th Cir. 2005). The use of equitable procedures should be infrequent. See Flanders v. Graves, 299 F.3d 974, 976 (8th Cir. 2002).

Equitable procedures will not be applied if the habeas movant has not diligently pursued his rights. Frinch v. Miller, 491 F.3d 424, 427 (8th Cir. 2007). “Equitable tolling is an exceedingly narrow window of relief.” Maghee v. Ault, 410 F.3d 473, 476 (8th Cir. 2005).

St. Claire has not argued that any extenuating circumstances beyond his control prevented a timely filing. St. Claire does not claim the Government has done something to make it impossible or difficult for him to uncover the facts he asserts in support of his claims. He does not allege that some Government action led him into inaction. He does not refer to any extraordinary circumstances attributable to the Government that have prevented him, in the exercise of reasonable diligence, from enabling him to bring a timely habeas petition. In fact, St. Claire does not address why he did not assert his claim within the one-year statute of limitations.

The Court finds St. Claire has failed to provide evidence that extraordinary circumstances beyond his control prevented the timely filing. Because St. Claire fails to point to any facts showing he diligently pursued his rights in this matter, he failed to establish a basis for equitable tolling.

IV. CONCLUSION

The Court has carefully reviewed the entire record, the parties’ arguments, and the relevant law. St. Claire Section 2255 motion is time barred, not subject to equitable tolling, and the Court need not address the merits of her claims. The Court **DENIES** St. Claire’s motion to vacate, correct, or set aside a sentence pursuant to 28 U.S.C. § 2255 (Doc. No. 70). The Court also issues the following **ORDER**:

- 1) St. Claire’s motion for extension of time (Doc. No. 84) filed on April 19, 2019, is **DENIED**.
- 2) The Court certifies that any appeal would be frivolous, could not be taken in good faith, and may not be taken in forma pauperis.

- 3) Based upon the entire record before the Court, dismissal of the motion is not debatable, reasonably subject to a different outcome on appeal, or otherwise deserving of further proceedings. Therefore, a certificate of appealability will not be issued by this Court. See Tiedeman v. Benson, 122 F.3d 518, 252 (8th Cir. 1997) (finding that a district court possesses the authority to issue certificates of appealability under Section 2255(c)). If the petitioner desires further review of her petition, she may request the issuance of a certificate of appealability by a circuit judge of the Eighth Circuit Court of Appeals.

IT IS SO ORDERED.

Dated this 23rd day of April, 2019.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief District Judge
United States District Court

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ORDER

The petition for rehearing by the panel is denied.

January 24, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans