

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

FIDEL RIOS, JR.,)	Case No. 4:21-cv-00382-SMR
)	Crim. No. 4:18-cr-00203-SMR-HCA-1
Movant,)	
)	
v.)	ORDER
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

Before the Court is a Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 by *pro se* Movant Fidel Rios, Jr. [ECF No. 1]. He challenges his sentence in *United States v. Rios*, 4:18-cr-00203-SMR-HCA-1 (S.D. Iowa) (“Crim. Case”). The Court takes judicial notice of the proceedings in that case. The Government moves to dismiss, arguing Rios’s Motion is untimely and he has not demonstrated a diligent pursuit of his rights or extraordinary circumstances. [ECF No. 4].

I. DISCUSSION

A. AEDPA Equitable Tolling Standard

“Section 2255 was intended to afford federal prisoners a remedy identical in scope to federal habeas corpus.” *Sun Bear v. United States*, 644 F.3d 700, 704 (8th Cir. 2011) (en banc) (citation and internal quotation omitted). The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) imposes “a one-year statute of limitations on motions by prisoners under section 2255 seeking to modify, vacate, or correct their federal sentences.” *Muhammad v. United States*, 735 F.3d 812, 815 (8th Cir. 2013); see 28 U.S.C. § 2244(d)(2). The one-year period runs from the date on which the judgment of conviction becomes final. 28 U.S.C. § 2255(f)(1). If a criminal

defendant does not appeal the judgment, it becomes final when the time for filing an appeal expires. *See Anjulo-Lopez v. United States*, 541 F.3d 814, 817 (8th Cir. 2008) (citing 28 U.S.C. § 2255(f)(4)). A notice of appeal must be filed within 14 days after a judgment is entered. Fed. R. App. P. 4(b).

The statute of limitations in AEDPA is “not ‘jurisdictional.’” *Day v. McDonough*, 547 U.S. 198, 205 (2006). Because it is not a jurisdictional bar, it may be subject to equitable tolling in appropriate circumstances. *Holland v. Florida*, 560 U.S. 631, 645 (2010). The United States Court of Appeals for the Eighth Circuit has recognized that equitable tolling applies to motions filed under § 2255. *United States v. Martin*, 408 F.3d 1089, 1092 (8th Cir. 2005). The Supreme Court has instituted a two-prong test to determine whether equitable tolling is available, where a movant must show “(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way’ and prevented timely filing.” *Holland*, 560 U.S. at 649 (2010) (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)). Both factors of the test must be satisfied for equitable tolling to apply.

Judgment was entered against Rios pursuant to a plea agreement on January 7, 2020. Crim. Case, ECF No. 156. The plea agreement contained a waiver of his right to appeal his conviction. Crim. Case, ECF No. 111 at 8. Rios’s conviction became final when his time to appeal expired in late January 2020.

B. Equitable Tolling Analysis

District courts around the country have found that the circumstances of the COVID-19 pandemic “could—in certain circumstances—conceivably warrant equitable tolling.” *United*

States v. Haro, No. 8:18CR66, 2020 WL 5653520, at *4 (D. Neb. Sept. 23, 2020); *Mims v. United States*, No. 4:20-CV-1538 RWS, 2021 WL 409954, at *3 (E.D. Mo. Feb. 5, 2021). However, it “does not automatically warrant equitable tolling for any movant who seeks it on that basis.” *Howard v. United States*, No. 4:20-CV-1632 JAR, 2021 WL 409841, at *3 (E.D. Mo. Feb. 5, 2021), *certificate of appealability denied*, No. 21-1592, 2021 WL 4177744 (8th Cir. May 17, 2021) (citations omitted); *see also United States v. West*, 578 F. Supp. 3d 962, 967 (N.D. Ohio 2022); *United States v. Henry*, No. 2:17-cr-180, 2020 WL 7332657, at *4 (W.D. Pa. Dec. 14, 2020).

A movant must still show diligent pursuit of their legal rights and prove that they “would have timely filed if not for external obstacles caused by COVID-19.” *Mims*, 2021 WL 409954, at *3–4 (finding “no basis presented for the Court to conclude that movant was at any point prior to filing acting to pursue his right to file a § 2255 motion.”). The rule that the inability to access to a law library is an insufficient circumstance to constitute as “extraordinary” has been affirmed during the pandemic. *Haro*, 2020 WL 5653520, at *4.

There is no evidence in the record that Rios “was pursuing his rights diligently and that the COVID-19 pandemic specifically prevented him from filing his motion.” *Howard*, 2021 WL 409841, at *3. He offers a variety of reasons for his untimeliness including limited access to the law library, suspended commissary services, denial of the ability to purchase stamps and writing paper. [ECF No. 5 at 3]. The bases for Rios’s claims was known to him, thus any limitation on usage of the law library is especially unpersuasive. *See e.g., West*, 578 F. Supp. 3d at 967 (denying

equitable tolling in part because the movant knew of the bases for the motion and failure to pursue any action). The other proffered reasons are similarly unpersuasive.¹

II. CONCLUSION

Based on its review, Rios is not entitled to equitable tolling and his Motion is untimely. Rios's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 is DISMISSED.

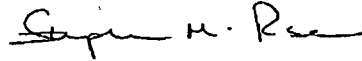
Pursuant to Rule 11(a) of the Rules Governing Section 2255 Proceedings in the United States Courts, the Court must issue or deny a Certificate of Appealability when it enters a final order adverse to the movant. District courts have the authority to issue certificates of appealability under 28 U.S.C. § 2253(c) and Fed. R. App. P. 22(b). A certificate of appealability may issue only if the defendant "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A substantial showing is a showing "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (citation omitted). Rios has not made a substantial

¹ The Court notes that despite Rios's claim that pandemic restrictions prevented him from filing his § 2255 petition in a timely manner, Rios had belatedly filed a notice of appeal in his criminal case on August 13, 2021, twenty months after the deadline for such an appeal had expired. Crim. Case, ECF No. 187. Nowhere in his untimely appeal in his criminal case does Rios mention any pandemic-related obstacles in his notice. *See id.* Rather, he states he believed his counsel had filed an appeal but later learned that no appeal had been filed. The appeal was denied by the Eighth Circuit without comment. Crim. Case, ECF No. 200. Rios does not bring any grounds for ineffective assistance of counsel related to a failure to file an appeal in his original Motion, *see* [ECF No. 1], his reply in support of the Motion's timeliness, [ECF No. 5], nor in his amended Motion, [ECF No. 8].

showing of the denial of a constitutional right on his claims. He may request issuance of a certificate of appealability from a judge with the Eighth Circuit. *See* Fed. R. App. P. 22(b).

IT IS SO ORDERED.

Dated this 19th day of January, 2023.



STEPHANIE M. ROSE, CHIEF JUDGE
UNITED STATES DISTRICT COURT

EXHIBIT B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 23-1268

Fidel Rios, Jr.

Petitioner - Appellant

v.

United States of America

Respondent - Appellee

Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:21-cv-00382-SMR)

JUDGMENT

Before COLLOTON, SHEPHERD, and KELLY, 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.

April 07, 2023

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

/s/ Michael E. Gans