APPENDIX

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APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-10958
Non-Argument Calendar

D.C. Docket Nos. 1:15-cv-21702-JAL,
1:10-cr-20410-JAL-5

DEXTER EARL KEMP,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(May 25, 2021)

Before JILL PRYOR, LAGOA and BRASHER, Circuit Judges.

PER CURIAM:

Dexter Kemp, a federal prisoner proceeding *pro se*, appeals the district court's dismissal of his Federal Rule of Civil Procedure 60(b) motion seeking relief from its judgment dismissing as untimely his 28 U.S.C. § 2255 motion and

the court's denial of reconsideration under Federal Rule of Civil Procedure 59(e). After careful review, we affirm.

I.

Kemp and several codefendants were charged and convicted of drug and firearms offenses. Kemp and seven of his co-defendants appealed, and this Court affirmed on November 15, 2013. *See United States v. Gray*, 544 F. App'x 870 (11th Cir. 2013) (unpublished). Kemp and several codefendants moved for an extension of time to file a petition for rehearing, and this Court granted the motion. One of Kemp's codefendants filed a petition for rehearing en banc. Kemp then again joined several codefendants in requesting a second extension of time, and this Court granted the request. A second codefendant petitioned for rehearing en banc. It appears that Kemp neither filed a petition for rehearing nor joined either of the petitions filed with the Court. This Court denied the two petitions for rehearing on May 22, 2014. Although some of Kemp's codefendants filed petitions for certiorari in the Supreme Court of the United States, Kemp neither joined these petitions nor filed a petition of his own.

On April 29, 2015, Kemp moved under § 2255 to vacate his sentence, raising several claims of ineffective assistance of counsel. On September 30, 2016, the district court dismissed his motion as untimely. The court determined that Kemp's judgment of conviction became final on February 13, 2014, 90 days after

this Court affirmed his conviction and his period to file a petition for a writ of certiorari with the Supreme Court of the United States expired. Since Kemp's § 2255 motion was filed more than one year later, the court concluded, it was beyond the statute of limitations in 28 U.S.C. § 2255(f).

On June 22, 2018, Kemp moved in the district court to reopen his proceedings under Rule 60(b), arguing that his petition was timely under Supreme Court Rule 13.3. Ordinarily a party must petition the Supreme Court for certiorari within 90 days of entry of the relevant judgment. Sup. Ct. R. 13.1. But under Rule 13.3:

> [I]f a petition for rehearing is timely filed in the lower court by any party, or if the lower court appropriately entertains an untimely petition for rehearing or *sua sponte* considers rehearing, the time to file the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the denial of rehearing or, if rehearing is granted, the subsequent entry of judgment.

Id. R. 13.3. Kemp argued that the district court had failed to account for 13.3, which made his petition timely.

The district court denied Kemp's Rule 60(b) motion as untimely. The court determined that Kemp's motion fell under Rule 60(b)(1) because it alleged the court made a "mistake," and that such motions must be filed within one year, which Kemp's was not. *See* Fed. R. Civ. P. 60(b)(1), (c)(1). The court acknowledged that a motion under Rule 60(b)(6)—which permits the court to grant

relief from a judgment for "any other reason that justifies relief"—is timely if filed "within a reasonable time." Fed. R. Civ. P. 60(b)(6), (c)(1). But, the court explained, relief under the two subsections is mutually exclusive and Kemp's argument was a classic Rule 60(b)(1) claim. On March 6, 2020, Kemp moved for reconsideration under Federal Rule of Civil Procedure 59(e). The district court denied the motion, concluding that it was untimely and, alternatively, meritless.

Kemp appealed, and this Court issued him a certificate of appealability on whether the district court erred in denying Kemp's motions, where his § 2255 motion may have been timely filed in light of Supreme Court Rule 13.3.

II.

We review a district court's denial of relief under Rule 60(b) only for an abuse of discretion. *Jackson v. Crosby*, 437 F.3d 1290, 1295 (11th Cir. 2006). We also review for an abuse of discretion a district court's denial of relief under Rule 59(e). *Mays v. U.S. Postal Serv.*, 122 F.3d 43, 46 (11th Cir. 1997). We liberally construe the pleadings of *pro se* litigants. *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998).

III.

Kemp argues that the district court erred in dismissing as untimely his § 2255 petition. The district court's error in finding otherwise, he contends, constituted extraordinary circumstances warranting relief under Rule 60(b)(6), so

the district court erred in construing his Rule 60(b) motion as brought under Rule 60(b)(1) and dismissing it as untimely. For these same reasons, he argues that the district court erred in denying his Rule 59(e) motion. Although it does appear Kemp's § 2255 motion was timely, the district court was within its discretion to deny his motions for relief under Rules 60(b) and 59(e).

A district court may relieve a party from a final judgment, order, or proceeding for several reasons, including, as relevant here: "(1) mistake, inadvertence, surprise, or excusable neglect;" or "(6) any other reason that justifies relief." Fed. R. Civ. P. 60(b)(1), (6). A party may also, no later than 28 days after entry of a judgment, move a district court to alter or amend it. Fed. R. Civ. P. 59(e).

A motion under Rule 60(b) must be made within a reasonable time, and under (b)(1), no more than a year after the entry of the judgment or order. Fed. R. Civ. P. 60(c)(1). Relief under Rule 60(b)(6) is an extraordinary remedy that is appropriate only upon a showing of exceptional circumstances. *Griffin v. Swim-Tech Corp.*, 722 F.2d 677, 680 (11th Cir. 1984). Further, Rule 60(b)(1) and (b)(6) are mutually exclusive: "a court cannot grant relief under (b)(6) for any reason which the court could consider under (b)(1)." *Cavaliere v. Allstate Ins. Co.*, 996 F.2d 1111, 1115 (11th Cir. 1993) (internal quotation marks omitted). Rule

60(b)(1) encompasses mistakes in the application of the law and the mistakes of judges. *Parks v. U. S. Life & Credit Corp.*, 677 F.2d 838, 839–40 (11th Cir. 1982).

Kemp's initial § 2255 motion, filed on April 29, 2015, appears to have been timely. Section 2255(f) provides that a motion to vacate must be filed within one year of certain triggering dates, and here the relevant one is the date on which the judgment of conviction became final. 28 U.S.C. § 2255(f)(1). For federal criminal defendants who do not file a petition for a writ of certiorari with the Supreme Court on direct review, § 2255's one-year limitation period starts to run when the time for seeking such review expires. *Clay v. United States*, 537 U.S. 522, 532 (2003). Kemp's judgment became final—and the 90-day period for him to seek certiorari began to run—when we denied his co-appellants' petitions for rehearing en banc on May 22, 2014. *See* Sup. Ct. R. 13.3. He did not file a petition for a writ of certiorari. Thus, the deadline for Kemp to file his § 2255 motion was August 20, 2015, one year after the expiration of the 90-day period within which he could have sought certiorari. *See Clay*, 537 U.S. at 532; Sup. Ct. R. 13.1, 13.3; 28 U.S.C. § 2255(f)(1). Kemp filed his motion before this date.

However, the district court did not abuse its discretion in treating Kemp's Rule 60(b) motion challenging the § 2255 judgment as filed under Rule 60(b)(1) and dismissing it as untimely under Rule 60(c)(1). Kemp's arguments are precisely the sort of judicial mistakes in applying the relevant law that Rule

60(b)(1) encompasses. *See* Fed. R. Civ. P. 60(b)(1); *Parks*, 677 F.2d at 839–40. The district court properly construed Kemp's motion as one under Rule 60(b)(1) and dismissed it as untimely because he filed it more than one year after entry of the judgment from which he sought relief. *See* Fed. R. Civ. P. 60(c)(1). For the same reasons, the court did not abuse its discretion in denying Kemp's motion for reconsideration under Rule 59(e). *See* Fed. R. Civ. P. 59(e).

Thus, although, Kemp is correct that his § 2255 motion was timely filed, the district court ultimately did not reversibly err in dismissing as untimely his motion under Rule 60(b) and denying reconsideration under Rule 59(e). We affirm.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-10958-C

DEXTER EARL KEMP,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

Before: JORDAN and BRANCH, Circuit Judges.

BY THE COURT:

Dexter Kemp has filed a motion for reconsideration, pursuant to 11th Cir. R. 27-2 and 22-1(c), of this Court's August 14, 2020, order, which denied a certificate of appealability and leave to proceed *in forma pauperis* on appeal from the district court's denial of his Fed. R. Civ. P. 59(e) and 60(b) motions, following the dismissal of his 28 U.S.C. § 2255 motion to vacate as time-barred. Upon reconsideration, Kemp's motion for a certificate of appealability is GRANTED on the following issue only:

> Whether the district court erred in denying Kemp's Fed. R. Civ. P. 59(e) and 60(b) motions, where his § 2255 motion may have been timely in light of Sup. Ct. R. 13.3, which begins the time in which a party may file a petition for writ of *certiorari* upon the conclusion of a petition for rehearing filed by any party in the lower court.

Reasonable jurists would find debatable whether Kemp's § 2255 motion, in which he raised nine claims of ineffective assistance of counsel and appellate counsel, stated facially valid claims of a denial of constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Spencer v. United States*, 773 F.3d 1132, 1138 (11th Cir. 2014). Furthermore, Kemp is GRANTED leave to proceed *in forma pauperis* on appeal.

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-21702-CIV-LENARD/REID

DEXTER EARL KEMP,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.
_____/

ORDER ADOPTING AND SUPPLEMENTING REPORT OF MAGISTRATE JUDGE (D.E. 55), AND DISMISSING AS UNTIMELY, OR, ALTERNATIVELY, DENYING ON THE MERITS MOTION TO REOPEN MOTION UNDER 28 U.S.C. § 2255 PURSUANT TO RULE 60(b) OF THE FEDERAL RULES OF CIVIL PROCEDURE (D.E. 36)

THIS CAUSE is before the Court on the Report of Magistrate Judge Lisette M. Reid issued January 2, 2020, ("Report," D.E. 55), recommending that the Court dismiss as untimely Movant Dexter Earl Kemp's Motion to Reopen Motion Under 28 U.S.C. § 2255 Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, ("Motion," D.E. 36), filed June 19, 2018. Movant filed Objections on January 15, 2020, ("Objections I," D.E. 56), and a separate "Reply to Report of Magistrate Judge" on January 21, 2020, which the Court construes as a second set of Objections, ("Objections II," D.E. 57). Upon review of the Report, Objections, and the record, the Court finds as follows.

I. Background

Movant's criminal case arose from an investigation by the Miami Gardens Police Department into sales of crack cocaine, cocaine, marijuana, and MDMA/Ecstasy. See

United States v. Gray, 544 F. App'x 870, 874 (11th Cir. 2013). On November 9, 2010, a Grand Jury sitting in the Southern District of Florida returned a Superseding Indictment charging Movant and eight co-defendants. (See United States v. Kemp, Case No. 10-20410-Cr-Lenard, D.E. 460 (S.D. Fla. Nov. 9, 2010).)[1] The Superseding Indictment charged Movant with conspiracy to possess with the intent to distribute fifty grams or more of a mixture and substance containing a detectable amount of cocaine base, commonly known as "crack," five hundred grams or more of a mixture and substance containing a detectable amount of cocaine, and fifty kilograms or more of marijuana and a detectable amount of 3-4 methylenedioxymethamphetamine (MDMA), commonly referred to as "Ecstasy" (Count 1); possession with intent to distribute less than 50 kilograms of marijuana (Count 3); possession of a firearm in furtherance of a drug trafficking crime (Counts 8 and 9); and possession of ammunition by a convicted felon (Count 10). (See id.)

Movant pled not guilty and proceeded to a jury trial. The Court dismissed Count 9 during trial, and the jury found Movant guilty of the remaining offenses. (Cr-D.E. 950.) The Court adjudicated Movant guilty of the subject offenses and sentenced him as a career offender to a total term of 420 months' imprisonment, consisting of 360 months as to Count 1; 120 months as to Counts 3 and 10, to run concurrently with the sentence imposed as to Count 1; and a consecutive 60-month term as to Count 8. (Cr-D.E. 1104, 1250.)

Movant, along with seven of his co-defendants, appealed his convictions and sentence. Case Nos. 12-11129, 12-10990 (11th Cir. docketed Mar. 2, 2012). The Eleventh

[1] Citations to the criminal docket will hereafter be denoted (Cr-D.E. __).

Circuit consolidated the appeals and affirmed Movant's convictions and sentence (as well as those of his co-defendants) by opinion dated November 15, 2013. United States v. Gray, 544 F. App'x 870 (11th Cir. 2013). Two of Movant's co-defendants petitioned the Eleventh Circuit for rehearing or rehearing en banc, but Movant did not. Three of Movant's co-defendants filed a petition for writ of certiorari in the United States Supreme Court, but Movant did not.

On April 29, 2015, Movant initiated this case by filing a Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct his Sentence. (D.E. 1.) On February 19, 2016, retired United States Magistrate Judge Patrick A. White issued a Report recommending that the Court dismiss the 2255 Motion as time-barred. (D.E. 27 at 21.) He found that Movant's judgment of conviction became final on February 13, 2014, when the ninety-day period to file a petition for writ of certiorari expired. (Id. at 9.) Pursuant to 28 U.S.C. § 2255(f), Movant had one year from that date—specifically, February 13, 2015—to timely file a 2255 Motion. (See id.) However, Movant did not file his 2255 Motion until April 29, 2015—more than two months after the applicable deadline. (See id.) Movant filed Objections to Judge White's Report arguing that he did file a petition for writ of certiorari. (D.E. 30.) However, on September 30, 2016, the Court rejected the arguments asserted in the Objections, adopted Judge White's Report, dismissed Movant's 2255 Motion as time-barred, denied a certificate of appealability, and closed the case. (Dismissal Order, D.E. 32.)

On June 22, 2018, Movant filed the instant Motion to Reopen pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, (D.E. 36), which the Court referred to Judge White,

(D.E. 37).[2] In the Motion, Movant argues that his 2255 Motion was not time-barred because there was a Petition for Rehearing or Rehearing en Banc pending in the Eleventh Circuit until May 22, 2014 when the Eleventh Circuit denied it. (Mot. at 13.) He argues that because he filed his 2255 Motion within one year of that date, it was not untimely. (Id.) The Motion does not specify which provision of Rule 60(b) Movant is relying on.

The Government filed a Response arguing that although Movant moved for two extensions of time to petition for rehearing, and although two of his co-defendants in the consolidated appeal filed petitions for rehearing or rehearing en banc, Movant did not request rehearing and did not join in either of his co-defendants' petitions. (D.E. 44 at 2.)

In his Reply brief, Movant concedes that "there is no evidence to support that [he] filed a petition for rehearing or adopted a co-defendant's petition for rehearing," but argues that the Court should nevertheless calculate the limitations period from May 22, 2014, the date the Eleventh Circuit denied his co-defendants' petitions for rehearing en banc. (D.E. 45 at 2.)

Judge White subsequently retired, and Magistrate Judge Lisette M. Reid was assigned all matters previously referred to Judge White. See Admin. Order 2019-2 (S.D. Fla. Jan. 2, 2019). On January 2, 2020, Judge Reid issued her Report finding that the Rule 60(b) Motion is untimely. (D.E. 55.) Specifically, Judge Reid found that the Motion is

[2] Judge White initially construed the Motion as a second or successive 2255 Motion and directed the Clerk to open it in a new case, Case No. 18-23173-Civ-Lenard. (D.E. 38.) Thereafter, the Court issued an Order finding that the Motion was improperly characterized as a motion under Section 2255, and administratively closed Case No. 18-23173-Civ-Lenard.

seeking reconsideration under Rule 60(b)(1) based on an alleged mistake made by the Court, but was filed beyond Rule 60(c)(1)'s one-year limitations period. (Report at 4-5.)

In his Objections, Movant argues that the Court should construe the Motion as one under Rule 60(b)(6) and find that it was filed within a reasonable time under Rule 60(c)(1). (Obj. I at 5.)

II. Legal Standard

Upon receipt of the Magistrate Judge's Report and Petitioner's Objections, the Court must "make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1); accord Fed. R. Civ. P. 72(b)(3). The court must conduct a de novo review of any part of the Report that has been "properly objected to." Fed. R. Civ. P. 72(b)(3); see 28 U.S.C. § 636(b)(1) (providing that the district court "shall make a de novo determination of those portions of the [R & R] to which objection is made"). "Parties filing objections to a magistrate's report and recommendation must specifically identify those findings objected to. Frivolous, conclusive, or general objections need not be considered by the district court." Marsden v. Moore, 847 F.2d 1536, 1548 (11th Cir. 1988). Those portions of a magistrate's report and recommendation to which no objection has been made are reviewed for clear error. See Lombardo v. United States, 222 F. Supp. 2d 1367, 1369 (S.D. Fla. 2002); see also Macort. v. Prem, Inc., 208 F. App'x 781, 784 (11th Cir. 2006) ("Most circuits agree that [i]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.") (internal quotation marks

and citations omitted). The Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).

III. Discussion

Federal Rule of Civil Procedure 60(b) provides that a Court may relieve a party from a final judgment or order for the following reasons:

> **(1)** mistake, inadvertence, surprise, or excusable neglect;
>
> **(2)** newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> **(3)** fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> **(4)** the judgment is void;
>
> **(5)** the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> **(6)** any other reason that justifies relief.

Fed. R. Civ. P 60(b). "A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed R. Civ. P. 60(c)(1).

Judge Reid found that Movant's Motion to Reopen is a motion under Rule 60(b)(1): "Movant is attempting to correct what he argues was a legal error in the denial of his § 2255 motion as untimely. Such a legal error can qualify as a mistake under Rule 60(b)." (Report at 4 (citing Turner v. Howerton, No. 06-16268, 2007 WL 3082138, at *3 (11th Cir. Oct. 23, 2007)).) And because the Motion was filed more than one year after the Court's

Order dismissing his 2255 Motion, Judge Reid found the Motion to Reopen is untimely under Rule 60(c)(1). (Id. at 5.)

Movant agrees with Judge Reid that his Motion to Reopen asserts legal error: "[T]he Magistrate is correct, in that, Petitioner's Rule 60(b) motion is appropriate since it argues that there was legal error in the denial of his Title 28 U.S.C. § 2255 motion as untimely." (Obj. I at 3.) However, Movant argues that the Motion should be construed as one under Rule 60(b)(6). (Obj. I at 5.) He further argues that his Motion to Reopen—which was filed almost two years after the Court's Dismissal Order—was filed within a reasonable time when considering, inter alia, that between June 3, 2015 and February 21, 2018, he was in state custody defending state court charges. (Id. at 4.)

The Eleventh Circuit "consistently has held that 60(b)(1) and (b)(6) are mutually exclusive. Therefore, a court cannot grant relief under (b)(6) for any reason which the court could consider under (b)(1)." Sloaroll Shade & Shutter Corp. Inc. v. Bio-Energy Sys., Inc., 803 F.2d 1130, 1133 (11th Cir. 1986) (citing Hall v. Alabama, 700 F.2d 1333, 1338 (11th Cir. 1983); Gulf Coast Bldg. & Suppl Co. v. Int'l Bhd. of Elec. Workers, 460 F.2d 105, 108 (5th Cir. 1972)). "Rule 60(b)(1) covers 'mistakes of fact as well as mistakes of law.'" Brown v. Wal-Mart Stores E., LP, 1:16-cv-111-WSD, 2017 WL 3608186, at *2 (N.D. Ga. Aug. 22, 2017) (quoting McCall v. Whisky, No. 3:13-cv-79, 2014 WL 12524655, at *1 (N.D. Ga. Apr. 10, 2014)). See also Parks v. U.S. Life & Credit Corp., 677 F.2d 838, 839-40 (11th Cir. 1982) ("Rule 60(b)(1) authorizes a court to grant relief from judgments for 'mistake, inadvertence, surprise, or excusable neglect.' The 'mistakes' of judges may be remedied under this provision. Meadows v. Cohen, 409 F.2d 750, 752

n.4 (5th Cir. 1969). The rule encompasses mistakes in the application of the law.") (citing Oliver v. Home Indem. Co., 470 F.2d 329 (5th Cir. 1972)); Turner, 2007 WL 30821385, at *3 ("A legal error in a judicial ruling can constitute a 'mistake' as that term is used in Rule 60(b)."); Nisson v. Lundy, 975 F.2d 802, 806 (11th Cir. 1992) (stating that Rule 60(b)'s use of the broad term "mistakes" "seems to include mistakes of fact as well as mistakes of law").

Thus, whether construed as a mistake of fact or a mistake of law, Movant's argument that the Court erroneously determined that his 2255 Motion was untimely is cognizable under Rule 60(b)(1). Because it is cognizable under Rule 60(b)(1), it is not cognizable under Rule 60(b)(6). Sloaroll Shade & Shutter, 803 F.2d at 1133 (citing Hall, 700 F.2d at 1338; Gulf Coast Bldg. & Supply, 460 F.2d at 108). And because it was filed more than a year after the Court entered its Dismissal Order, the Motion to Reopen is untimely under Rule 60(c)(1).

Alternatively, the Motion fails on the merits. Relevant here, 28 U.S.C. § 2255(f) provides for a one-year limitations period running from "the date on which the judgment of conviction becomes final[.]" 28 U.S.C. § 2255(f)(1). "For the purpose of starting the clock on § 2255's one-year limitation period, . . . a judgment of conviction becomes final when the time expires for filing a petition for certiorari contesting the appellate court's affirmation of the conviction." Clay v. United States, 537 U.S. 522, 525 (2003).

Here, the Eleventh Circuit affirmed Movant's conviction and sentence on November 15, 2013. United States v. Gray, 544 F. App'x 870 (11th Cir. 2013). Because Movant did not petition the Supreme Court of a writ of certiorari or petition the Eleventh Circuit for

rehearing, his conviction became final ninety days later on February 13, 2014. Movant filed his 2255 Motion more than one year later on April 29, 2015. (D.E. 1 at 13.)

Movant argues that because two of his co-defendants petitioned the Eleventh Circuit for rehearing or rehearing en banc, his conviction did not become final until 90 days after the Eleventh Circuit denied the petitions for rehearing on May 22, 2014. (Mot. at 12-13.) He argues that because his 2255 Motion was filed within one year of May 22, 2014, it should be deemed timely filed. (Id. at 13.)

However, the Court finds that the May 22, 2014 Order denying the Petitions for Rehearing and Rehearing En Banc does not apply to Movant. After the Eleventh Circuit issued its opinion affirming Movant's convictions and sentence, Movant joined in two motions for extension of time to file a petition for rehearing. See United States v. Kemp, Case No. 12-10990 (11th Cir. Nov. 26, 2013 & Dec. 1, 2013). The Eleventh Circuit granted both of those motions. Id. (11th Cir. Nov. 26, 2013 & Dec. 17, 2013). However, movant never filed a petition for rehearing or rehearing en banc, and did not join in or adopt either of the petitions filed by his co-defendants'. See id. (11th Cir. Dec. 5, 2031) (Rahim Jefferson's petition for rehearing en banc); id. (11th Cir. Dec. 23, 2013) (Jonathan Morley's petition for rehearing en banc). Thus, Movant's convictions and sentence became final on April 29, 2015—ninety days after the Eleventh Circuit affirmed his convictions and sentence. Clay, 537 U.S. at 525. Because his 2255 Motion was filed more than one year later, it was untimely. 2255 U.S.C. § 2255(f)(1). The Court committed no mistake of law or fact.

IV. Conclusion

Accordingly, it is **ORDERED AND ADJUDGED** that:

1. The Report of the Magistrate Judge issued January 2, 2020 (D.E. 55) is **ADOPTED** as supplemented herein;

2. Movant's Motion to Reopen Motion Under 28 U.S.C. § 2255 Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure is **DISMISSED as untimely**, or, alternatively, **DENIED on the merits**;

3. A Certificate of Appealability **SHALL NOT ISSUE**; and

4. This case remains **CLOSED.**

DONE AND ORDERED in Chambers at Miami, Florida this 5th day of February, 2020.

JOAN A. LENARD
UNITED STATES DISTRICT JUDGE