

APPENDIX

TABLE OF CONTENTS

	Page
APPENDIX A: Opinion of the United States Court of Appeals for the Sixth Circuit (May 16, 2023)	1a
APPENDIX B: Order of the United States District Court for the Eastern District of Michigan (Oct. 25, 2021)	10a
APPENDIX C: Report and Recommendation of United States Magistrate Judge of the United States District Court for the Eastern District of Michigan (June 15, 2021)	13a
APPENDIX D: Judgment of the United States District Court for the Eastern District of Michigan (Nov. 6, 2019)	24a

APPENDIX A

NOT RECOMMENDED FOR PUBLICATION

File Name: 23a0230n.06

Case No. 21-1747

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LEANDER MANN (#55849-039),)
Petitioner-Appellant,) ON APPEAL
v.) FROM THE
UNITED STATES OF AMERICA,) UNITED
Respondent-Appellee.) STATES
) DISTRICT COURT
) FOR THE EASTERN
) DISTRICT OF MICHIGAN

FILED
May 16, 2023
DEBORAH S. HUNT, Clerk

Before: GIBBONS, THAPAR, and BUSH, Circuit Judges.

THAPAR, Circuit Judge. From the day his sentence became final, federal prisoner Leander Mann had one year to file a habeas petition. He missed that deadline, and the district court dismissed his petition as untimely. Because Mann does not establish that his deadline should have been tolled, we affirm.

I.

While on parole, Mann was found in possession of drugs, guns, and ammunition. Ultimately, he pled guilty to possession with intent to distribute cocaine. The district court entered judgment in Mann's case on November 6, 2019. Mann did not appeal his sentence of 167 months' imprisonment.

The COVID-19 pandemic struck several months later. Beginning in January or early February 2020, a "severe[,] flu[-]like" illness—possibly COVID—began circulating in Mann's prison. R. 154, Pg. ID 1665. Trying to contain the outbreak, officials restricted the prisoners' movement, reducing Mann's law-library access. In late February, Mann fell ill. The illness left him bedridden for a week, and he continued experiencing severe symptoms through the end of March.

As infections spiked, prison officials implemented a full lockdown. From March through June or early July, inmates were ordered to remain in their cells. During this period, Mann lost law-library access entirely. He also believed (incorrectly) that the courts closed for about ninety days. In reality, the federal courthouse in Detroit suspended nearly all in-person proceedings due to COVID-19, but it continued to accept filings.

In July, the lockdown lifted. On July 15, Mann filed a motion for compassionate release. Two weeks later, the court appointed a lawyer for the limited purpose of helping Mann with the motion.

From July onwards, Mann reports two more brief interruptions. In September, a transfer to a new facility eliminated Mann's access to his legal materials for eight days. Several days later, he was transferred

again, resulting in a loss of access for another sixteen days. Otherwise, Mann litigated unimpeded. On September 16, during the transfers, he petitioned the warden for compassionate release. And on October 27, now with the aid of counsel, Mann filed an updated compassionate-release motion with the district court.

When the court denied Mann’s motion for compassionate release, Mann appealed. On January 6, 2021, he also filed this habeas petition.¹ For good measure, two days after he filed his habeas petition, Mann filed a notice of appeal of his original conviction.

The government moved to dismiss Mann’s habeas petition as untimely. A magistrate judge recommended tolling the filing deadline. The district court rejected that recommendation and dismissed Mann’s petition. It also denied him a certificate of appealability. Our circuit granted one, and this appeal followed.

II.

In general, a prisoner seeking federal habeas relief must file his petition within one year from the day his sentence becomes final. 28 U.S.C. § 2255(f). While this filing deadline can be tolled, tolling is the exception, not the rule. *Robertson v. Simpson*, 624 F.3d 781, 783-84 (6th Cir. 2010). To toll the deadline, a prisoner must show that (1) an extraordinary circumstance kept him

¹ Although the habeas petition was stamped January 13, it was signed January 6. For our purposes, January 6 is the date that counts. Generally, pro se prisoners’ legal materials are treated as filed the day they are turned in for mailing. *Brand v. Motley*, 526 F.3d 921, 925 (6th Cir. 2008). And absent contrary evidence, we assume they are turned in the day they are signed. *Id.*

from filing on time, and (2) he diligently pursued his rights. *Holland v. Florida*, 560 U.S. 631, 649 (2010).²

The parties agree that Mann’s petition was late. Judgment became final in Mann’s case on November 20, 2019, when he failed to file a timely direct appeal. *See Fed. R. App. P. 4(b)(1)(A); 28 U.S.C. § 2255(f)(1)*. Thus, Mann’s January 2021 petition was six weeks late.

The question is whether Mann is entitled to equitable tolling. Since he has neither shown extraordinary circumstances that kept him from filing nor that he diligently pursued his rights, he is not.

A.

Extraordinary Circumstances. Mann claims that extraordinary circumstances kept him from meeting the statutory filing deadline. But extraordinary circumstances by themselves do not merit tolling. Rather, a petitioner must show that the circumstances actually caused him to miss the deadline. *See Hall v. Warden, Lebanon Corr. Inst.*, 662 F.3d 745, 750-51

² Technically, the limitation periods in *Holland* and in this case rely on different statutory provisions. Since *Holland* involved a challenge to a state conviction, 28 U.S.C. § 2244(d) supplied the filing deadline, while here 28 U.S.C. § 2255(f) does, since this involves a challenge to a federal sentence. However, these sections have similar text, and the parties treat Section 2244(d) and Section 2255(f) the same, as do our cases in this context. *Compare 28 U.S.C. § 2244(d), with 28 U.S.C. § 2255(f); see, e.g., Jones v. United States*, 689 F.3d 621, 627 (6th Cir. 2012); *Johnson v. United States*, 457 F. App’x 462, 469 (6th Cir. 2012); *Simmons v. United States*, 974 F.3d 791, 796 (6th Cir. 2020). We follow the parties and assume that the same principles apply to both provisions.

(6th Cir. 2011); *Ata v. Scutt*, 662 F.3d 736, 742 (6th Cir. 2011) (“[A] causal link between the [extraordinary circumstance] and untimely filing is required.”). In other words, he must demonstrate that they made compliance impossible. And when the “extraordinary circumstances” end months before the deadline expires, that is usually not enough to meet the burden. Why? Because the prisoner must still show that the circumstances, even after they had abated, kept him from filing. *See Holland*, 560 U.S. at 649 (The extraordinary circumstance must have “prevented timely filing.”); *see also, e.g.*, *Smalls v. Collins*, 10 F.4th 117, 146 (2d Cir. 2021).

Mann does not carry this burden. He identifies two extraordinary circumstances: (1) the debilitating illness he suffered from late February through March, and (2) the additional twenty-four days he lost during prison transfers in September and early October. *See Reply Br.* 3, 8. Even crediting these allegations, they only account for two months. Subtracting this time from the year-long limitations period, Mann still had ten full months in which to file. Since Mann does not explain why ten months was insufficient to permit him to meet the filing deadline, he fails to meet his burden.

Factoring in the mid-January to February library restrictions and the March to June lockdown does not alter the analysis. Subtracting those periods still left Mann with five to six months entirely unimpeded. If that period was insufficient, Mann does not explain why.

Moreover, the record suggests that none of these impediments—except his illness—actually stopped Mann from litigating. *Cf. Ramirez-Matias v. Lynch*,

631 F. App'x 339, 343 (6th Cir. 2015). On July 15, just a few days after the lockdown ended, Mann filed a twenty-page motion for compassionate release citing both statutory and legal authority. From July 31 onward, he enjoyed the aid of counsel on his compassionate-release motion. Mann was also able to file grievances and to petition the warden for compassionate release, despite the transfers. So even crediting Mann's assertion that circumstances made litigating harder, the record does not support his claim that the transfers prevented him from doing so entirely.

In response, Mann argues that, at a minimum, he is entitled to tolling for the period of his illness and for the transfers. In other words, he reasons that for each day that he can show that he was prevented from filing, he is entitled to have another day added to the clock. But equitable tolling applies when circumstances make compliance with the deadline impossible, not when they merely reduce a petitioner's time to comply. *See Holland*, 560 U.S. at 649; *Smalls*, 10 F.4th at 1445-46; *cf. Ata*, 662 F.3d at 743 (tolling the statute when the allegations, construed in the petitioner's favor, showed that he was incapacitated for the full limitation period). So even if Mann was physically unable to file for two months, he must still show that compliance with the deadline was impossible before it could be tolled for that period.

B.

Mann also fails to show that he diligently pursued his rights. Doing so requires demonstrating that he took reasonable steps to develop and file his habeas petition during the limitations period. *Holland*, 560

U.S. at 653; *see Kendrick v. Rapelje*, 504 F. App'x 485, 487 (6th Cir. 2012) (lack of diligence, even for five months, precludes equitable tolling (citing *Pace v. DiGuglielmo*, 544 U.S. 408, 419 (2005))). The trouble for Mann is that, aside from filing grievances to challenge his lack of access to legal materials from September 8 to October 2, 2020, he does not articulate or show that he pursued his habeas petition at all.

True, Mann did pursue compassionate release during that time. But the inquiry asks whether the prisoner diligently pursued these rights in particular, not whether the petitioner was diligent in general. *Cf. Jones v. United States*, 689 F.3d 621, 628 (6th Cir. 2012); *Levy v. Osborne*, 734 F. App'x 960, 964 (6th Cir. 2018); *see also Smith v. Davis*, 953 F.3d 582, 601 (9th Cir. 2020) (en banc) ("[I]n every instance reasonable diligence seemingly requires the petitioner to work on his petition with some regularity."). Section 2255(f)'s deadline would matter little if a petitioner could pursue other forms relief until each was exhausted before turning to his habeas claim. By imposing a deadline, Section 2255(f) asks prisoners to prioritize their petitions. And if a prisoner does not, he must live with that choice.

To excuse his lack of diligence, Mann points out that he mistakenly thought the pandemic forced courts to close for ninety days. Mann's error could be viewed as a mistake of fact: that the courts ceased all business for ninety days. Or it could be seen as a mistake of law: that closure automatically tolls the limitations period. Either way, it does not change the outcome.

Mistakes of law do not justify equitable tolling, so taken that way, Mann's error is a nonstarter. *See*

McSwain v. Davis, 287 F. App'x 450, 457 (6th Cir. 2008) (citing *Grfn v. Rogers*, 399 F.3d 626, 637 (6th Cir. 2005)). And as a mistake of fact, Mann's belief that the courts closed for ninety days would only explain ninety days of inaction, leaving him still to account for the remaining nine months. Mann also apparently knew the courts were open again by July 15, since that is when he filed his initial compassionate-release motion. So his mistake would not excuse inaction after that date. Finally, Mann was counseled from July 31 onward. If there was any doubt about whether the courts were open or the deadlines were tolled, he could have asked his attorney. Cf. *Levy*, 734 F. App'x at 964. So, regardless of the nature of Mann's mistake, it neither shows reasonable diligence nor excuses a lack of diligence.

In short, Mann has not met his burden.

III.

Mann is not entitled to a hearing either. Evidentiary hearings give habeas petitioners a chance to show their allegations are true. *Ata*, 662 F.3d at 742. But there is no reason to hold a hearing when the allegations, even if true, do not qualify a petitioner for relief. *Id.* at 742 n.6; see *Kitchen v. Bauman*, 629 F. App'x 743, 749 (6th Cir. 2015). Since Mann fails to allege a meritorious equitable tolling claim, any hearing would be futile.

* * *

We affirm.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LEANDER MANN (#55849-039),)
Petitioner-Appellant,)
)
v.)
)
UNITED STATES OF AMERICA,)
Respondent-Appellee.)

} **FILED**
May 16, 2023
DEBORAH S. HUNT, Clerk

No. 21-1747

Before: GIBBONS, THAPAR, and BUSH, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Eastern District of Michigan at Detroit.

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION THEREOF, it is ORDERED that the district court's dismissal of Leander Mann's petition as untimely is AFFIRMED.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES,

Plaintiff,

v. Case No. 17-cr-20644
District Judge Paul D.
LEANDER MANN, Borman

Defendant. /

ORDER

(1) REJECTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION (ECF NO. 151) THAT THIS COURT SHOULD DENY THE GOVERNMENT'S MOTION TO DISMISS, AS UNTIMELY, DEFENDANT'S 28 U.S.C. § 2255 MOTION TO VACATE SENTENCE (ECF NO. 139)

(2) DENYING DEFENDANT'S REQUEST FOR EQUITABLE TOLLING, AND GRANTING GOVERNMENT'S MOTION TO DISMISS DEFENDANT'S 28 U.S.C. § 2255 MOTION AS UNTIMELY

Defendant filed this untimely 28 U.S.C. § 2255 Motion on January 13, 2021.

Defendant contends that equitable tolling should apply to excuse his two-months late filing because of the COVID-19 pandemic impact on him, the Courts and prison libraries, and his brief bout of COVID-19. Indeed, the Magistrate Judge noted that Mann did not explicitly detail how he pursued his rights during the period in question. (ECF No. 151, PageID.1647.)

Contrary to Mann's contention that the Courts were shut down during that period (ECF No. 150, at PageID.1636), this Court was always open to receive 28 U.S.C. § 2255 petitions and petitions for compassionate release through that period. Indeed, Defendant Mann filed Motions with this Court during this period:

- (1) Pro Se Motion for Compassionate Release, July 15/30, 2020, ECF No. 113;
- (2) Motion to Reduce Sentence, October 27, 2020, ECF No. 115, filed by his CJA-appointed attorney, attaching his exhibits.

Defendant Mann filed a Petition/Request for Compassionate Release with his Warden on September 26, 2021. (ECF No. 115-5, at PageID. 1322-23.) That Petition did not contain any specific COVID-19 impact, apart from his race, obesity and Type 2 Diabetes.

Thus, Defendant chose to expend his time-relevant efforts on seeking compassionate release from this Court, and ignored his timely opportunity to file a petition pursuant to 28 U.S.C. § 2255 to vacate his sentence.

Accordingly, the Court REJECTS the Magistrate Judge's Report and Recommendation denying the Government's request to reject Defendant's 28 U.S.C.

12a

§ 2255 motion as untimely, rejects Defendant's request for tolling the one- year statute of limitations, and DENIES Defendant's § 2255 Motion as not timely filed.

SO ORDERED.

DATED: October 25, 2021



PAUL D. BORMAN

UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,
Case No. 17 20644

Plaintiff,

v. Paul D. Borman
United States District
Judge

LEANDER MANN, David R. Grand
United States Magistrate
Defendant. /Judge

**REPORT AND RECOMMENDATION TO DENY
PLAINTIFF'S MOTION TO DISMISS
DEFENDANT'S MOTION TO VACATE
SENTENCE (ECF No. 139)**

On January 13, 2021, *pro se* defendant Leander Mann (“Mann”) filed a Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence. (ECF No. 134.) On February 8, 2021, the government responded by filing a motion to dismiss, arguing that Mann’s § 2255 motion is untimely. (ECF No. 139.) Mann filed a response on April 10, 2021 (ECF No. 150), and the government did not file a reply. Both Mann’s § 2255 motion and the government’s motion to dismiss have been referred to the undersigned for a Report and

Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). (ECF No. 140.)

I. RECOMMENDATION

For the reasons set forth below, **IT IS RECOMMENDED** that the government's motion to dismiss (ECF No. 139) be **DENIED**.

II. REPORT

A. Background

Between 1997 and 2016, Mann accumulated at least three felony convictions for home invasion, making him a person prohibited from possessing a firearm under 18 U.S.C. § 922(g)(1). (ECF No. 76, PageID.589-590.) Mann was on parole on June 15, 2017, when the Michigan Department of Corrections and the Wayne State University Police Department conducted a Parole Home Compliance Check. (ECF No. 1, PageID.3.) During the search of Mann's person, officers found multiple bags of marijuana, \$1,390 in U.S. currency, and a cellular phone. (*Id.*, PageID.4.) Mann's bedroom and attic were also searched, where officers recovered one automatic semi-automatic rifle, one rifle magazine, four 7.62 caliber ammunition rounds, and 2.8 grams of cocaine, marijuana, and narcotics paraphilia. (*Id.*, PageID.5-6; ECF No. 76, PageID.589-590.)

The Charges

After the search, Mann was indicted by a grand jury in this Court with the following criminal charges:

- Count One (1), Felon in Possession of a Firearm- Armed Career Criminal, in violation of 18 U.S.C. § 922(g)(1);924(e);

- • Count Two (2), Felon in Possession of Ammunition- Armed Career Criminal, in violation of 18 U.S.C. § 922(g)(1);924(e);
- • Counts Three (3) and four (4), Possession with Intent to Distribute a Controlled Substance, in violation of 21 U.S.C. § 841(a)(1);
- • Count Five (5), Possession of a Firearm in Furtherance of a Drug Trafficking Crime, in violation of 18 U.S.C. § 924(c);
(ECF No. 13, PageID.26-29.)

i. Plea Agreement

On October 2, 2018, after voirie dire had commenced but before trial, Mann entered into a plea agreement with the government, agreeing to plead guilty to Count 4 of the Indictment, Possession with Intent to Distribute a Controlled Substance (cocaine), in violation of 21 U.S.C. § 841(a)(1), with an agreed-upon sentence of 180 months' imprisonment. (ECF No. 76; ECF No. 134, PageID.1583). Shortly thereafter, however, Mann's counsel moved to withdraw, contending he had advised Mann that as a career offender he faced a guideline range on the drug offenses of 151-188 months, whereas the Probation Department later determined Mann was not a career offender and that his guideline range was 92-115 months. (ECF No. 134, PageID.1583). Counsel's motion to withdraw was granted, and Mann was appointed new counsel, who filed a motion to withdraw Mann's plea. (ECF Nos. 81, 83, 88). The Court held an evidentiary hearing on that motion, which was denied based on a finding that Mann's plea was "fully knowing and voluntary." (ECF No. 98). On November 1, 2019, based on the terms of the plea agreement,

Mann was sentenced to 167³ months' imprisonment on Count 4, and judgment was entered on November 6, 2019. (ECF No. 76, PageID.590, 592; No. 110).

ii. Appeal and § 2255 Motion

Mann appealed his conviction and sentence, but the Sixth Circuit Court of Appeals dismissed that appeal on the grounds that it was untimely. (ECF No. 141). On January 13, 2021, Mann filed his § 2255 motion, raising four issues: (1) his guilty plea "was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and consequences of the plea;" (2) the prosecution failed to disclose evidence to him; (3) his conviction was obtained by use of evidence gained in an unconstitutional search and seizure; and (4) his trial counsel provided ineffective assistance by (1) failing to obtain the information the government allegedly withheld; and (2) failing to properly inform Mann regarding the maximum sentence exposure he faced at trial versus entering a guilty plea. (ECF No. 134).

Rather than filing a response to the merits of Mann's § 2255 motion, the government filed the instant motion to dismiss that motion, arguing that it was untimely:

There is a one-year period of limitation on motions filed under § 2255. That limitation period runs from

³ Although the parties' plea agreement called for a sentence of 180 months, the government agreed at the sentencing hearing that it would not object to Mann receiving credit for the 13 months he had already served on a parole violation for the same conduct that gave rise to the charge for which he was indicted and convicted. (ECF No. 112, PageID.1237-42).

“the date on which the judgment of conviction becomes final,” unless there was governmental action impeding the motion or the motion is based on newly recognized facts or a newly recognized right—none of which Mann asserts here. 28 U.S.C. § 2255(f). Where a defendant does not timely appeal the judgment, it “becomes final upon the expiration of the period in which the defendant could have appealed to the court of appeals.” *Sanchez-Castellano v. United States*, 358 F.3d 424, 427 (6th Cir. 2004). In criminal cases, a defendant’s notice of a direct appeal must be within 14 days of entry of the judgment. Fed. R. App. R. 4(b)(1)(A).

Mann did not timely appeal the judgment, so it became final on November 20, 2019—14 days after it was entered. (Judgment, ECF No. 110, PageID.1174-75). Thus, Mann had one year from that date—until November 20, 2020—to file a motion under 28 U.S.C. § 2255. He did not file until January 13, 2021. (Motion to Vacate, ECF No. 134, 1576). His motion is untimely, and the Court should dismiss it.

(ECF No. 139, PageID.1605-06).

In his response to the government’s motion, Mann does not contest the government’s calculation of the date upon which his judgment became final (November 20⁴), nor that his § 2255 motion was filed about 14 months after that date. (ECF. No. 150,

⁴ The Court notes that “the mere filing of a late notice of appeal is not sufficient [] to render a final conviction nonfinal for purposes of § 2255.” *Johnson v. United States*, 457 F. App’x 462, 465 (6th Cir. 2012).

PageID.1636). However, Mann argues that his motion should be subject to equitable tolling based on coronavirus-related closures of the courts and prison law library, lockdowns, and quarantines, and on the fact that he contracted the coronavirus (he presumes in late February 2020), which caused him to suffer serious symptoms such as fever, chills, loss of appetite, inability to stand up or walk without becoming very short of breath and feeling dizzy, and excruciating body aches. (ECF No. 150, PageID.1636-637; No. 115-2). He claims he was bedridden for over a week and experienced the symptoms for over a month. (ECF No. 115-2). The government did not file a reply brief or otherwise dispute the arguments or factual assertions raised by Mann in his response.

B. Legal Standards

Under 28 U.S.C. § 2255, a prisoner sentenced by a federal court may “move the court which imposed the sentence to vacate, set aside or correct the sentence” based on a claim “(1) ‘that the sentence was imposed in violation of the Constitution or the laws of the United States;’ (2) ‘that the court was without jurisdiction to impose such sentence;’ (3) ‘that the sentence was in excess of the maximum authorized by law;’ or (4) that the sentence ‘is otherwise subject to collateral attack.’” *Hill v. United States*, 368 U.S. 424, 426-427 (1962).

“The one-year statute of limitations for filing a § 2255 petition is subject to equitable tolling.” *Johnson*, 457 F. App’x at 469 (citing *Hall v. Warden, Lebanon Corr. Inst.*, 662 F.3d 745, 749-50 (6th Cir.2011)). Equitable tolling “allows courts to toll a statute of limitations when a litigant’s failure to meet a legally-

mandated deadline unavoidably arose from circumstances beyond that litigant's control." *Robertson v. Simpson*, 624 F.3d. 781, 783 (6th Cir. 2010) (internal quotation marks omitted). The § 2255 petitioner bears the burden of demonstrating he is entitled to equitable tolling. *See McClelland v. Sherman*, 329 F.3d 490, 494 (6th Cir. 2003). To meet this burden, a petitioner must show that (1) "he has been pursuing his rights diligently," and (2) "some extraordinary circumstance stood in his way and prevented timely filing." *Holland v. Florida*, 560 U.S. 631, 649 (2010) (internal quotation marks omitted). The first prong requires "reasonable diligence," not "maximum feasible diligence." *Id.* at 653.

C. Analysis

Mann contends that equitable tolling due to the Covid-19 pandemic excuses his untimely filing. (ECF No. 150, PageID.1636.) The first prong examines whether the petitioner was reasonably diligent in pursuing his rights. *Holland*, 560 U.S. at 649. Courts have been more likely to find such diligence when the petitioner actively sought legal resources and information necessary to his case and contacted the court and others involved in his case. *Solomon v. United States*, 467 F.3d 928, 934 (6th Cir. 2006); *Holland*, 560 U.S. at 653. In *Solomon*, the court found that the petitioner had been diligently pursuing his rights when he "immediately asked staff members at [the prison] to provide him with the address or phone number of the Clerk of the District Court in Cincinnati" so that he could "inform the court of his situation" after being transferred. *Id.* Courts are less likely to find that a petitioner diligently pursued his rights when he "still had over five months to timely file

his habeas petition” outside of any unexpected or limiting circumstances or waited long beyond the statute of limitations to file a §2255 Motion. *Hall*, 662 F.3d at 752; *Robinson v. Easterling*, 424 F. App’x 439, 443 (6th Cir. 2011).

In *Donald v. Pruitt*, No. 20-1435, 2021 WL 1526421 (10th Cir. Apr. 19, 2021), the Tenth Circuit refused to equitably toll the petitioner’s habeas motion because he failed to “allege with any specificity what steps he had taken to pursue his claim diligently before the Covid-19 restrictions.” Similarly, here, Mann failed to explicitly highlight in either his § 2255 motion or in his response to the government’s motion to dismiss what actions he took to diligently pursue his rights. (ECF Nos. 134, 150.) On the other hand, Mann’s focus on the Covid-19 pandemic that spread throughout the United States beginning in March 2020, just four months after Mann’s final judgment, suggests that he had a very limited amount of time to have actively and diligently pursued his rights before the closures caused by the pandemic. And, even with all of the lockdowns, quarantines, and law library closures described by Mann, not to mention the extreme and long-lasting symptoms he experienced, Mann still managed to file his § 2255 motion only two months late. Those facts set Mann’s case apart from *Donald* where the statute of limitations expired in March 2020, just as the pandemic was commencing in the United States. (ECF No. 115, PageID.1291-92; *Donald*, 2021 WL 1526421, at 2) And, unlike in *Hall*, with the onset of the pandemic, Mann had fewer than five months prior to the onset of limiting circumstances (Covid-19 pandemic) as a *pro se* petitioner to work diligently on his case. *Hall*, 662 F.3d

at 752. In sum, while Mann should have explicitly detailed how he diligently pursued his rights during the time period in question, the timing in question at least arguably suggests Mann acted reasonably diligently. The government, which elected not to file a reply brief, does not argue otherwise.

The second prong of the test set forth in *Holland* requires that there be “extraordinary circumstances” that prevented the petitioner’s timely filing of the § 2255 motion. *Holland*, 560 U.S. at 649. Here, Mann argues that the Covid-19 pandemic resulted in the extended closure of his prison’s law library, lockdowns, and quarantines. (ECF No. 115-2; ECF No. 150, PageID.1637.) He also asserts that in roughly the middle of his one- year timeframe to file his § 2255 motion, he battled Covid-19, experiencing serious symptoms that left him completely bed-ridden for a week, and suffering debilitating symptoms for over month. (ECF No. 115, PageID.1291-92.) Again, the government does not contest the circumstances described by Mann, nor contend that they were not “extraordinary.”

The government having not argued against Mann’s request for equitable tolling, and for the reasons explained above, the Court should deny the government’s motion to dismiss Mann’s § 2255 motion.

D. Conclusion

For the foregoing reasons, **IT IS RECOMMENDED** that the government’s motion to dismiss (ECF No. 139) be **DENIED**. Should the Court enter an order adopting this recommendation, the government should be ordered to file a response to Mann’s § 2255 motion within 30 days thereof.

Dated: June 15, 2021 s/David R. Grand
Ann Arbor, Michigan DAVID R. GRAND
United States Magistrate Judge

**NOTICE TO THE PARTIES REGARDING
OBJECTIONS**

Within 14 days after being served with a copy of this Report and Recommendation, any party may serve and file specific written objections to the proposed findings and recommendations set forth above. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2); E.D. Mich. L.R. 72.1(d)(1). Failure to timely file objections constitutes a waiver of any further right of appeal. See *Thomas v. Arn*, 474 U.S. 140, (1985); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005). Only specific objections to this Report and Recommendation will be preserved for the Court's appellate review; raising some objections but not others will not preserve all objections a party may have. See *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987); see also *Frontier Ins. Co. v. Blaty*, 454 F.3d 590, 596-97 (6th Cir. 2006). Copies of any objections must be served upon the Magistrate Judge. See E.D. Mich. L.R. 72.1(d)(2).

A party may respond to another party's objections within 14 days after being served with a copy. *See Fed. R. Civ. P. 72(b)(2); 28 U.S.C. § 636(b)(1).* Any such response should be concise, and should address specifically, and in the same order raised, each issue presented in the objections.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on June 15, 2021.

s/Eddrey O. Butts
EDDREY O. BUTTS
Case Manager

APPENDIX D

UNITED STATES DISTRICT COURT
Eastern District Of Michigan

UNITED STATES OF AMERICA	JUDGMENT IN A CRIMINAL CASE
v.	Case Number: 0645
Leander Mann	2:17CR20644 (1)
	USM Number: 55849-039
	<i>Craig A. Daly</i>
	Defendant's Attorney

THE DEFENDANT:

<input checked="" type="checkbox"/>	pleaded guilty to count(s)	4 of the Indictment
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	Offense Ended Count
21 U.S.C. § 841(a)(1), Possession with Intent to Distribute Cocaine	6/15/2017 4

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s)

Count(s) 1, 2, 3 and 5 are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

11/1/2019

Date of Imposition of Judgment

s/ Paul D. Borman

Signature of Judge

The Honorable Paul D. Borman
United States District Judge

Name and Title of Judge

11/6/2019

Date

DEFENDANT: Leander Mann
CASE NUMBER: 0645 2:17CR20644 (1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

167 months. The Court orders this sentence to run concurrently to the undischarged term of imprisonment in Michigan. The Court waives the imposition of costs of incarceration.

The court makes the following recommendations to the Bureau of Prisons:

The Court recommends the defendant be permitted to participate in appropriate substance abuse and alcohol treatment, to include the Residential Substance Abuse Treatment Program (RDAP).

The Court additionally recommends the defendant be placed at FCI Milan (Michigan).

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at a.m. p.m. on

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on

as notified by the United States Marshal.

27a

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Leander Mann
CASE NUMBER: 0645 2:17CR20644 (1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three years. The Court waives the imposition of costs of supervision.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (check if applicable)
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. (check if applicable)
5. You must cooperate in the collection of DNA as directed by the probation officer. (check if applicable)
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any

state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. (check if applicable)

7. You must participate in an approved program for domestic violence. (check if applicable)

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: Leander Mann
CASE NUMBER: 0645 2:17CR20644 (1)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation

officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.

7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.

10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at the www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: Leander Mann
CASE NUMBER: 0645 2:17CR20644 (1)

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall participate in a program approved by the probation department for substance abuse, which may include testing to determine if the defendant has reverted to the use of drugs or alcohol, if necessary.
2. The defendant shall enroll and participate in a Cognitive Behavior Therapy program (CBT) as approved by the probation officer, if necessary.
3. The defendant shall participate in a program approved by the probation department for mental health counseling, if necessary.
4. The defendant shall submit his person, residence, office, vehicle(s), papers, business or place of employment, and any property under his control to a search. Such a search shall be conducted by a United States Probation Officer at a reasonable time and in a reasonable manner based upon a reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to such a search may be grounds for revocation; the defendant shall warn any residents that the premises may be subject to searches.

DEFENDANT: Leander Mann
 CASE NUMBER: 0645 2:17CR20644 (1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	N/A	None	None

- The determination of restitution is deferred until An Amended Judgment in a Criminal Case (AO245C) will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.
- Restitution amount ordered pursuant to plea agreement \$
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:

35a

the interest requirement is waived for the

fine restitution

the interest requirement for the

fine restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Leander Mann
CASE NUMBER: 0645 2:17CR20644 (1)

SCHEDEULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payments of \$ 100.00 due immediately.
 not later than , or
 in accordance C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal (*e.g., weekly, monthly, quarterly*) installments of \$ over a period of _____ (*e.g., months or years*), to commence (*e.g., 30 or 60 days*) after the date of this judgment; or

D Payment in equal (*e.g., weekly, monthly, quarterly*) installments of \$ over a period of (*e.g., months or years*), to commence (*e.g., 30 or 60 days*) after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ (*e.g., 30 or 60 days*) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of

criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Restitution is joint and several with the following co-defendants and/or related cases, in the amount specified below:

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

Defendant shall receive credit on «dft_his_her» restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.