

ENTERED

December 17, 2020

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

UNITED STATES OF AMERICA §
v. §
§
§
§
§
§
EDWIN OLAND ANDRUS. §
CRIMINAL ACTION NO. L-17-78

MEMORANDUM OPINION AND ORDER

Defendant Edwin Oland Andrus, proceeding *pro se*, filed a motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. (Docket Entry No. 92.) The Government filed a motion to dismiss the section 2255 motion predicated on expiration of limitations (Docket Entry No. 96), to which Defendant filed a response (Docket Entry No. 97).

Having considered the section 2255 motion, the motion to dismiss, the response, the record, and the applicable law, the Court **GRANTS** the motion to dismiss and **DISMISSES** the section 2255 motion as barred by limitations.

I. BACKGROUND AND CLAIMS

A jury convicted Defendant of one count of attempted coercion and enticement of a minor in violation of 18 U.S.C. § 2422(b). The Court sentenced him to a term of 120 months in federal incarceration, to be followed by a seven-year term of supervised release. (Docket Entry No. 82.) Judgment was entered on March 5, 2018. *Id.* The judgment was affirmed on appeal, and the Supreme Court denied a writ of certiorari on April 15, 2019.

Appendix

A

Defendant filed his pending section 2255 motion on June 5, 2020, claiming that (1) the Court erred by denying his motion to dismiss the indictment; (2) the rule of lenity should have been applied in his favor; (3) trial counsel rendered ineffective assistance of counsel by failing to raise an entrapment defense; and (4) his conviction violated the Tenth Amendment.

The Government argues that the motion should be dismissed as barred by limitations.

II. ANALYSIS

A one-year statute of limitations governs section 2255 proceedings. 28 U.S.C. § 2255(f). Under section 2255(f)(1),¹ a section 2255 motion is due one year from “the date on which the judgment of conviction [became] final.” Here, the judgment became final for purposes of section 2255 on April 15, 2019, when the Supreme Court denied certiorari, and expired one year later, on April 15, 2020. As alleged by the Government, Defendant’s section 2255 motion, filed on June 5, 2020, is untimely by approximately seven weeks.

In his response to the Government’s motion to dismiss, Defendant argues that his habeas petition should be heard. In support, he states that his case has “clear Constitutional issues,” and that any rule or law that would bar resolution of his claims is “inherently unconstitutional.” No legal authorities are cited in support, and the Court finds none. Defendant further argues that equitable tolling should apply because it would be

¹The alternative commencement dates for the one-year limitations period provided in 28 U.S.C. §§ 2255(f)(2), (3) and (4) do not apply in this case, and Defendant argues nothing to the contrary. Defendant’s allegations show that he was aware of the facts underlying his claims at the time they occurred prior to trial and during trial.

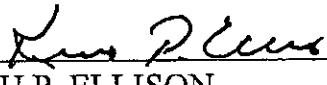
“inequitable” not to address his significant constitutional issues. The Supreme Court has stated that a habeas petitioner is entitled to equitable tolling only if he shows that: (1) he has been pursuing his rights diligently, and (2) some extraordinary circumstance prevented a timely filing. *Holland v. Florida*, 560 U.S. 631, 649 (2010). Defendant’s arguments do not raise a viable basis for application of equitable tolling.

Defendant pleads no factual or legal basis that would support the timeliness of his section 2255 motion, and the Government is entitled to dismissal of the motion.

III. CONCLUSION

The Government’s motion to dismiss (Docket Entry No. 96) is **GRANTED** and Defendant’s section 2255 motion (Docket Entry No. 92) is **DISMISSED WITH PREJUDICE** as barred by limitations. A certificate of appealability is **DENIED**. The related civil case, *United States v. Andrus*, C.A. No. 4:20-CV-2042 (S.D. Tex.), is **ORDERED ADMINISTRATIVELY CLOSED**.

Signed at Houston, Texas, on this the 15th day of December, 2020.


KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

United States Court of Appeals for the Fifth Circuit

ORDER General Docket No. 2021-3

General Order 2020-7 instructed the clerk's office to extend deadlines for incarcerated pro se filers in 30-day increments because procedures put in place to respond to COVID-19 by the Federal Bureau of Prisons, Louisiana Department of Public Safety & Corrections, Mississippi Department of Corrections, and the Texas Department of Criminal Justice prevented or delayed the ability of incarcerated filers to meet filing deadlines. Conditions in these facilities no longer require a blanket extension of deadlines. Accordingly, the court hereby rescinds the provision of General Order 2020-7 that directed the clerk to extend deadlines in 30-day increments. The clerk will advise incarcerated pro se filers previously granted extensions of this action and establish future deadlines in accordance with Federal Rules of Appellate Procedure or Fifth Circuit Local Rules.

All previous changes ordered in General Docket Nos. 2020-3, 2020-4, 2020-5, 2020-6 remain in effect.

Dated this 22nd day of January 2021.



PRISCILLA R. OWEN

*Chief Judge, United States Court of Appeals
for the Fifth Circuit*