

NO. 21-7746

IN THE

SUPREME COURT OF THE UNITED STATES

DAVID PIPER JR
(Your Name)

— PETITIONER

Supreme Court, U.S.
FILED

FEB 17 2022

OFFICE OF THE CLERK

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DAVID PIPER JR.
(Your Name)

P.O. BOX 9000-LOW
(Address)

FORREST CITY, AR 72336
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Whether the Court of Appeals denying Piper's 2255 motion to vacate, set aside, or correct his sentence for a Certificate of Appealability reasons were correct.

It states that "Because Piper does not challenge the finding that his 2255 motion was untimely, he waived review of the determination. (see Court of Appeals order).

Piper is a pro-se petitioner and when applying for a COA Piper thought he was challenging the district court's dismissal of his 2255 motion as untimely. (see Court of Appeals order).

Whether the prisoner (Piper) demonstrated that "jurists of reason would find it debatable whether the (motion) states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling" (see 2255 motion, the Response to show cause, and ---Reply to government's response regarding untimely 2255 motion). Miller v. Cockrell, 537 U.S. 322, 337 (2003).

The Court of Appeals failed to rule on whether Piper was eligible for equitable tolling.

Does the AEDPA create a constitutionally violative procedural deadline impeding access to the court using the statutory mechanism under 18 U.S.C. § 2255?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

DAVID PIPER JR.--Petitioner

RELATED CASES

Markel Latrae Bass v. Attorney General
United States Court of Appeals for the Eleventh Circuit
2020 U.S. App. LEXIS 20477
No. 20-10985-F
June 30, 2020 filed

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

- reported at 2021 U.S. Dist. LEXIS 65345 WL 1250328 (N.D. Tex. Apr 5, 2021)
- has been designated for publication but is not yet reported; or,
- is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

- reported at
- has been designated for publication but is not yet reported; or,
- is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix to the petition and is

- reported at _____; or,
- has been designated for publication but is not yet reported; or,
- is unpublished.

The opinion of the _____ court appears at Appendix to the petition and is

- reported at _____; or,
- has been designated for publication but is not yet reported; or,
- is unpublished.

JURISDICTION

For cases from **federal courts**:

- The date on which the United States Court of Appeals decided my case was November 22, 2021.
- No petition for rehearing was timely filed in my case.
- [] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.
- [] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __ A _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

- The U.S. Court of Appeals for the 5th Circuit had jurisdiction pursuant to 28 U.S.C. 1291 and 18 U.S.C. 3742(a).
- The U.S. District Court, Northern District of Texas, Fort Worth Division had jurisdiction pursuant to 18 U.S.C. 3231.
- This petition was filed within 90 days of November 22, 2021 and therefore timely under Se Sup Ct R. 13.1.

[] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

- [] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.
- [] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __ A _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- I. First Amendment Right, the Article IV Privileges and Immunities Clause.
- II. Fifth Amendment and or Fourteenth Amendment, the Constitutional Right to access to the courts.
- III. Eighth Amendment, Unconstitutional prison conditions.
- IV. Sixth Amendment, Ineffective assistance of counsel.
- V. Does the AEDPA create a constitutionally violative procedural deadline impeding access to the court using the statutory mechanism under 18 U.S.C. § 2255.

STATEMENT OF CASE

The Court of appeals denied the COA because it states that: "Piper contends that the district court erred in determine that he was not entitled to equitable tolling because Piper does not challenge the finding, his 2255 motion was untimely. He has waived review of this determination."

The court of appeals did not mention whether they agreed with Piper or the district court whether Piper was entitled to equitable tolling. Piper is very confused because when Piper applied for a COA he thought that was what he was doing, challenging the denial of his 2255 motion as untimely how else could Piper show the district court erred in its procedural ruling? Piper's intent is obvious in his application for a COA.

Disallowing an appeal when a federal prisoner makes a constitutional challenge in a section 2255 motion, when the district court denies the motion on procedural grounds is an injustice that the Supreme Court should decide.

The court of appeals should have considered Pipers pro sec status when ruling on a application for a COA.

Pro se pleadings are held to a less stringent standard than pleads drafted by attorney's and therfore, be liberally construed. Tannenbaum vs. United States 148 F. 3d 1262 (11th Cir. 1998)

Piper claims that the Court of Appeals erred in its decision to waive review of the district courts findings that Pipers 2255 motion was untimely.

Piper also challages the court of appeals failure to rule on whether piper was eligible for equitable tolling.

Petitioner contends that whether the board incorrectly, (in this case) also failed to apply equitable tolling due diligence standards to the undisputed facts of the case is a "question of law" that provision authorizes court of appeals to consider.

Because the equitable tolling doctrine is based on notions of equity and fairness.

The ninth circuit has said that about 30 days after elimination of the roadblock should be sufficient. Gullory v. Roe, 329 F 3d 1015, 1018, n.2 (9th Cir.. 2009)

To cbtain a COA Piper must show denial af constitutional right. To satisfy this standard when the district court has denied a 2255 motion on procedural grounds the prisoner must demondstrate that "Jurist of reason would find it debatable whether the district court was correct in its procedural ruling.

The required showing means (In other words does the Petitioner at least allege a valid claim, even though it hasn't been proven yet)

The Court of Appeals denial for a COA was clearly debateable and Piper should have been granted a COA.

Obtaining a Certificate of Appealability "does not require a showing that the appeal will succed" and "a court of appeals should not decline the application...merely because it believes the applicant will not demonstrate an entitlement to relief." Miller v. Cockell, 537 U.S. 322, 337 (2003)

In all of Piper's responses to show cause why his 2255 motion should not be dismissed as untimely. Not once has the district court acknowledged that Piper has even stated any response why his motion should not be dismissed, instead the court ignores Pipers detailed explanation and states that.

"Piper has not offered any explanation what happened during the 9 months prior to January 20, 2020. Piper does not cite any impediment not of his own making" He is not entitled to equitable tolling for those reasons, motion is dismissed as untimely.

The District Courts reasons for dismissal of Piper's 2255 motion is simply not true. It was based on unreasonable determination of the facts in light of the evidence presented, Piper was prejudiced and the court has clearly erred in its decision.

The AEDPA's amendment of 28 U.S.C. imposed a one year statue of limitation which is triggered by the latest four events:
1) the date in which the judgment of conviction becomes final
2) The date in which the impediment to making a motion created by a government action in violation of constitution of law of the United States is removed. If the motion prevented from making a motion by such government action.

In the district courts opinion an order dismissing Pipers 2255 motion as untimely the courts reasons are not supported by the record, In fact the court as clearly erred in its determination in light of the record and surrounding circumstances that were extraordinary circumstances beyond Pipers control. That is in fact what prevented Pipers timely filling. Piper has also show diligence throughout the one year limitation.

Piper has spent a huge amount of time preparing his 2255 motion. Piper has responded to all the clerks orders, and replied to the Governments orders, filled twice for a leave in form of pauper (Court of Appeals) (Writ of Cert). Applied for a COA and petitioned for a writ of cert. It would make no sense to abandon 1 year limitation in filling the 2255.

Piper not only explained what happened prior during the 9 month period prior to January 2020, he explains what happened way beyond the 1 year limitation until September 2020.

In the district court's opinion and order dismissing Piper's 2255 motion as untimely, the Court quotes a few statement Piper made in his Response to show cause. The only trouble with this is they are using them out of context and changing words and leaving words out in order to make it sound like Piper laid around and made no attempt to work on his motion. The recycled statements are also used to justify the dismissal. He laments that he should have; "read about how to file a proper 2255 motion after the 1 year statute of limitation has expired." He concludes that had he foreseen the Covid-19 epidemic, he probably could have gotten the motion done before the lockdown." The government quoted that same statement in their Response to show cause in the exact same way. Piper explains what the real statement means in Piper's Reply to the Government's Order to show cause. But the District Court ignored it. Piper will let this Court read it and judge for their selves. I can see the government using this tactic since it's their job to keep prisoners in jail, but for the District Court to do it in order to belittle Piper and justify their denial. Even worse, the court ignores every event Piper mentioned that took place during the 1-year limitation and the Court makes a false statement that Piper failed to explain what happened during the 9 months prior to January 2020 and Piper does not cite any impediment not of his own making.

I have to question the integrity of this Court. The Court ignores Piper's Order and copies most of the government's Order in their dismissal. This Court is in a habit of adopting the government's claims and failing to do its own investigation in search of the truth. Just as it did when adopting the Probation Officers findings as reliable in the PSR when sentencing Piper. The Judge that ruled on Piper's Di . . . appeal and also the government when responding to Piper's Briefs that state that Piper's PSR "is vague, baseless, and lacks foundation," and "The government was unable to find where PSR statements come from and Piper could use the statement to impeach witnesses." Piper has picked the PSR app. . . in his 2255 motion that the judge used to sentence Piper to 235 months. But thus far the motion has not been reviewed on its merits.

Piper only wishes to be treated fairly and not unfairly, and to be acknowledged and not ignored, to realize what he has been through and not blamed for something he had no control over.

During the Covid-19 pandemic, all the inmates at FCC Forrest City Arkansas Low institution were faced with difficult circumstances dealing with the quick-spreading airborne virus. But nothing could possibly compare to the unexpected, terrorizing, inhumane treatment that around 70 inmates from Marianna Alpha unit went through due to the BOP prison officials' actions in their reckless attempts at containing the outbreak. Out of the 170-plus inmates that lived in Marianna Alpha unit, 100 of the inmates tested positive at the time of the first testing. Since there were so many positive cases, they were left in Marianna Alpha to quarantine (believe it or not, they were the lucky ones). The remaining 70 inmates were moved to the Unicor building and placed on cots around these huge woodworking machines because they tested negative at the time of first testing. Piper was one of these inmates. Learning of the number of infected inmates and the likelihood of being infected was very strong and all the different ways it affected people was really scary. When our personal belongings were brought to us in bags we had to stack them around our cots. They made an announcement that all our paper items like newspapers, legal papers, drawings, all except for one book for each inmate. These items would be stored in our Unit Manager (Mrs.. Gallardo)'s storage room. Piper asked the person in charge that he was filing a 2255 motion and needed his legal papers as soon as possible before his 1-year limitation ran out. He was told that his was a worldwide pandemic and he had little doubt the courts would be extending filing deadlines. At the time there would have been no ways of working on the motion because there were no tables, chairs, paper, envelopes, stamps, or addresses to the court. The court needs to realize that it wasn't just one or two events that impacted

Piper's 1-year filing limitation it was a combination of things. Piper has mentioned these impediments in his Motion to Leave to Amend, Response to order to show cause, Reply to government's order to show cause, Application for a COA.

To prove an Eighth amendment claim for unconstitutional prison conditions, a inmate must show that he was exposed to a objective risk of serious harm and that prison officials subsequently acted with deliberate to inmate health or safety. Farmer V. Brennan, 511 U.S. 825, 834, 174 ct. 1970, 128 L. Ed. 2d 811 (1994)

The constitutional right of access to the courts is grounds in the First Amendment, the article IV privilege's and immunities clause, the Firth Amendment and/or the Fourteenth Amendment. Chappell V. Rich, 340 F. 3d 1279 (11th Cir. 2003)

The coronavirus pandemic was the extraordinary circumstance. The lockdown of the prison that started a landslide of impediments, closure of the law library, living in a warehouse on a cot, taken away from Unit Team; Counselor Hagler, Case Manager Hanks, Unit Manager Gallardo with no way of contacting them, with the toss of computers to sent copouts, storage of legal papers, inability to access the courts, legal assistance in helping file a non-frivolous motion, living conditions, conflicts, and access to the bathroom, fights and access to the one phone, lack of supervision, freezing temperature in the building, outbreak of scabies, outbreak of fungal infections, lack of medical attention, struggles with normal day-to-day needs, (bath, shave, change clothes, brushing teeth, eating on cot, everything you owned in bags). Piper has also show diligence throughout the 1-year limitation and several months past the limitation. Why the district court has failed to even acknowledge the response they requested Piper to make in his Response to show cause, and Reply to government's Response to show cause. The district court ignores the true undenying magnitude of the inhuman, unconstitutional "compelling circumstances" that prevented Piper from filing a timely 2255 motion.

Equitable tolling, whether litigant's efforts were reasonable in light of the circumstances, Hollana v. Florida, 510 U.S. 631,653-654 130 S. Ct. 2549, 177 L. Ed. 2d 130 (2010) (Breyer, Fourth Court)

Piper would like to enlighten the court about an inmate filing a 2255 motion on my behalf without telling me. Piper also explains this in his responses to show cause.

Before the lockdown and outbreak of Covid Piper was assisted by an inmate helping him make his 2255 motion. Like I have stated before, the motion was nearly complete when we were separated. I was taken to the UNICOR building, he lived in Wynne Bravo unit. To this day I have not seen him since. He went home before the lockdown was over. When he filed the motion his situation was way different than mine. He never left his unit, he had pens, paper, envelopes, email, access to the court although he didn't have access to the law library or my legal papers or the original motion we were working on. As a result he had to go by memory on the issues and was unable to effectively file a motion like the one we were working on. When Piper became aware of his friend filing to motion, Piper wrote to the court and asked to be able to supplement or amend the motion. The court stated that the request had to be done along with the amended 2255 motion. As soon as Piper received his legal papers he did so. Piper wishes he would have been left. My friend's motion signed under "next friend" and amended it. Piper only wanted to be truthful about what had happened and why. As a result his motion was most likely moot without Piper's legal papers and Piper's motion shows substantial violation of constitutional rights that have never been reviewed on the merit.

The fact that Piper's friend remembered so much about my grounds and my trial should also show that they were working on the motion diligently before the impediment.

REASONS WHY GRANTING THE PETITION

This petition goes way beyond the Covid 19 pandemic, the lockdown of the prison, access to the law library, and storage of legal papers. Courts have ruled on these with mixed results. Piper's issues that prevented his timely filing is most likely a first. And was truly an extraordinary circumstance.

Piper has been an inmate at Forrest City Low for 5 years so this is his home and he keeps a daily schedule. He lives in Marianna Alpha unit. He works 5 days a week. He takes the requested classes his case manager suggests on his free evenings, and Saturdays, he worked on his 2255 motion. Piper has never missed a day's work or failed to go to a class ever. There is absolutely no way Piper would have failed to make the one-year limitation period had it not been for a number of obstacles that were impossible to remove before the deadline passed. When Piper was taken from his home and daily life and moved to a Unicor building on a cot around huge wood-working machines. Subject to diseases, infections, inhumane living conditions. After considering these circumstances along with the worldwide impact the coronavirus had in the beginning.

This case is about statue of limitation. To file a motion and when a motion is filed after a limitation period the district court will request the petitioner to "show cause" why the motion should not be dismissed as untimely. One principle of equity that survived the section 2255 statue of limitation imposed pursuant to the AEDPA is the concept of equitable tolling. The one year (section 2255 statue of limitation is not jurisdictional and is subject to equitable tolling)

Equitable tolling is " A courts discretionary extension of a legal deadline as a result of extraordinary circumstances that prevented one from complying despite reasonable diligence throughout the period before the deadline passed. "

When a motive misses the one year limitation equitable tolling, the court may hold a evidentiary hearing to determine whether the preventive obstacle amounts to a extraordinary circumstance and whether motive exercised reasonable diligence.

What happens when a motive has made these requirements but the district court ignores them and the 2255 motion is dismissed as untimely and motive applies for a COA with the court of appeals based on the district courts baseless unreliable determination of the facts in light of the evidence presented, but the court of appeals fails to determine if motive is eligible for equitable tolling and waives review of the district courts determination if it was untimely.

Piper responded to the district court's order to show cause and explained in detail the obstacles he faced and his reasonable diligence and progress he had made toward completing his non-frivolous 2255 motion.

The district court chose to ignore Piper's Response and states "he does not offer any explanation of what happened during the nine months prior to January 2020, when he should have been preparing his motion. He does not cite any impediment not to his own making that prevent him from timely filing his motion. He is not entitled to equitable tolling." "Movant's motion is dismissed as untimely."

Piper filed a notice of appeal and sent an application for a COA with the court of Appeals. In the Court of Appeals order it states, "Piper contends that the district court erred in determining that he was not entitled to equitable tolling. Because Piper does not challenge the finding that his 2255 motion was untimely, he has waived review of this determination."

When applying for a COA as a Pro Se movant that's what Piper thought he was doing.

Piper was convicted of a conspiracy drug charge by a jury and sentenced to 235 months solely on circumstantial evidence. Piper's defense counsel's ineffective assistance of counsel not only lead to Piper's conviction it aided prosecution and Judge's baseless sentence and enhancements.

When the court of appeals failed to rule on Equitable tolling and waived review of the district courts decision Piper was prejudice and needs the Supreme Court to step in and grant a Writ of Cert.

Currently Federal courts are issuing their own orders concerning statutes. Some states have authorized case-specific extensions. On March 13, 2020, the Supreme Court of Texas issued its first Emergency Order permitting Judges to extend the

statute of limitation in any civil case for a stated period of no later than 30 days after the governor's state of disaster has lifted.

Nothing could possibly make Piper happier than to simply have his 2255 motion reviewed on the merits after all the hundreds of hours Piper has put into this motion and the unbelievable heartbreaking events he has gone through in order to have his 2255 motion reviewed?

Piper was deprived of his habeas filing right but-for the unconstitutionally vague interpretation of the AEDPA by the lower court.

a. Piper's motion to vacate provided him with an opportunity to challenge the lawfulness of his sentence pursuant to 28 U.S.C. § 2255. Section 2255, however, contains a provision of the Antiterrorism and Effective Death Penalty Act (AEDPA) that imposes a 1-year period of limitation for a movant to file his § 2255 motion to the court. (§ 2255(f)). The AEDPA is devoid of any definitive explanation as to what counts as 1-year period.

In construing the meaning of the '1-year period' provision, the United States District Court and Court of Appeals for the Sixth Circuit have determined this phrase means a single calendar year of 365 days, as it is generally understood using the Gregorian calendar system of ordered days, months, and years.

But these lower courts have taken a hardline approach in applying this rendition. Without exception, Piper's 1-year period accrued despite the exceptional circumstances created under the COVID pandemic and by the Bureau of Prison's modified operational regime that ultimately made access to legal resources impossible. These lower courts, nevertheless, have determined his days advance without regard to non-governmentally created impediments and that the remaining time, unaffected by the impediment, is sufficient to comply with the mandates of the AEDPA. (see § 2255(f)(2)).

Piper posits that the lower court's precedent, using this definitional interpretation, is a legal mistake in need of resolution by this Court. Section 2255 makes available one opportunity for each prisoner to test the constitutionality or lawfulness of his sentence when no law may authorize the deprivation of his liberty. The lower court's conclusion, if taken whole-cloth, would indirectly foreclose this single opportunity for prisoners seeking relief despite the fact that non-governmentally created impediments may obstruct their post-conviction relief pursuits through no fault of their own. That very scenario occurred in Piper's case.

Without a clear ruling as to the definition to the 1-year period, as it relates to Piper's opportunity to research, develop, and construct his challenge, the entire class of prisoners as a whole, as well as the lower courts, are left to guess as to its proper meaning and application.

A collateral challenge to the availability of a mechanism to raise such an important claim was considered by the Eleventh Circuit. (McCarthan v. Director of Goodwill Ind, 851 F.3d 1076, Mar. 14, 2017). The McCarthan court, in the dissent, vehemently opposed such a procedural constraint-citing that habeas corpus is of such fundamental importance to this nation's legal system that it has been enshrined into our constitution under U.S. Const. Article I, § 9 cl. 2 as a tool to be available to any person who finds himself in jail when he ought not be there. Id.

Most every other lower court has taken a less-rigid approach in construing the 1-year time limitation under § 2255. For instance, in U.S. v. Vaughan (related case no. 1:14-CR-00639) the district court granted Vaughn's § 2255 motion as timely despite service to the court just days past his 1-year period. This is because Vaughn was able to demonstrate that the holidays observed by the prison resulted in a cumulative closure of the law library for more than 30 days. The district court observed that Vaughn should have had unimpeded access constituting his 1-year AEDPA timeframe, and ultimately forgave his late filing under an otherwise rigid analysis.

b. In addition to the unconstitutionally vague meaning of the 1-year period phrase, the AEDPA also creates a nearly insurmountable rule of law to file a second or successive § 2255 petition under subsection (h)(2). The repressive rule under § 2255 (h)(2) sets forth a restraint upon movants, like Piper, to await specific performance by the Supreme Court before he may file for such relief. This performance is premised upon the creation, by the Court of a new rule of retroactive constitutional law.

Piper asserts this restriction is improper because it relies upon performance and circumstances beyond his control.

This circumstance, or creation of a new opportunity to seek relief by a second or successive motion, is already contemplated using the post-conviction relief mechanism under 18 U.S.C. § 3582. But, when applied to section 2255, it serves as an impeditive barrier to utilizing the various forms of procedural assistance available under section 2255, such as the ability to expand the record. (Rule 6, section 2255 cases).

Accordingly, the constitutional clause, as cited above, favors a habeas practice that is protected from these types of conflicts. The question presented here is ripe for resolution and only this court can resolve the conflict.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

David Piper

Date: April 20, 2022

In the United States
Court of Appeals
Fifth Circuit

Request for a Certificate of Appealability

David Piper, Jr. hereby requests the issuance of a Certificate of Appealability in Case No. listed above, to be considered by this Honorable United States Appellate Court, 5th Circuit, Northern District of Texas.

A Notice of Appeal was sent to the District Court on April 29, 2021.

Piper received final judgement notice, dated 6th day of April 2021. The court dismissed Piper's 2255 motion as untimely (Doc 12at4). The court states that Piper does not offer any explanation for what happened during the nine months prior to January 2020, (before Covid 19 lockdown and storage of legal papers), when he should have been preparing his motion. (Doc 12at4). That statement is simply not true. Piper explains exactly what he was doing prior to January 2020. (Doc 5at1-3)(Doc 11at1-2). Along with Piper's full time job and being involved in RPP and ACE classes and has now completed 14 of them. Piper would receive visits most weekends from his wife of 18 years before her sudden death on September 5, 2019. Piper is also the commissioner over the Pickle Ball league and tournaments.

Piper sent requests to court for appointed counsel and was denied several months later. (Doc 264) Piper sent request to the district clerk's office for the 2255 forms. Piper sent letters to trial and appeal lawyers asking for documents in my case. Piper sent letters to police in Oklahoma and Texas and received police reports and docket sheets on Garza, Rosales (witnesses). Piper read all about Habeas Corpus procedure and what needed to be proved and how it would have changed the outcome of the trial.

The court states that Piper does not cite to any impediment not to his own making that prevented him from timely filing his motion. He is not entitled equitable tolling. (Doc 12at4).

After reading Piper's response to Order to Show Cause (Doc5) and Reply to Government's Preliminary Response Regarding Untimely Section 2255 Motion (Doc11) there is no way the court can honestly believe after all the hardships and fear Piper faced everyday that they were of his own making.

Piper was working on his 2255 motion with reasonable diligence from day one and was nearly completed before his legal papers were taken and stored in Unit Manager's storage room

According to the court's dismissal (Doc 12) it was dismissed because Piper should have had his motion completed and filed within the nine months before the "extraordinary circumstances" prevented Piper from moving forward. That is like asking a carpenter to write out a factual defense for a person in a drug case and everything has to be filed within one year and if your claims are not proven or not accepted then it could mean a death sentence for your client considering his age and remaining sentence he has left.

You need to keep your full time job and all your other obligations. You can have limited access to a law library for about three hours a week with no website and if you need something you'll have to send them a letter. So over the months the carpenter has learned a lot and sees that his client has some serious constitutional issues that he can prove with no doubt because they're all in black and white, written in thousands of pages of his client's legal papers and the carpenter has written out a solid defense and can prove each claim and who and where the issue came from. The carpenter is close to finishing and still has plenty of time before his one year deadline is up. Then out of nowhere his legal papers are all taken from him: everything he has read, learned, or written down. No one will ever know all the work he had to put into this because he isn't a lawyer. There's no way he can file a successful motion unless given back the one he almost completed or make another one without the legal papers. The bottom line is that it isn't Piper's fault; it isn't anyone's fault that the Covid 19 pandemic cut his deadline short to file. Piper was working on his 2255 motion with reasonable diligence for the nine months in question and it shows based on the ground he claims for relief and all the responses to the court orders and responses to the government claims and even this plea for a Certificate of Appealability. Equitable Tolling was put into place for people like Piper because it is based on notions of fairness and equity. The court can't honestly think that the dismissal of Piper's 2255 motion was fair, and he was treated with justness and impartiality.

At the very least there should have been an evidentiary hearing.

During the nine months in question and nearly a year beyond that Piper has been on a rollercoaster ride of fear, heartbreaks, helpless disappointments including the BOP misleading Piper by telling him that region selected five inmates out of the around 560 that qualified for home confinement under the First Step Act that were eligible and have a minimal recidivism score and low PATTERN score. Piper filled out a form stating where and who he would be living with, who would be picking him up. This was through Counselor Hagler. Piper was told that it might take a few days since Piper lived in Missouri and that the probation office in Texas would have to accept the transfer to Missouri.

Later that day we were called to Hagler's office where Mrs. Gather went over our release plan again and then Piper signed it. Piper asked what he was signing and she said it was his release papers and she would turn them in to Region to sign off on. A week later Mrs. Gallardo called Piper to her office and told him he was denied and read that it was due to the poor condition of Piper's house. She read where in Piper's PSI report that the house was cluttered and looked in bad condition. Piper informed her that the PSI was four years old and that his house had been remodeled so she said she would resubmit the new information.

About three weeks later Kevin Ashlock (person living in Piper's house) told Piper that a probation officer called him and set up a day to come look at the home, which was about ten days later. While there she told him the house would be approved and that she would inform the BOP. She told him that, for some reason, they are pushing hard to get Mr. Piper released. By then Piper was living in UNICOR warehouse, chapel, then Helena Alpha, away from his unit team with no way to talk to them. After about a month, Piper had Kevin call the probation office and talk to the person that came to the house, I think her name was Wilma Allen out of the Springfield, MO office. She told him that for some reason the BOP withdrew their request for Home Confinement and that is all she knew. Since Piper has finally moved back to his unit in February he has talked with Counselor Hagler, Secretary Gather, and Unit Manager Gallardo and no one seems to know why the request was withdrawn.

During the nine months in question, Piper has suffered the death of his wife of 18 years, the cruel let down of not going home, living on a cot in a warehouse, the storage of legal papers, no contact with his unit team, and the effects of the pandemic in whole that kept Piper from filing his motion on time and yet Piper has still kept all of his commitments by working programming, involvement in prison activities, and still showing reasonable diligence with his 2255 motion. Piper is a model prisoner that would never do anything that would jeopardize him not going home at the earliest date possible. Unfortunately the late filing of his 2255 motion was something he could not control.

Along with this request Piper has included his ground for relief that are all constitutional issues along with response to show cause and response to the government's order.

All Piper is asking is to read his ground, read the trial transcripts, read Garza and Rosales' proffers, PSI, sentencing hearing, phone records. Piper was even convicted of the indictment according to Piper's PSI and Court of Appeals denial and the superseding indictment was dismissed. The government never objected to it at Piper's sentencing hearing like they did at Piper's codefendant's hearing (Carlos Cortinas).

Since Piper's legal counsel was so inefficient at defending Piper and in some ways downright detrimental in Piper's defense, Piper asks for this one chance to have his claims be heard. Piper would like to apologize for sending such a long request but he wasn't sure what all the court needed and if there's something that he left out, if given the chance, Piper will respond immediately upon request.

Along with this request he has sent his constitution issues that were never viewed because of the issues of motion untimely.

Thank you