

APPENDICES

- Appendix A:** Judgment from the United States Court of Appeals for the Eighth Circuit dated July 20, 2022;
- Appendix B:** Order from the United States Court of Appeals denying petition for rehearing, dated Sept. 15, 2022;
- Appendix C:** United States District Court Order, denying McCoy's § 2255 as untimely;
- Appendix D:** United States District Court Order, addressing McCoy's "status" of [his] reconsideration motion, of which the Court states, "that they did not receive."
- Appendix E:** United States District Court Order, addressing McCoy's Motion for Clarification.
- Appendix F:** United States District Court Order, denying McCoy Certificate of Appealability as well as well as to proceeding in forma pauperis to the Court of Appeals.
- Appendix G:** Federal Bureau of Prisons memorandum dated April 26, 2021, that Unit Manager Gary Brown signed for Dale McCoy, and McCoy sent to the Court.
- Appendix H:** Federal Bureau of Prisons memorandum dated August 25th, 2022, that Unit Manager Gary Brown typed and gave to Dale McCoy, regarding quarantine issues, to clarify issues before the Court.
- Appendix I:** Statute(s) Definitions:

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

No: 22-2137

Dale McCoy

Petitioner - Appellant

v.

United States of America

Respondent - Appellee

Appeal from U.S. District Court for the Northern District of Iowa - Eastern
(2:20-cv-01017-LRR)

JUDGMENT

Before GRUENDER, STRAS, and KOBES, Circuit Judges.

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

July 20, 2022

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

/s/ Michael E. Gans

"APPENDIX A"

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

No: 22-2137

Dale McCoy

Appellant

v.

United States of America

Appellee

Appeal from U.S. District Court for the Northern District of Iowa - Eastern
(2:20-cv-01017-LRR)

ORDER

The petition for rehearing by the panel is denied.

September 15, 2022

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

/s/ Michael E. Gans

"APPENDIX B"

November 3, 2017 Minute Entry (criminal docket no. 31); Judgment (criminal docket no. 32).

On November 14, 2017, the movant filed a notice of appeal. *See* Notice of Appeal (criminal docket no. 36). On January 29, 2019, the Eighth Circuit Court of Appeals affirmed the movant's sentence. *See* criminal docket nos. 45-46.

The movant's § 2255 motion was filed on May 6, 2020. In the motion, the movant raises one ground of ineffective assistance of counsel with regard to sentencing enhancements. *See generally* Motion at 2-5.

I. § 2255 INITIAL REVIEW STANDARD

Rule 4(b) of the Rules Governing Section 2255 Proceedings requires the court to conduct an initial review of the motion and dismiss the motion if it is clear that it cannot succeed. Three reasons generally give rise to a preliminary Rule 4(b) dismissal. First, summary dismissal is appropriate when the allegations are vague or conclusory, palpably incredible, or patently frivolous or false. *See Blackledge v. Allison*, 431 U.S. 63, 75-76 (1977).

Second, summary dismissal is appropriate when the motion is beyond the statute of limitations. 28 U.S.C. § 2255(f) states that a one-year limitations period shall apply to motions filed under 28 U.S.C. § 2255. *See, e.g. Taylor v. United States*, 792 F.3d 865, 869 (8th Cir. 2015). The limitations period shall run from the latest of (1) the date on which the judgment of conviction becomes final; (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action; (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence. 28 U.S.C. § 2255(f). The most common limitations period stems from the final judgment. If no appeal is taken, judgment is final

fourteen days after entry. See Federal Rule of Appellate Procedure 4(b) (giving defendants fourteen days to file a notice of appeal in a criminal case). If an appeal is taken, the time to file begins to run either 90 days after the denial if no further appeal is taken or at the denial of certiorari if a petition for certiorari is filed. See *Clay v. United States*, 537 U.S. 522, 532 (2003), stating, “[w]e hold that, for federal criminal defendants who do not file a petition for certiorari with this Court on direct review, § 2255’s one-year limitation period starts to run when the time for seeking such review expires;” see also U.S. Sup. Ct. R. 13.

The one-year limitations period is a strict standard with only a very narrow exception. As set out by the Eighth Circuit Court of Appeals:

the Antiterrorism and Effective Death Penalty Act of 1996 imposed, among other things, a one-year statute of limitations on motions by prisoners under section 2255 seeking to modify, vacate, or correct their federal sentences. See *Johnson v. United States*, 544 U.S. 295, 299, 125 S. Ct. 1571, 161 L.Ed.2d 542 (2005). The one-year statute of limitation may be equitably tolled “only if [the movant] 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, 130 S. Ct. 2549, 2562, 177 L.Ed.2d 130 (2010) (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418, 125 S. Ct. 1807, 161 L.Ed.2d 669 (2005)) (applicable to section 2254 petitions); see also *United States v. Martin*, 408 F.3d 1089, 1093 (8th Cir. 2005) (applying same rule to section 2255 motions).

Muhammad v. United States, 735 F.3d 812, 815 (8th Cir. 2013).

Third, summary dismissal is appropriate when the movant filed a previous § 2255 motion. Under the rules, movants are prohibited from filing a second 28 U.S.C. § 2255 motion unless they are granted leave from the Eighth Circuit Court of Appeals. See 28 U.S.C. § 2255(h), 28 U.S.C. § 2244 (b)(3)(A); see also *United States v. Lee*, 792 F.3d 1021, 1023 (8th Cir. 2015). Dismissal is appropriate if the movant has failed to obtain leave to file a second, successive habeas motion. *Id.*

II. ANALYSIS

Here, the movant's judgment became final April 29, 2019, 90 days after the denial of his appeal. The Motion was filed on May 6, 2020, which is over one year past the one-year limitations period. While only implicitly addressed in the Motion, even if the "prison mailbox rule" is applied, the movant's motion remains untimely. Rule 3(d) of the Rules Governing Section 2255 provides that "[a] paper filed by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing." *Id.* The Motion itself is signed by the movant and dated May 1, 2020, which is after the one-year deadline. *See* Motion at 5. Furthermore, attached to the Motion is a cover letter, in which the movant states that "I am sliding this motion under my cell door on Friday, May 1, 2020, therefore being filed and mailed by the correctional office on duty; on said date above." Cover Letter (docket no. 1-1) at 1. Again, May 1, 2020 is past the one-year deadline. Accordingly, the movant's § 2255 motion shall be dismissed.

III. CERTIFICATE OF APPEALABILITY

In a 28 U.S.C. § 2255 proceeding before a district court judge, the final order is subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held. *See* 28 U.S.C. § 2253(a). Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals. *See* 28 U.S.C. § 2253(c)(1)(A). A district court possesses the authority to issue certificates of appealability pursuant to 28 U.S.C. § 2253(c) and Federal Rule of Appellate Procedure 22(b). *See Tiedeman v. Benson*, 122 F.3d 518, 522 (8th Cir. 1997). Under 28 U.S.C. § 2253(c)(2), a certificate of appealability may issue only if a movant has made a substantial showing of the denial of a constitutional right. *See Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003); *Garrett v. United States*, 211 F.3d 1075, 1076-77 (8th Cir. 2000); *Carter v. Hopkins*, 151 F.3d 872, 873-74 (8th Cir. 1998); *Cox v. Norris*, 133 F.3d 565, 569 (8th Cir. 1997); *Tiedeman*, 122 F.3d at 523. In order to make such a showing, the issues must be debatable among reasonable jurists, a court could resolve the

issues differently, or the issues deserve further proceedings. *Cox*, 133 F.3d at 569; *see also Miller-El*, 537 U.S. at 335-36 (reiterating standard).

Courts reject constitutional claims either on the merits or on procedural grounds. “[W]here a district court has rejected the constitutional claims on the merits, the showing required to satisfy [28 U.S.C.] § 2253(c) is straightforward: the [movant] must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Miller-El*, 537 U.S. at 338 (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). When a federal habeas petition is dismissed on procedural grounds without reaching the underlying constitutional claim, “the [movant must show], at least, that jurists of reason would find it debatable whether the petition 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*, 529 U.S. at 484.

Here, the court finds that it is not debatable that the movant’s motion is untimely. Accordingly, a certificate of appealability shall be denied. If he desires further review of his 28 U.S.C. § 2255 motion, the movant may request issuance of the certificate of appealability by a circuit judge of the Eighth Circuit Court of Appeals in accordance with *Tiedeman*, 122 F.3d at 520-22.

In light of the foregoing, it is hereby **ORDERED**:

- (1) The Motion pursuant to 28 U.S.C. § 2255 (docket no. 1) is **DENIED**; and
- (2) A certificate of appealability shall **NOT ISSUE**.

IT IS SO ORDERED.

DATED this 15th day of April, 2021.



LINDA R. READE, JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

DALE McCOY,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

No. 20-CV-1017-LRR

ORDER

The matter before the court is Petitioner Dale McCoy's ("the movant") pro se "Motion for Status Inquiry as to [Movant's] Motion for Reconsideration" ("Motion") (docket no. 5), which was filed on October 20, 2021. In the Motion, the movant states that:

[The movant] in this case filed his § 2255 motion and sent it to the [c]ourt on May 1st, 2020. This [c]ourt denied [the movant's] motion as being two days late, despite a Memorandum by Bureau of Prison Officials stating we were under lockdown procedures due to COVID-19.

After receiving said [c]ourt order denying [the movant's] § 2255 motion (dated April 15, 2021), [the movant] filed a Motion for Reconsideration and sent it to this court on April 28, 2021.

Motion at 1-2. The movant requests the "'status' of his [M]otion for Reconsideration as well as a Certificate of Appealability should it be denied." *Id.* at 2.

First, the court has never received a "Motion for Reconsideration" and there is no such motion on the docket. Second, the movant's § 2255 motion, which he untimely filed on May 1, 2020, did not include "a Memorandum by Bureau of Prison Officials stating we were under lockdown procedures due to COVID-19." Third, the only attachment to the movant's § 2255 motion states that:

Due to the fact of the COVID-19 virus and inmates being locked down in our cells without access to any facilities on the compound, including the law library and mailroom[,] I am sliding this motion under my cell door on Friday, May 1st, 2020. Therefore, being filed and mailed by the Correctional Officer on duty; on said date above.

Docket no. 1-1 at 1. Nothing in the above paragraph constitutes a request for extension of time to file the § 2255 motion due to COVID-19 or any other reason. It is apparent that the purpose of the above paragraph was to demonstrate that the movant sent his § 2255 motion on May 1, 2020, presumably to show compliance with the "prison mailbox rule." However, the movant's judgment became final on April 29, 2019, and, as explained in the court's April 15, 2021 Order (docket no. 3) denying and dismissing the movant's § 2255 motion, "May 1, 2020 is past the one-year deadline." *Id.* at 4. Thus, to the extent the instant Motion may be construed as a motion to reconsider, the court finds that nothing in the instant Motion leads the court to a different conclusion. Accordingly, the Motion (docket no. 5) is **DENIED**. The movant's request for a certificate of appealability is also **DENIED**.

IT IS SO ORDERED.

DATED this 29th day of December, 2021.



LINDA R. READE, JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

DALE McCOY,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

No. 20-CV-1017-LRR

ORDER

The matter before the court is Petitioner Dale McCoy's ("the movant") pro se Motion to Clarify ("Motion") (docket no. 8), which was filed on February 28, 2022. In the Motion, the movant seeks clarification regarding the court's December 30, 2021 Order (docket no. 6) denying the movant's pro se Motion for Status Update (docket no. 5). *See* Motion at 1-2. In the Motion for Status Update, the movant requested the status of a motion for reconsideration, which he stated he sent to the court on April 28, 2021. In the December 30, 2021 Order the court quoted from the movant's Motion for Status Update regarding the movant's claim that he sent a motion for reconsideration. *See* December 30, 2021 Order at 1. The court went on to state that it never received a motion for reconsideration and no such motion was docketed in the movant's case. *See id.* To the extent that the movant thought the court had stated two contrary things, the court clarifies that it never received a motion for reconsideration and simply quoted from the movant's motion, his claim that he had sent the court such a motion.

To the extent the movant is seeking reconsideration of the denial of his § 2255 motion, the court addressed reconsideration of the issue in its December 30, 2021 Order, which construed the Motion for Status Update as a motion for reconsideration. Furthermore, in the instant Motion, the movant has raised no new issues and has not

made any arguments that would change the court's decisions in this matter. Accordingly, the Motion (docket no. 8) is **DENIED**.

IT IS SO ORDERED.

DATED this 3rd day of May, 2022.



LINDA R. READE, JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

DALE McCOY,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

No. 20-CV-1017-LRR

ORDER

The matter before the court is Petitioner Dale McCoy's ("the movant") pro se Motion to Appeal In Forma Pauperis (docket no. 16), which was filed on May 31, 2022. On April 15, 2021, the court denied the movant's pro se Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255. *See* April 15, 2021 Order (docket no. 3). The court also declined to issue a certificate of appealability. *Id.* at 4-5.

Because the court has already found that there are no appealable issues in this case pursuant to 28 U.S.C. § 2253(c)(2), the movant's request to appeal in forma pauperis is **DENIED**.¹ The Clerk of Court is directed to forward this supplemental record to the Eighth Circuit Court of Appeals.

¹ Under the Federal Rules of Appellate Procedure, a party who was determined to be financially unable to obtain an adequate defense in a criminal case may proceed on appeal in forma pauperis without further authorization, unless the district court certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis. *See* Fed. R. App. P. 24(a)(3); 28 U.S.C. § 1915(a)(3) (stating "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith."). The movant was appointed counsel in his underlying criminal case. *See* 17-CR-1015-LRR, docket no. 7. Because a 28 U.S.C. § 2255 motion is technically a continuation of the criminal case, it is unclear that he would need leave to appeal in forma pauperis. However, as noted above, because the

IT IS SO ORDERED.

DATED this 6th day of June, 2022.



**LINDA R. READE, JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA**

court determined there are no appealable issues, there is no need to grant the movant's motion.



U.S. Department of Justice
Federal Bureau of Prisons
Federal Correctional Institution

Pekin, Illinois 61554

April 26, 2021

MEMORANDUM FOR: To whom it may concern

FROM: 
G. Brown, Unit Manager
FCI Pekin, Illinois

SUBJECT: MCCOY, Dale
Register #: 17098-029

Dear Sir or Mam,

In March of 2020, FCI Pekin implemented lock-down procedures for COVID-19. The inmates in Illinois Unit did not have access to the Law Library until after May 8th of 2020.


"APPENDIX G"



United States Department of Justice
Federal Bureau of Prisons
Federal Correctional Institution
Post Office Box 7000
2600 South Second Street
Pekin, Illinois 61555-7000

August 25, 2022

MEMORANDUM FOR: To Whom it may concern

FROM: 
G. Brown Unit Manager
FCI Pekin, Illinois

SUBJECT: MCCOY, Dale
Register #: 17098-029

Dear Sir or Mam,

Inmate McCoy # 17098-029 was under an Institutional quarantine due to COVID-19, from the months of March 2020 until May of 2020. Inmate McCoy did not have any access to the electronic law library or legal references until after May 8, 2020.

Phone communication and e-mail communication were prohibited during the quarantine period. Inmate McCoy was permitted out of his cell for ten minutes to shower every three days.

FCI Pekin's Administration could not predict how long the quarantine period would last or when inmates would have access to the legal law library.

I spoke with the Clerk of Courts in April of 2021 concerning inmate McCoy's lack of excess to the courts. The Clerk replied "to have McCoy resubmit to the court."

"APPENDIX H"

STATUTES

21 U.S.C. § 802(44):

Provides (44) The term "felony drug offense" means an offense that is punishable by imprisonment for more than one year under any law of the United States or of a state or foreign country that prohibits or restricts conduct relating to narcotic drugs, marijuana, anabolic steroids, or depressants or stimulant substances.

21 U.S.C. § 841(b)(1)(A):

Unlawful acts. Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally -

(b) Penalties - Except as otherwise prohibited in section 409, 418, or 420 [21 USCS §§ 849, 859, 860, or 861], any person who violates subsection (a) of this section, shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving: (Numerous drug(s) and quantities thereof)

21 U.S.C. § 851(a):

Proceedings to establish previous convictions:

(a) Information filed by United States Attorney:

28 U.S.C. § 2255:

Federal Custody; remedies on motion attacking sentence:

(a) a prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the grounds that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.