UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

ERIC C. SUTHERLAND, Movant/Defendant,

v. Criminal Action No. 3:18-cr-136-DJH

UNITED STATES OF AMERICA, Respondent/Plaintiff.

* * * * *

MEMORANDUM

Movant Eric C. Sutherland filed a *pro se* motion and amended motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (Docket Nos. 97 and 102). The Court reviewed the amended motion[1] under Rule 4 of the Rules Governing Section 2255 Proceedings for the United States District Courts. Upon review, the Court directed Sutherland to show cause why his amended motion should not be dismissed as barred by the applicable one-year statute of limitations. Sutherland filed a response (DN 105) to the Court's Show Cause Order. For the reasons set forth below, the Court will deny the amended motion as untimely.

I.

After entering a guilty plea, Sutherland was convicted on November 13, 2019, on one count of coercion or enticement of a minor and sentenced to 120 months' incarceration. Sutherland did not file a direct appeal of his conviction. He filed his original § 2255 motion on June 29, 2021.[2]

[1] By prior Order (DN 99), the Court gave Sutherland an opportunity to file an amended § 2255 motion and instructed that the amended motion would supersede the original motion.
[2] *See Miller v. Collins*, 305 F.3d 491, 497-98 (6th Cir. 2002) (under the mailbox rule, the motion is deemed filed when presented to prison officials for mailing) (citing *Houston v. Lack*, 487 U.S. 266 (1988)).

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II.

Section 2255 provides for a one-year limitations period, which 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.

See § 2255(f).

When a § 2255 movant does not pursue a direct appeal to the court of appeals, his conviction becomes final on the date on which the time for filing such appeal expires. *See Sanchez-Castellano v. United States*, 358 F.3d 424, 428 (6th Cir. 2004). Judgment was entered in this case on November 13, 2019 (DN 57). The judgment became final on November 27, 2019, upon the expiration of the fourteen-day period for filing a notice of appeal. *See* Fed. R. App. P. 4(b)(1)(A). Sutherland had one year, or until November 27, 2020, in which to timely file a motion under § 2255. Accordingly, Sutherland's original § 2255 motion, filed on June 29, 2021, was filed approximately seven months after the statute of limitations expired. Under § 2255(f), therefore, Sutherland's motion is time-barred.

However, because § 2255's one-year statute of limitations is not jurisdictional, it is subject to equitable tolling. *Dunlap v. United States*, 250 F.3d 1001, 1007 (6th Cir. 2001).

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"'Typically, equitable tolling applies only when a litigant's failure to meet a legally-mandated deadline unavoidably arose from circumstances beyond that litigant's control.'" *Jurado v. Burt*, 337 F.3d 638, 642 (6th Cir. 2003) (quoting *Graham-Humphreys v. Memphis Brooks Museum of Art, Inc.*, 209 F.3d 552, 560-61 (6th Cir. 2000)). A movant "is 'entitled to equitable tolling' only if he shows '(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way' and prevented timely filing." *Holland v. Florida*, 560 U.S. 631, 649 (2010) (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)). "Absent compelling equitable considerations, a court should not extend limitations by even a single day." *Graham-Humphreys*, 209 F.3d at 561. "The [movant] bears the burden of demonstrating that he is entitled to equitable tolling." *McClendon v. Sherman*, 329 F.3d 490, 494-95 (6th Cir. 2003) (citing *Griffin v. Rogers*, 308 F.3d 647, 653 (6th Cir. 2002)).

ACTUAL INNOCENCE EXCEPTION THROUGH PROPER STANDARD OF PROOF

THERE ARE SEVERAL OTHER EXCEPTIONS

The statute of limitations under § 2255 may be equitably tolled when the movant makes a credible claim of actual innocence based on new reliable evidence. *Schlup v. Delo*, 513 U.S. 298, 317 (1995); *see also Souter v. Jones*, 395 F.3d 577, 589-90 (6th Cir. 2005). Actual innocence means factual innocence, not mere legal insufficiency or legal innocence. *Bousley v. United States*, 523 U.S. 614, 623 (1998); *Connolly v. Howes*, 304 F. App'x 412, 417 (6th Cir. 2008); *Souter v. Jones*, 395 F.3d at 590. To make out a credible claim of actual innocence, Sutherland is required to support his allegations of federal constitutional error with "new reliable evidence–whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence–that was not presented at trial." *Schlup v. Delo*, 513 U.S. at 324. Without any new reliable evidence and facts showing actual innocence, even the existence of a meritorious claim of a federal constitutional violation is not in itself sufficient to establish a miscarriage of justice that would allow the court to reach the merits of a habeas claim that is

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time-barred by the statute of limitations. *Id.* at 316; *Connolly*, 304 F. App'x at 417. "[The] evidence of innocence [must be] so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of nonharmless constitutional error." *Schlup v. Delo*, 513 U.S. at 316. A "petitioner must show that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence." *Id.* at 327. This exacting standard permits review only in the "extraordinary case," but it "does not require absolute certainty about the petitioner's guilt or innocence." *House v. Bell*, 547 U.S. 518, 538 (2006) (citing *Schlup v. Delo*, 513 U.S. at 327).

In his response to the Court's Show Cause Order, Sutherland argues that the statute of limitations "is not applicable because my § 2255 is based on a credible claim of actual innocence that is backed by newly presented legal facts and case law." Sutherland asserts, "It is not just my opinion that reasonable doubts exist, but rather the opinion of several parents who have minors who are at the age of consent, and they believe that no reasonable juror would have found me guilty of coercion." He points to the Modern Federal Jury Instructions, which he believes support his claims, and "Brady evidence from the Facebook chat logs, which were never presented at trial" to support his claim of actual innocence. He also argues that the victim was a "legally consenting adult under Kentucky law"; that the state dismissed thirteen counts because there was no violation of state law; that the victim initiated communication with him and that all of the communications were voluntary; and that there was not a substantial connection to interstate commerce to support federal charges. He also states that this Court "has allowed for numerous violations of due process, countless errors, violations of several rules of procedure, and numerous violation of the United States Constitution which have resulted in severe prejudice

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and a gross miscarriage of justice." He points to errors he believes the Court made during the plea hearing and in his indictment.

Sutherland also states, "The Court kept the intricate inner workings of the third element a secret. The Government failed to turn over Brady material during pre-trial that would have greatly supported my case, therefore blatantly violating my Sixth Amendment rights, my due process rights, and countless other protections" under the Constitution. He further maintains that his counsel abandoned him and "failed to provide me with the necessary modern federal jury instructions for § 2422(b), and failed to inform me that the charge requires an underlying state offense in order to convict." Sutherland asserts, "These numerous reasonable doubts and undisclosed Facebook chat logs would lead to only one conclusion. No reasonable juror would have found me guilty." ★ MY ARGUMENT IS SUBSTANTIVE, NOT PROCEDURAL.

Sutherland's arguments concerning the Modern Federal Jury Instructions, the victim's age, the dismissal of the state charges, voluntariness of the communications, a connection with interstate commerce, and broad claims of constitutional violations do not present new evidence, but bear only on the legal sufficiency of the case. Therefore, these arguments fail to show that Sutherland is entitled to equitable tolling based on actual innocence. SEEKING EXCEPTION, NOT EXTENSION

With regard to Sutherland's argument that the government failed to turn over "Brady evidence from Facebook chat logs," he fails to produce this purported evidence, to state when or how he discovered it to establish that the evidence is in fact new, or to provide any facts to show that it is in fact reliable. *See McQuiggin v. Perkins*, 569 U.S. 383, 399 (2013) ("Unexplained delay in presenting new evidence bears on the determination whether the petitioner has made the requisite showing."). A movant's "vague assertion of innocence, unsupported by actual evidence and resting only on [his] own self-serving statement, does not make it more likely than not that

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no reasonable juror would have found [the movant] guilty beyond a reasonable doubt." *Castellon v. Calif.*, No. SACV 15-00221-PA (GJS), 2015 U.S. Dist. LEXIS 115683, at 25 (C.D. Cal. Jul. 20, 2015) (citing *Schlup v. Delo*, 513 U.S. at 327; *McQuiggin v. Perkins*, 569 U.S. at 399), *report and recommendation adopted*, 2015 U.S. Dist. LEXIS 115685 (C.D. Cal. Aug. 28, 2015); *see also Weeks v. Bowersox*, 119 F.3d 1342, 1352 (8th Cir. 1997) (finding no actual innocence where the petitioner alleged that a "staggering amount of evidence" existed but "failed to produce one iota of substance"). Sutherland's vague reference to the Facebook chat logs, without presenting them or even describing what is contained in them, is insufficient to establish actual innocence. *See Larson v. Soto*, 742 F.3d 1083, 1096 (9th Cir. 2013) (speculative evidence insufficient to show actual innocence); *Eby v. Janecka*, 349 F. App'x 247, 249 (10th Cir. 2009) (conclusory allegations of actual innocence insufficient to excuse untimeliness of petition); *White v. Dir.*, No. 6:19cv231, 2021 U.S. Dist. LEXIS 50102, at *15 (E.D. Tex. Feb. 5, 2021) ("[The petitioner's] claims that the witness recanted to him are not reliable evidence; they are simply his own conclusory words."), *report and recommendation adopted*, 2021 U.S. Dist. LEXIS 48808 (E.D. Tex. Mar. 16, 2021). Therefore, the Court finds that Sutherland has failed to demonstrate that he is entitled to equitable tolling.

For these reasons, the Court concludes that the § 2255 motion is untimely. The Court will dismiss this action by separate Order.

III. CERTIFICATE OF APPEALABILITY

In the event that Sutherland appeals this Court's decision, he is required to obtain a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B); Fed. R. App. P. 22(b). A district court must issue or deny a certificate of appealability and can do so even though the movant has yet to make a request for such a certificate. *Castro v. United States*, 310 F.3d 900, 903 (6th Cir. 2002).

I AM MAKING SUBSTANTIVE ARGUMENT.

When a district court denies a motion on procedural grounds without addressing the merits of the motion, a certificate of appealability should issue if the movant shows "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." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). When a plain procedural bar is present and the district court is correct to invoke it to dispose of the matter, a reasonable jurist could not conclude either that the court erred in dismissing the motion or that the movant should be allowed to proceed further. *Id.* at 484. In such a case, no appeal is warranted. *Id.* This Court is satisfied that no jurists of reason could find its procedural ruling to be debatable. Thus, no certificate of appealability is warranted in this case.

↖ SEEKING SUBSTANTIAL RULING AS TO THE FUNDAMENTAL ELEMENTS.

Date: December 21, 2021

David J. Hale, Judge
United States District Court

cc: Movant/Defendant, *pro se*
United States Attorney
4415.010

APPENDIX F

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

ERIC C. SUTHERLAND, Movant/Defendant,

v. Criminal Action No. 3:18-cr-136-DJH

UNITED STATES OF AMERICA, Respondent/Plaintiff.

* * * * *

ORDER

For the reasons set forth in the Memorandum entered this date and being otherwise sufficiently advised, **IT IS HEREBY ORDERED** that Movant Eric C. Sutherland's motion and amended motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (Docket Nos. 97 and 102) are **DENIED** and that the action is **DISMISSED.**

IT IS HEREBY FURTHER ORDERED that a certificate of appealability is **DENIED.** 28 U.S.C. § 2253(c); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

This Court **certifies** that an appeal would be frivolous and therefore not taken in good faith. *See* 28 U.S.C. § 1915(a)(3).

Sutherland shall direct any further request for a certificate of appealability or appeal *in forma pauperis* to the Sixth Circuit Court of Appeals pursuant to the requirements of Fed. R. App. P. 22(b) and 24, respectively.

There being no just reason for delay in its entry, this is a final and appealable Order.

Date: December 21, 2021

David J. Hale, Judge
United States District Court

cc: Movant/Defendant, *pro se*
United States Attorney
4415.010

APPENDIX G

General Docket
United States Court of Appeals for the Sixth Circuit

Court of Appeals Docket #: 22-5168 **Docketed:** 03/03/2022
Nature of Suit: 2510 Prisoner: Vacate Sentence
Eric Sutherland v. USA
Appeal From: Western District of Kentucky at Louisville
Fee Status: fee paid

Case Type Information:
1) Prisoner
2) Federal
3) Motion to Vacate

Originating Court Information:
District: 0644-3 : 3:21-cv-00442
Trial Judge: David J. Hale, District Judge
Date Filed: 07/06/2021
Date Order/Judgment: 12/21/2021
Date NOA Filed: 02/22/2022

District: 0644-3 : 3:18-cr-00136-1 **Lead:** 3:21-cv-00442
Trial Judge: David J. Hale, District Judge
Date Filed: 09/06/2018
Date Order/Judgment: 12/21/2021
Date NOA Filed: 02/22/2022

Prior Cases:
None

Current Cases:
None

ERIC C. SUTHERLAND (Federal Prisoner: #19495-033) Petitioner - Appellant	Eric C. Sutherland [NTC Pro Se] FMC Lexington P.O. Box 14500 Lexington, KY 40512
v.	
UNITED STATES OF AMERICA Respondent - Appellee	Monica Wheatley, Assistant U.S. Attorney Direct: 502-582-5938 [COR LD NTC Government] Office of the U.S. Attorney Western District of Kentucky Firm: 502-582-5911 717 W. Broadway Louisville, KY 40202 Jo E. Lawless, Assistant U.S. Attorney Direct: 502-625-7065 [NTC Government] Office of the U.S. Attorney

APPENDIX H

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA, Plaintiff,

v. Criminal Action No. 3:18-cr-136-DJH

ERIC C. SUTHERLAND, Defendant.

* * * * *

ORDER

This matter is before the Court on two motions filed by Defendant Eric C. Sutherland. Sutherland filed a motion to dismiss the indictment for failure to state an offense (Docket No. 112) and a motion "in arrest of judgment" in which Sutherland argues that his indictment is "insufficient to sustain a judgment" (DN 116). As the Court instructed Sutherland in a prior Order (DN 106), a district court no longer has jurisdiction over a criminal case after a final judgment is entered. *United States v. Martin*, 913 F.2d 1172, 1174 (6th Cir. 1990). Sutherland pleaded guilty, and a final judgment of conviction was entered on November 13, 2019 (DN 57). Thus, this Court does not have jurisdiction to hear the instant motions. Accordingly, it is hereby

ORDERED that the motion to dismiss the indictment and motion "in arrest of judgment" (DNs 112 and 116) are **DENIED.**

Date: April 15, 2022

David J. Hale, Judge
United States District Court

cc: Defendant, *pro se*
U.S. Attorney
4415.010

APPENDIX D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

ERIC C. SUTHERLAND, Movant/Defendant,

v. Civil Action No. 3:18-cr-136-DJH

UNITED STATES OF AMERICA, Respondent/Plaintiff.

* * * * *

MEMORANDUM AND ORDER

Movant Eric C. Sutherland filed a *pro se* motion and amended motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 (Docket Nos. 97 and 102). Sutherland also filed a motion for extension of time to file his amended § 2255 motion. Upon review, **IT IS ORDERED** that the motion for extension of time (DN 101) is **GRANTED**.

The amended motion[1] is now before the Court for preliminary review pursuant to Rule 4 of the Rules Governing Section 2255 Proceedings for the United States District Courts. Because the motion appears to be barred by the applicable statute of limitations, the Court will direct Sutherland to show cause why his motion should not be denied as untimely.

I.

After entering a guilty plea, Sutherland was convicted on November 13, 2019, on one count of coercion or enticement of a minor and sentenced to 120 months' incarceration. Sutherland did not file a direct appeal of his conviction. He filed his original § 2255 motion on June 29, 2021.[2]

[1] By prior Order (DN 99), the Court gave Sutherland an opportunity to file an amended § 2255 motion and instructed that the amended motion would supersede the original motion.
[2] *See Miller v. Collins*, 305 F.3d 491, 497-98 (6th Cir. 2002) (under the mailbox rule, the motion is deemed filed when presented to prison officials for mailing) (citing *Houston v. Lack*, 487 U.S. 266 (1988)).

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II.

Section 2255 provides for a one-year limitations period, which 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.

See § 2255(f).

When a § 2255 movant does not pursue a direct appeal to the court of appeals, his conviction becomes final on the date on which the time for filing such appeal expires. *See Sanchez-Castellano v. United States*, 358 F.3d 424, 428 (6th Cir. 2004). Judgment was entered in this case on November 13, 2019 (DN 57). The judgment became final on November 27, 2019, upon the expiration of the fourteen-day period for filing a notice of appeal. *See* Fed. R. App. P. 4(b)(1)(A). Sutherland had one year, or until November 27, 2020, in which to timely file a motion under § 2255. Accordingly, Sutherland's original § 2255 motion, filed on June 29, 2021, was filed approximately seven months after the statute of limitations expired. Under § 2255(f), therefore, Sutherland's motion appears to be time-barred and subject to summary dismissal.

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However, because § 2255's one-year statute of limitations is not jurisdictional, it is subject to equitable tolling. *Dunlap v. United States*, 250 F.3d 1001, 1007 (6th Cir. 2001). Sutherland has not alleged facts in his motion which warrant the application of equitable tolling. "'Typically, equitable tolling applies only when a litigant's failure to meet a legally-mandated deadline unavoidably arose from circumstances beyond that litigant's control.'" *Jurado v. Burt*, 337 F.3d 638, 642 (6th Cir. 2003) (quoting *Graham-Humphreys v. Memphis Brooks Museum of Art, Inc.*, 209 F.3d 552, 560-61 (6th Cir. 2000)). A movant "is 'entitled to equitable tolling' only if he shows '(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way' and prevented timely filing." *Holland v. Florida*, 560 U.S. 631, 649 (2010) (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)). "Absent compelling equitable considerations, a court should not extend limitations by even a single day." *Graham-Humphreys*, 209 F.3d at 561. "The [movant] bears the burden of demonstrating that he is entitled to equitable tolling." *McClendon v. Sherman*, 329 F.3d 490, 494-95 (6th Cir. 2003) (citing *Griffin v. Rogers*, 308 F.3d 647, 653 (6th Cir. 2002)).

In the section of the § 2255 motion form which asks the filer to explain why the motion should not be barred by the statute of limitations if his judgment of conviction became final more than one year ago, Sutherland alleges actual innocence. (The statute of limitations under § 2255 may be equitably tolled when the movant makes a "credible claim" of actual innocence based on new reliable evidence.) *Schlup v. Delo*, 513 U.S. 298, 317 (1995); *see also Souter v. Jones*, 395 F.3d 577, 589-90 (6th Cir. 2005). Actual innocence means factual innocence, not mere legal insufficiency or legal innocence. *Bousley v. United States*, 523 U.S. 614, 623 (1998); *Connolly v. Howes*, 304 F. App'x 412, 417 (6th Cir. 2008); *Souter*, 395 F.3d at 590. To make out a credible claim of actual innocence, Sutherland is required to support his allegations of federal

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FACTUAL INNOCENCE

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constitutional error with "new reliable evidence–whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence–that was not presented at trial." *Schlup v. Delo*, 513 U.S. at 324. Without any new reliable evidence and facts showing actual innocence, even the existence of a meritorious claim of a federal constitutional violation is not in itself sufficient to establish a miscarriage of justice that would allow the court to reach the merits of a habeas claim that is time-barred by the statute of limitations. *Id.* at 316; *Connolly*, 304 F. App'x at 417.

NOT ARGUING THE CONSTITUTIONAL VIOLATION, I AM ARGUING THE UNDERLYING CONVICTION THAT I WAS CHARGED WITH.

BRADY VIOLATION

Sutherland does not argue any new facts or point to any new reliable evidence that was not presented at trial. Therefore, he fails to establish that he is entitled to equitable tolling on the basis of actual innocence.

→FACEBOOK CHATS

THESE ARE NEW FACTS BECAUSE THESE TOPICS WERE NEVER RAISED DURING MY TIME IN COURT. I NEVER RECIEVED THE MFJI

Moreover, to the extent Sutherland also makes reference to being denied access to the law library due to COVID-19 restrictions, a prisoner's lack of knowledge of the law and limited access to the prison's law library or to legal materials do not justify equitable tolling. *Hall v. Warden, Lebanon Corr. Inst.*, 662 F.3d 745, 750-51 (6th Cir. 2011). Such conditions are typical for many prisoners and therefore do not constitute extraordinary circumstances. *Adams v. Chillicothe Corr. Inst.*, No. 2:16-CV-563, 2016 U.S. Dist. LEXIS 111672, at *4 (S.D. Ohio Aug. 22, 2016). Courts have recognized the "extraordinary circumstance" imposed by impact of COVID-19. *See, e.g., Pickens v. Shoop*, No. 1:19-CV-558, 2020 U.S. Dist. LEXIS 103703, at *7 (S.D. Ohio June 12, 2020). However, "[c]ourts have consistently held that general allegations of placement in segregation and lack of access to legal materials are not exceptional circumstances warranting equitable tolling, especially where a petitioner does not sufficiently explain why the circumstances he describes prevented him from timely filing a habeas petition." *Andrews v. United States*, No. 17-1693, 2017 U.S. App. LEXIS 28295, at *6 (6th Cir. Dec. 12, 2017) (citing

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Paulcin v. McDonough, 259 F. App'x 211, 213 (11th Cir. 2007); *United States v. Fredette*, 191 F. App'x 711, 713 (10th Cir. 2006)). Sutherland's allegations are not sufficient to support equitable tolling. He does not provide the dates or length of time he was denied access to the law library or otherwise describe how COVID-19 restrictions prevented him from timely filing his § 2255 motion.

However, before dismissing the motion as time-barred, the Court will provide Sutherland with an opportunity to respond. *See Day v. McDonough*, 547 U.S. 198, 210 (2006).

III.

WHEREFORE, IT IS ORDERED that within **thirty (30) days** from entry of this Memorandum and Order, Sutherland must **SHOW CAUSE** why the amended § 2255 motion to vacate, set aside or correct his sentence should not be dismissed as barred by the applicable one-year statute of limitations.

Sutherland is WARNED that failure to respond within the time allotted will result in denial of the amended motion for the reasons set forth herein.

Date: September 28, 2021

David J. Hale, Judge
United States District Court

cc: Movant/Defendant, *pro se*
United States Attorney
4415.010

APPENDIX E

Additional material from this filing is available in the Clerk's Office.