No. 23-_____

In The

Supreme Court of the United States

JOHN W. HANSON III,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

JOHN W. HANSON III
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I. Questions Presented

1. **The Sixth Circuit Court of Appeals has already established that the Petitioner did not Resist Arrest on February 3, 2018.** "Hanson did not threaten any hikers or the rangers, he complied with the rangers' commands, he did not try to run, and he did not resist the rangers." Quoting Hanson v. U.S.A. (6th No. 21-6092 Cir.2022) NORRIS, GIBBONS, and LARSEN, Circuit Judges.

2. **The Appeals Court is also in Clear Disagreement of Petitioner's time of the Arrest that was used to establish the Petitioner's conviction in the Lower Court.**

3. **The Appeal Court disagreement trumps the lower court conviction. The disagreement of arrest is nearly 45 minutes, and close to 2 miles apart from each other.**

4. **The Lower Court's instructed time of arrest was established to protect against excessive force used by the arresting Rangers.**

5. **The Lower Court errored by instructing a false time of arrest to Jurors in the Instruction given at the 3-day trial.**

6. **The petitioner was never told he was under arrest, or detained on February 3rd, 2018.**

7. **Petitioner Hanson was just tackled to the ground by U.S. Park Rangers, and punched nearly 10 times in the back of the head before running for his safety.**

I. Questions Presented – Continued

8. **The Petitioner later scheduled a traditional Jury trial to take place on August 13, 2018 in the Lower Court.**

9. **The Petitioner reached settlement in a case that was unrelated at the time. Case. No 17-5209 reached settlement on August 6th, 2018, in the Sixth Circuit of Appeals.**

10. **On August 8th, 2018, the Petitioner's Jury trial was then rescheduled to take place on September 24th, 2018.**

11. **Trial format was then tailored for a later *HECK Barring* argument by the United States of America.**

12. **Latoyia Carpenter became aware of the outcome of Case. No 17-5209 on May of 2018. The United States of America then charged The Petitioner with new charges, and in September of 2018 Mr. Hanson was forced into a special jury/bench trial arrangement.**

    Jurors would only decide 1 of only 7 charges brought against the petitioner.

13. **The settlement of Case. No 17-5209 triggered the United States of America, and LaToyia Trotter Carpenter to enter false and perjured testimony against the Petitioner 13 days before the new trial date. See Document 27.**

I. Questions Presented – Continued

14. **On September 11, 2018 Petitioner Hanson was falsely accused of possessing Methamphetamines by the United States of America.**

15. **No federal trial exists to cite that proceeded like the Petitioner's jury/bench trial**

16. **Rangers handcuffed the Petitioner with a new set of cuffs. Rangers left the new keys attached. At trial, the respondents tricked the Lower Court and jurors to believe Hanson owned the keys Rangers left attached.**

17. **Jurors were told Hanson owned the set of keys, because he had a pre-planned escape from law enforcement.**

18. **The Respondents for United States of America knowingly gave jurors perjured testimony on multiple occasions.**

19. **All coming between the time of Case. No 17-5209 settlement, and No. 23-5166**

20. **Erroneous Jury Instructions concealed that the Petitioner was being tackled, and punched.**

II. Related Cases

John William Hanson III v. United States of America, United States Court of Appeals for the Sixth Circuit, No. 23-5166 (Jul. 13, 2023).

John William Hanson III v. United States of America, United States District Court for the Eastern District of Tennessee, Nos. 3:21-CV-390-TAV-JEM, 3:18-CR-61-JEM (Memorandum Opinion filed Jan. 11, 2023) (Report and Recommendation filed June 15, 2022).

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V. Petition for Writ Of Certiorari

John W. Hanson III, a prisoner of a wrongful conviction, respectfully petitions this court for a writ of certiorari to review the judgement of the United States Sixth Circuit Court of Appeals.

VI. Opinions Below

1. **The decision by The Sixth Circuit Court of Appeals Dismissing Mr. Hanson's Pro se Direct Appeal is reported as United States of America v. John William Hanson, III, Case 19-5648/19-5650 (Sixth Circuit Court of Appeals June 26, 2019). A motion to reconsider was also denied Case 19-5648/19-5650.** Faretta v. California, 422 U.S. 806 (1975) A judge has the power to decide that a defendant is mentally competent to stand trial, yet not competent enough to represent himself. (*Indiana v. Edwards*, U.S. Sup. Ct. 2008.)

2. "dogs might be a man's best friend, but they generally are not allowed in the backcountry of a national park." [Doc. 65-10, p. 1]. After a visit to Cades Cove with his two unrestrained dogs, plaintiff was convicted of resisting arrest under 18 U.S.C. § 111(a)(1) along with several other minor offenses. Thomas A. Varlan UNITED STATES DISTRICT JUDGE. JOHN WILLIAM HANSON III v. United States of America, LESZEK KWIATKOWSKI and DYLAN JONES, No.: 3:19-CV-46-TAV-HBG)

3. "Hanson did not threaten any hikers or the rangers, he complied with the rangers' commands, he

did not try to run, and he did not resist the rangers." Quoting Hanson v. U.S.A. (6th No. 21-6092 Cir. 2022) NORRIS, GIBBONS, and LARSEN, Circuit Judges. Order attached at Appendix B *The body cam footage shows park rangers hitting Hanson while he is on the ground. Rangers also deployed a stun gun while subduing Hanson. by: WATE 6 On Your Side staff Posted: Jun 26, 2018 / 02:29 PM EDT Updated: Jun 26, 2018 / 02:38 PM EDT*

4. **The petitions for rehearing and motions for a "hearing on Document 27" and to alter or amend the judgement were denied by the Sixth Circuit Court on September 18, 2023. It is reported as John William Hanson III v. United States of America, 23-5166.**

VII. Jurisdiction

Mr. Hanson petition for new hearing, "hearing on Document 27" and to alter or amend a judgement entered in his criminal case was denied on September 18, 2023. Mr. Hanson invokes this Court's jurisdiction under 28 U.S. Code § 1251, having timely filed this petition for a writ of certiorari within ninety days of the Sixth Circuit Court of Appeals Judgment.

VIII. Constitutional Provisions Involved

The Sixth Amendment guarantees the rights of criminal defendants, including the right to a public trial without unnecessary delay, the right to a lawyer,

the right to an impartial jury, and the right to know who your accusers are and the nature of the charges and evidence against you.

A violation of Fourth Amendment rights starts at suppressing relevant evidence. Mr. Hanson toxicology report was suppressed from jurors, September 2018. Mr. Hanson received the report from the T.B.I. February, 2023, through email.

The Fourth Amendment to the United States Constitution prohibits the use of excessive force in the course of an arrest, investigatory stop, or other seizure. Excessive force by a law enforcement officer is force that is objectively unreasonable under the circumstances.

IX. Statement of the Case

1. He did not Resist the rangers

"Hanson did not threaten any hikers or the rangers, he complied with the rangers' commands, he did not try to run, and he did not resist the rangers." Quoting Hanson v. U.S.A. (6th No. 21-6092 Cir. 2022) NORRIS, GIBBONS, and LARSEN, Circuit Judges.

2. Perjured Expert Testimony

This case is the result of the Respondents knowingly producing, and providing jurors perjured testimony during jury deliberation in Mr. Hanson's September 2018 Jury/Bench trial.

3. Jurors not aware another trial was taking place

Jurors in Mr. Hanson jury trial, were unaware they were being presented evidence from a bench trial, and believed perjured "Expert Testimony" was truthful.

X. REASONS FOR GRANTING THE WRIT

A. To avoid erroneous deprivations of constitutional right. This Court needs to clarify that Mr. Hanson did not Resist Arrest.

B. This case is the direct result of concealment, and perjured testimony entered against Mr. Hanson back in September of 2018.

Mr. Hanson filed timely in the Eastern District Court of Tennessee. "Hanson did not threaten any hikers or the rangers, he complied with the rangers' commands, he did not try to run, and he did not resist the rangers." Quoting Hanson v. U.S.A. (6th No. 21-6092 Cir. 2022) NORRIS, GIBBONS, and LARSEN, Circuit Judges.

C. John Hanson v. Madison Cty. Detention Center, No. 17-5209 (6th Cir. 2018), and John Hanson, III v. USA, et al LESZEK KWIATKOWSKI, U.S. Park Ranger and DYLAN JONES, U.S. Park Ranger 21-6092, both are **Unpublished Opinions.**

D. Mr. Hanson was found to have not resisted by the Appeals Court. Mr. Hanson litigated

the proper time of arrest in his first chance on appeal in John Hanson, III v. USA 21-6092.

XI. Conclusion

Case 21-6092 is the first time Hanson was able to exercise his pro Se right to represent himself in a case related to this conviction. Mr. Hanson has filed Timely every time he's represented himself.

John Hanson v. Madison Cty. Detention Center, No. 17-5209 (6th Cir. 2018) reached settlement in August 2018. Document 27 Perjured Testimony was entered on September 11th.

When Document 27 was entered. It was over a month from the original trial date, Mr. Hanson sat in person. Jurist today would conclude John Hanson v. Madison Cty. Detention Center, No. 17-5209 (6th Cir. 2018) involved Excessive Force.

Mr. Hanson was Not present when his traditional jury trial right was manipulated in August of 2018.

U.S. Rangers left handcuff keys attached to Mr. Hanson's handcuffs. The Respondents knowingly conspired to unlawfully convict Mr. Hanson.

The Respondents falsely convinced the court, and jurors on multiple occasions that Mr. Hanson owned the handcuff keys before he was arrested on February 3, 2018. The Respondents convinced jurors in September of 2018 that Mr. Hanson preplanned escapes from law enforcement.

A circuit clerk decided Mr. Hanson's Pros se right. A judge has the power to decide that a defendant is mentally competent to stand trial, yet not competent enough to represent himself. (*Indiana v. Edwards*, U.S. Sup. Ct. 2008.)

John William Hanson III, v. United States of America 23-5166 Order is attached.

The body cam footage shows park rangers hitting Hanson while he is on the ground. Rangers also deployed a stun gun while subduing Hanson. by: WATE 6 On Your Side Staff Posted: Jun 26, 2018 / 02:29 PM EDT Updated: Jun 26, 2018 / 02:38 PM EDT.

"Taking a person to the ground constitutes excessive force when the person in question did not pose a tenable threat to the officers' safety" Citing Lyons v. City of Xenia, 417 F.3d 565, 578 (6th Cir. 2005).

Jurors today would conclude the Court has continued to rely on that false time of arrest, only so the Petitioner's wrongful conviction is a HECK barring claim in case #21-6092.

"Hanson, his two dogs, and Kwiatkowski hiked back to the Abrams Falls trailhead. Although Hanson was suspected of committing several nonviolent offenses, Kwiatkowski did not tell him that he was under arrest or that he would be arrested and charged with any offenses." Quoting Hanson v. U.S.A. (6th No. 21-6092 Cir. 2022) The Rangers also hit and punched Hanson on the back of his head and on his body. Quoting

Hanson v. United States of America (6th Cir. 2022) No. 21-6092.

If a suspect is passively complying with the officer's commands, that suspect has {2017 U.S. Dist. LEXIS 21} a clearly established right to be free from force beyond what may be necessary to carry out an arrest. Cole, 448 Fed. Appx. 571, 2011 WL 592462 at *5; see also Wheeler v. City of Cleveland, 415 Fed. Appx. 705, 2011 WL 944374, at *2 (6th Cir. 2011); Baker v. City of Hamilton, 471 F.3d 601, 608 (6th Cir. 2006).

"As a general matter the right to be free from excessive force by police is clearly established Fourth Amendment Right. Cole, 448 Fed. Appx. 571, 2011 WL 5924562, at *4 (citing Neague v. Cynkar, 258 F.3d 504, 507 (6th Cir. 2001). The failure to consider this issue will result in a plain miscarriage of justice. "Girl Scouts of Middle Tenn., Inc v. Girl Scouts of the U.S.A. (6th Cir. 2014) (quoting United States v. Ninety-Three Firearms(6th Cir. 2003) Refusing to address these claims will not result in a plain miscarriage of justice.

"Hanson did not threaten any hikers or the rangers, he complied with the rangers' commands, he did not try to run, and he did not resist the rangers." Quoting Hanson v. U.S.A. (6th No. 21-6092 Cir. 2022)

Petitioner Received Final Discovery for Original 2018 Jury Trial on February 21st, 2023.

Hanson is Timely

A jurist today would be able to refer to Petitioner Hanson's Toxicology Report that was suppressed.

A jurist today would determine Petitioner Hanson was not "High on Meth" back in February of 2018.

Today

A jurist today would not focus on Hanson running "High on Meth" at the Great National Park. Jurist today would see "The body cam footage shows park rangers hitting Hanson 6 while he is on the ground." by: WATE 6 On Your Side Staff Posted: Jun 26, 2018 / 02:29 PM EDT Updated: Jun 26, 2018 / 02:38 PM EDT

A jurist today would conclude "Hanson, his two dogs, and Kwiatkowski hiked back to the Abrahams Falls trailhead. Although Hanson was suspected of committing several non-violent offenses, Kwiatkowski did not tell him that he was under arrest or that he would be arrested and charged with any offenses." Quoting Hanson v. U.S.A. (6th No. 21-6092 Cir. 2022) "The Rangers also hit and punched Hanson on the back of his head and on his body." Quoting Hanson v. United States of America (6th Cir. 2022) No. 21-6092. The Defendant was convicted by a jury of forcibly resisting a federal officer in the performance of the officer's official duties in violation of 18 U.S.C. § 111(a)(1) (Class A misdemeanor). On that same date, United States Magistrate

Judge H. Bruce Guyton found Defendant Hanson guilty of six petty offenses (Class B misdemeanors).

"People in this country know that the system is rigged, and they know that they're being lied to" **Robert F. Kennedy Jr 2024 Democrat Frontrunner for President of the United States**

"The Department of Justice, they've totally weaponized it," "It's weaponized like we've never had this before. It's not only me" "When this election is over, I will be the president of the United States," "You will be vindicated and proud, and the thugs and criminals who are corrupting our justice system will be defeated, discredited and totally disgraced." **President Donald J. Trump, 2024 Republican Frontrunner for President of the United States, 45th president of the United States. See Document 27**

This Unlawful conviction has already lost Mr. Hanson employment, that he held since 2018. Currently the unlawful conviction has caused discrimination against Mr. Hanson with multiple employers. The Unlawful conviction makes Mr. Hanson continues face unwarranted civil disabilities.

For the foregoing reasons, Mr. Hanson respectfully requests this Court issue a writ of certiorari to review the judgement of the Sixth Circuit

Court of Appeals. DATED this 16th day of December 2023

Respectfully submitted,

Originally filed: 12/16/2023
Re-filed: 2/19/2024

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APPENDIX TABLE OF CONTENTS

No. 23-5166

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOHN WILLIAM HANSON III, Petitioner-Appellant, v. UNITED STATES OF AMERICA, Respondent-Appellee.	)	ORDER (Filed Jul. 13, 2023)

Before: SUTTON, Chief Judge.

John William Hanson III, proceeding pro se, appeals a district court judgment dismissing his motion to vacate, set aside, or correct his sentence filed under 28 U.S.C. § 2255. This court construes the notice of appeal as a request for a certificate of appealability. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b)(2). Hanson moves to proceed in forma pauperis on appeal.

In a combined proceeding held in 2018, a jury found Hanson guilty of resisting, opposing, impeding, and interfering with a federal officer in the performance of the officer's duties, in violation of 18 U.S.C. § 111(a)(1), and a magistrate judge found him guilty of the following petty offenses after a bench trial: possession of five grams of marijuana, in violation of 36 C.F.R. § 2.35(b)(2); pet in a closed area, in violation of 36 C.F.R. § 2.15(a)(1); unrestrained pet, in violation of 36 C.F.R. § 2.15(a)(2); fire in a closed area, in violation of 36 C.F.R. § 2.13(a)(1); interfering with agency

functions—lawful order, in violation of 36 C.F.R. § 2.32(a)(2); and interfering with agency functions—providing false information, in violation of 36 C.F.R. § 2.32(a)(3). *United States v. Hanson*, No. 3:18-CR-61 (E.D. Tenn.); *United States v. Hanson*, No. 3:18-PO-53 (E.D. Tenn.). The magistrate judge sentenced Hanson to serve 10 months in prison for the § 111 offense and four months in prison for each remaining offense, to run concurrently, followed by one year of supervised release. *Hanson*, No. 3:18-CR-61; *Hanson*, No. 3:18-PO-53. Hanson appealed to the district court, which affirmed his convictions. *United States v. Hanson*, No. 3:18-CR-193 (E.D. Tenn. May 28, 2019); *United States v. Hanson*, No. 3:18-CR-194 (E.D. Tenn. May 28, 2019). On April 15, 2020, we affirmed the district court's orders in consolidated appeals. *United States v. Hanson*, Nos. 19-5614/5615 (6th Cir. Apr. 15, 2020). Hanson did not pursue a petition for a writ of certiorari to the United States Supreme Court.

Hanson filed this motion to vacate on November 16, 2021. He claimed that he was denied (1) self-representation, (2) effective assistance of trial counsel, (3) a speedy trial, (4) a preliminary hearing, and (5) an impartial jury. He also claimed that (6) the prosecutor committed misconduct, (7) insufficient evidence was presented to support his conviction for forcibly resisting arrest because the magistrate judge allowed him to present a self-defense claim, (8) the format of his trial was improper, (9) evidence concerning handcuff keys was improperly admitted, and (10) pretrial motions were erroneously denied. A magistrate judge

recommended denial of Hanson's motion because (1) he was not "in custody" when his motion was filed and therefore statutorily ineligible for § 2255 relief, (2) his motion was untimely and he failed to show entitlement to equitable tolling, and (3) his claims either were procedurally defaulted or had been previously litigated.

Over Hanson's objections, the district court adopted in part the magistrate judge's report, dismissed the motion to vacate, and denied a certificate of appealability. The district court accepted the magistrate judge's statutory-ineligibility and untimeliness determinations but declined to address or adopt the magistrate judge's remaining recommended basis for denying Hanson's motion because it found that statutory ineligibility and untimeliness were sufficient grounds on which to dismiss the motion. Hanson's motion for reconsideration was denied.

A certificate of appealability may issue only if a petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a habeas corpus petition is denied on procedural grounds, the petitioner must show "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 v. McDaniel*, 529 U.S. 473, 484 (2000).

Reasonable jurists would not debate the district court's determination that Hanson failed to satisfy the "in custody" requirement of § 2255(a). "A prisoner *in*

custody under sentence of a court established by Act of Congress . . . may move the court which imposed the sentence to vacate, set aside or correct the sentence." 28 U.S.C. § 2255(a) (emphasis added). A § 2255 movant satisfies the custodial requirement by filing his motion to vacate during either his prison or supervised-release term. *See Polo v. United States*, 778 F.3d 525, 529 (6th Cir. 2015); *Melville v. United States*, 457 F. App'x 522, 524 n.1 (6th Cir. 2012).

Hanson completed his sentence and was released from prison on August 30, 2019. *See Find an Inmate*, Federal Bureau of Prisons, https://www.bop.gov/inmateloc (last visited July 11, 2023). His one-year supervised-release term expired one year later, on August 30, 2020. Thus, Hanson was not "in custody" and therefore statutorily ineligible for § 2255 relief when he filed his motion to vacate over one year later, on November 16, 2021. *See* 28 U.S.C. § 2255(a).

Reasonable jurists also would not debate the district court's determination that Hanson's motion to vacate is untimely. A motion to vacate is subject to a one-year statute of limitations that begins to run from the latest of four possible circumstances. *Id.* § 2255(f). Most of the time, the statute of limitations begins to run from "the date on which the judgment of conviction becomes final." *Id.* § 2255(f)(1).

Hanson's convictions became final on Monday, September 14, 2020, on expiration of the extended 150-day period during which he could have filed a petition for a writ of certiorari to the United States Supreme

Court from our April 15, 2020, order affirming his convictions. *See Gonzalez v. Thaler*, 565 U.S. 134, 150 (2012); *see also Rules of the Supreme Court of the United States—Miscellaneous Order Addressing the Extension of Filing Deadlines [COVID-19]*, 334 F.R.D. 801 (2020). Because "the day of the event that triggers the period" is not counted, the one-year limitations period began to run on Tuesday, September 15, 2020. *See Moss v. Miniard*, 62 F.4th 1002, 1010 (6th Cir. 2023). It ran uninterrupted until its expiration one year later on Tuesday, September 14, 2021, "the anniversary of the day of finality." *Id.* Because Hanson's motion to vacate was filed more than two months after September 14, 2021, it is untimely under § 2255(f)(1).

"The one-year statute of limitations for filing a § 2255 [motion] is subject to equitable tolling." *Jefferson v. United States*, 730 F.3d 537, 549 (6th Cir. 2013) (quoting *Johnson v. United States*, 457 F. App'x 462, 469 (6th Cir. 2012)). To benefit from equitable tolling, the § 2255 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 v. Florida*, 560 U.S. 631, 649 (2010) (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)). "The party seeking equitable tolling bears the burden of proving he is entitled to it." *Robertson v. Simpson*, 624 F.3d 781, 784 (6th Cir. 2010).

The district court found that Hanson failed to establish entitlement to equitable tolling. Reasonable jurists would not disagree. Hanson showed neither that he diligently pursued his rights after his convictions

nor that an extraordinary circumstance prevented him from filing a timely motion to vacate. *See Holland*, 560 U.S. at 649. Additionally, Hanson did not assert, much less make a credible showing of, actual innocence that would allow his motion to vacate to proceed despite its untimeliness. *See McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013); *Schlup v. Delo*, 513 U.S. 298, 327 (1995).

We therefore **DENY** the application for a certificate of appealability and **DENY** as moot the motion to proceed in forma pauperis.

ENTERED BY ORDER OF
THE COURT

/s/ Deborah S. Hunt
Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

JOHN WILLIAM HANSON III, Petitioner, v. UNITED STATES OF AMERICA, Respondent.	)	Nos.: 3:21-CV-390-TAV-JEM 3:18-CR-61-JEM

MEMORANDUM OPINION

(Filed Jan. 11, 2023)

In November 2021, petitioner filed his motion to vacate, set aside, or correct sentence, pursuant to 28 U.S.C. § 2255 [Doc. 1].[1] The Court referred the matter to United States Magistrate Judge Jill E. McCook [Doc. 8], and, on June 15, 2022, Judge McCook entered her report and recommendation ("R&R) [Doc. 10] recommending that the Court deny petitioner's § 2255 motion. Petitioner objects to the R&R [Doc. 17]. For the reasons explained herein, petitioner's objections [Doc. 17] are **OVERRULED** and the R&R [Doc. 10] is **ACCEPTED AND ADOPTED IN PART**. Petitioner's § 2255 motion is therefore **DENIED**.

[1] Unless otherwise specified, all document citations refer to the civil case docket.

I. Background

The following relevant facts are taken from the background section of the R&R. In early February 2018, National Park Service Ranger Leszek Kwiatkowski responded to reports of an orange vehicle driving the wrong way down a road in the Great Smoky Mountains National Park [Case No. 3:18-cr-61 ("Crim. Case"), Doc. 70, p. 32]. Ranger Kwiatkowski found an unoccupied vehicle matching that description in a parking lot along the road, noticed a dog leash in plain view within the vehicle, and observed dog tracks on the nearby trail—although signs in the area indicated that dogs were not permitted on that trail [*Id.* at 32–33, 36–40]. Ranger Kwiatkowski had previously been informed by park visitors that there were unrestrained dogs on the trail [*Id.* at 33].

Ranger Kwiatkowski traveled roughly 2 ½ miles down the trail and saw petitioner, two unrestrained dogs, and a fire near the base of a tree [*Id.* at 43–44]. As Ranger Kwiatkowski approached, petitioner extinguished the fire, picked up a backpack containing a 12-inch knife with a 7-inch blade strapped onto it, and started walking away [*Id.* at 43–46, 53]. Ranger Kwiatkowski directed petitioner to stop, set down his backpack, and move back towards him; however, petitioner initially ignored Ranger Kwiatkowski's instructions [*Id.* at 46]. Eventually, petitioner set his backpack down and moved a short distance away from it [*Id.* at 46–48]. Petitioner was asked for his name and date of birth, but he provided a false last name and false birth year [*Id.* at 52].

Petitioner stated he was cold and wanted to get pants from his backpack [*Id.* at 48]. Ranger Kwiatkowski told petitioner he had seen the knife on the backpack, and he directed petitioner to leave it alone. Petitioner continued to ignore Ranger Kwiatkowski's commands, walked over towards the backpack, and picked it up again [*Id.*]. Ranger Kwiatkowski—concerned that petitioner would retrieve the knife—pushed petitioner to the ground to gain control of his movement and then helped him stand up [*Id.* at 48–49]. Petitioner refused to release the backpack, but Ranger Kwiatkowski was able to pull it away from him [*Id.* at 49]. Petitioner was "showing a high energy level" and appeared to be "under the influence of some kind of drug" [*Id.* at 53]. Ranger Kwiatkowski carried petitioner's backpack as they hiked back to the parking lot with the two dogs in tow [*Id.* at 55, 57–58]. During the return trip, National Park Service Ranger Dylan Jones joined petitioner and Ranger Kwiatkowski [*Id.* at 58, 118]. Petitioner was hiking "very quickly" and appeared to be "trying to outpace" the rangers, even though they repeatedly directed him to slow down [*Id.* at 57–58].

When they neared the parking lot, the rangers attempted to arrest petitioner by simultaneously grabbing both of his arms [*Id.* at 58–59, 123–24]. Petitioner resisted arrest, "violently struggle[d]," and "lowered his center of gravity," broke free, and ran through the woods, stopping beside his vehicle [*Id.* at 59–61]. The rangers chased petitioner for nearly four minutes and tased him several times before placing handcuffs on

him [*Id.* at 64–67, 77–78, 128–23]. After being handcuffed, petitioner appeared to suffer a seizure and was flown to a hospital for medical evaluation [*Id.* at 61–62, 136]. Later, Ranger Jones conducted an inventory search of petitioner's vehicle and found what he suspected was marijuana hash oil as well as petitioner's driver's license, revealing that he was someone other than who he had claimed to be [Crim. Case, Doc. 70, pp. 137–40]. Petitioner was later charged with six petty offenses [Case No. 3:18-po-53, Doc. 1]. Ranger Kwiatkowski later obtained and executed a warrant to search petitioner's backpack, which contained 5.7 grams of a green leafy substance, which was confirmed to be marijuana [Crim. Case, Doc. 70, pp. 85–87, Doc. 27–1].

On May 9, 2018, the government filed an information charging petitioner with two misdemeanor offenses of forcibly resisting arrest, opposing, impeding, and interfering with a federal officer, in violation of 18 U.S.C. § 111(a)(1), and possessing marijuana, in violation of 36 C.F.R. § 2.35(b)(2) [Crim. Case, Doc. 1]. Petitioner was arraigned on those charges in June 2018 [Crim. Case, Doc. 76, pp. 1–20; Doc. 87, p. 2]. Upon petitioner's consent, all of the charges were tried together before United States Magistrate Judge H. Bruce Guyton with a jury deciding his guilt only as to the Class A misdemeanor of resisting arrest [Crim. Case, Doc. 8]. Petitioner was convicted on all charges, excluding one petty offense that had previously been dismissed by the government [Crim. Case, Doc. 71, pp. 86–92]. Petitioner unsuccessfully sought a judgment of

acquittal or a new trial in regarding to the resisting-arrest misdemeanor offense [Crim. Case, Doc. 60]. Petitioner was sentenced to 10 months' imprisonment and one year of supervised release [Crim. Case, Doc. 67].

Petitioner appealed to the district court, which affirmed the convictions [Case No. 3:18-cr-193, Doc. 33]. Petitioner subsequently appealed to the Sixth Circuit Court of Appeals, which affirmed the convictions as well. *United States v. Hanson*, Nos. 19-5614/5615, 2020 U.S. App. LEXIS 12012 (6th Cir. Apr. 15, 2020). No petition for a writ of certiorari was filed.

On November 16, 2021, petitioner filed this § 2255 motion [Doc. 1]. In her R&R, Judge McCook set forth three independent grounds for dismissal of petitioner's § 2255 motion [Doc. 10, p. 8]. First, Judge McCook found that petitioner is statutorily ineligible for relief under § 2255, because he was not "in custody" at the time when he filed his § 2255 motion [*Id.* at 8–9]. Second, Judge McCook found that petitioner's § 2255 motion is untimely, and he had not established that equitable tolling applies [*Id.* at 9–11]. Finally, Judge McCook found that all of petitioner's claims are unreviewable as they are either procedurally defaulted or previously litigated [*Id.* at 11–12]. Judge McCook also recommended that the Court deny a certificate of appealability [*Id.* at 12–13].

II. Legal Standard

This Court reviews *de novo* those portions of a magistrate judge's report and recommendation to which a party objects, unless the objections are frivolous, conclusive, or general. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *Smith v. Detroit Fed'n of Teachers, Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987); *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986). "The parties have 'the duty to pinpoint those portions of the magistrate's report that the district court must specially consider.'" *Mira*, 806 F.2d at 637 (quoting *Nettles v. Wainwright*, 677 F.2d 404, 410 (5th Cir. 1982)). "A general objection, or one that does nothing more than disagree with a magistrate judge's determination or summarize what has been presented before, is not considered a valid objection." *Payne v. Sawyer*, No. 18-cv-10814, 2020 WL 5761034, at *2 (E.D. Mich. Sept. 28, 2020) (citing *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505, 508–09 (6th Cir. 1991)).

III. Analysis

In his objections, petitioner asserts that his arguments have yet to be litigated in this Court [Doc. 17, p. 1]. He contends that his § 2255 motion was timely filed and he "filed numerous 28 U.S.C. 2255 during incarceration due to the length of sentence" [*Id.*]. Petitioner contends that considering "time and location of [his filing] is an excuse for this Court to ignore never litigated arguments" which he asserts "is a miscarriage of justice" [*Id.* at 19]. The remainder of

petitioner's objections relate to the substance of his claims, rather than the grounds for denial set forth in the R&R.

First, the Court agrees with Judge McCook's assessment that petitioner was not "in custody" at the time of filing his § 2255 motion, and therefore, is statutorily ineligible for relief. Petitioner does not directly address this contention in his objections but appears to argue that he has filed prior § 2255 motions and that the time of filing should not impact the Court's review of his motion. But the record belies any claim that petitioner previously filed a § 2255 motion. And, indeed, if petitioner had filed a prior § 2255 motion, the instant motion would be barred absent leave to file a second or successive motion from the Sixth Circuit. 28 U.S.C. § 2255(h).

To the extent that petitioner argues that the Court should not consider his custodial status in addressing his motion, the Court notes that being "in custody" is a statutory prerequisite for relief under § 2255. 28 U.S.C. § 2255(a) (providing that "[a] prisoner in custody under sentence of a court established by Act of Congress" may seek relief under that statute). There does not appear to be any dispute that petitioner was released from custody of the Bureau of Prisons and had completed his term of supervised release when he filed the instant § 2255 motion [*See* Doc. 10, pp. 8–9]. Accordingly, petitioner's § 2255 motion is statutorily barred because he did not meet the requirement of being "in custody" at the time of his filing.

Second, the Court agrees with Judge McCook's assessment that petitioner's § 2255 is barred by the applicable one-year limitations period. The Antiterrorism and Effective Death Penalty Act ("AEDPA") contains a one-year statute of limitations for the filing of a § 2255 motion. 28 U.S.C. § 2255(f). In pertinent part, this one-year limitations period commences the date on which the judgment of conviction becomes final. *Id.* § 2255(f)(1). A judgment of conviction becomes final when the Supreme Court "affirms a conviction on the merits on direct review or denies a petition for a writ of certiorari, or when the time for filing a certiorari petition expires." *Clay v. United States*, 537 U.S. 522, 527 (2003). Here, the Sixth Circuit affirmed petitioner's convictions on April 20, 2020 [Case. No. 3:18-cr-193, Doc. 44], therefore, petitioner had until September 17, 2020, to seek a writ of certiorari from the Supreme Court. *See* Supreme Court Miscellaneous Order (Mar. 19, 2020), https://www.supremecourt.gov/orders/courtorders/031920zr_dlo3.pdf ("In light of the ongoing public health concerns relating to COVID-19 . . . the deadline to file any petition for a writ of certiorari due on or after the date of this order is extended to 150 days from the date of the lower court judgment. . . ."). Because petitioner declined to seek a writ of certiorari, his convictions became final on that date. Nonetheless, petitioner waited until more than a year had expired, in November 2021, to file his § 2255 motion [Doc. 1].

Although the one-year limitations period under § 2255 is not a jurisdictional bar, and may be tolled under limited, extraordinary circumstances, *Jones v.*

United States, 689 F.3d 621, 626–27 (6th Cir. 2012), petitioner has not presented any such extraordinary circumstances in this case that would warrant tolling of the limitations period. Instead, petitioner merely states that dismissing his § 2255 motion on timeliness grounds would be unjust, based on his underlying claims. But, if the Court were to accept this argument, that the alleged viability of petitioner's underlying claims overcome the limitations period, the limitations period in § 2255 would have no meaning at all. Accordingly, the Court finds that petitioner's § 2255 motion is untimely and no equitable tolling applies.

The Court notes that Judge McCook also found petitioner's claims were either procedurally defaulted or previously litigated, which petitioner appears to contest. However, because the two grounds discussed above provide adequate and independent grounds for dismissal of this § 2255 motion, in the interests of judicial economy, the Court declines to address this issue, and will not adopt this portion of the R&R.

IV. Conclusion

For the reasons stated above, petitioner's objections [Doc. 17] are **OVERRULED** and the R&R [Doc. 10] is **ACCEPTED AND ADOPTED IN PART**. Petitioner's motion to vacate, set aside, or correct sentence [Doc. 1] is **DISMISSED**. A hearing is unnecessary as to petitioner's claims, and the Court will **CERTIFY** that any appeal from this dismissal would not be taken in good faith and would be totally frivolous. Therefore,

this Court will **DENY** petitioner leave to proceed in forma pauperis on appeal. *See* Fed. R. App. P. 24. Further, because petitioner has failed to make a substantial showing of the denial of a constitutional right as to these claims, a certificate of appealability **SHALL NOT ISSUE**. 28 U.S.C. § 2253; Fed. R. App. P. 22(b).

ENTER:

s/ Thomas A. Varlan
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

JOHN WILLIAM HANSON III, Petitioner, v. UNITED STATES OF AMERICA, Respondent.	)	Nos.: 3:21-CV-390-TAV-JEM 3:18-CR-61-JEM

JUDGMENT ORDER

(Filed Jan. 11, 2023)

For the reasons set forth in the accompanying opinion, it hereby is **ORDERED** and **ADJUDGED** that Petitioner's § 2255 motion [Case No. 3:18-cr-61, Doc. 88; Case No. 3:21-cv-390, Doc. 1] is **DISMISSED** with prejudice.

Should Petitioner give timely notice of an appeal from this order, such notice will be treated as an application for a certificate of appealability, which is hereby **DENIED** because he has failed to make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Additionally, the Court has reviewed this case in accordance with Rule 24 of the Federal Rules of Appellate Procedure and hereby **CERTIFIES** that any appeal from this action would not be taken in good faith and would be totally frivolous. Therefore, any application by Petitioner for

leave to proceed in forma pauperis on appeal is **DENIED**. *See* Fed. R. App. P. 24.

The Clerk is **DIRECTED** to close civil case number 3:21-CV-390.

ENTER:

s/ Thomas A. Varlan
UNITED STATES DISTRICT JUDGE

ENTERED AS A JUDGMENT

LeAnna R. Wilson
CLERK OF COURT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

JOHN WILLIAM HANSON, III, Petitioner, v. UNITED STATES OF AMERICA, Respondent.	)	Nos.: 3:21-CV-390-TAV-JEM 3:18-CR-61-JEM

REPORT AND RECOMMENDATION

Before the Court is a *pro se* Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 [Doc. 1 ("Petition")], filed by John William Hanson, III ("Petitioner"), on November 17, 2022.[1] This case was initially assigned to Magistrate Judge H. Bruce Guyton, and later reassigned to the undersigned [Doc. 2]. On June 2, 2022, pursuant to 28 U.S.C. § 137, Chief United States District Judge Travis R. McDonough assigned this matter to United States District Judge Thomas A. Varian for all further proceedings [Doc. 7]. District Judge Varian subsequently referred to the Petition to the undersigned for a report and recommendation [Doc. 8].

In 2018, Petitioner was charged with multiple petty offenses in Case No. 3:18-po-53 and was later

[1] Unless otherwise indicated, all citations to the record are found on the docket of Case No. 3: 21-CV-390-TAV-JEM.

charged with two misdemeanors in Case No. 3:18-cr-61, including the Class A misdemeanor of resisting arrest in violation of 18 U.S.C. § 111(a)(1). Petitioner consented to have all charges tried together before United States Magistrate Judge H. Bruce Guyton [Case No. 3:18-cr-61, Doc. 8]. Judge Guyton presided over the trial, and a jury decided Petitioner's guilt solely as to the resisting-arrest misdemeanor offense. Petitioner was convicted at trial and was sentenced to an aggregate term of 10 months' imprisonment, followed by one year of supervised release [Case No. 3:18-cr-61, Doc. 30]. Petitioner unsuccessfully appealed his convictions to the district court [Case No. 3:18-po-53, Doc. 37; Case No. 3:18-cr-61, Doc. 67]. Petitioner completed his sentence in its entirety prior to his convictions becoming final, and he filed his 28 U.S.C. § 2255 motion on November 17, 2021 [Doc. 1]. The Court reviewed the Petition and issued an order on February 15, 2022, directing the Government to file an answer or other response within forty-five (45) days, as it did not plainly appear from the face of the motion that it should be summarily dismissed [Doc. 3]. The Government responded on April 1, 2022 [Doc. 4]. Petitioner filed replies on May 2, 2022 [Doc. 5], and on May 4, 2022 [Doc. 6].[2] The Court has reviewed the parties' filings and the background of this matter and finds an evidentiary

[2] The replies are nearly identical to each other excluding the fact that they were received two days apart and in different envelopes. Therefore, unless otherwise indicated, all citations to Petitioner's Reply refer to the May 2, 2022 filing [Doc. 5]. The Court has, however, reviewed both replies in rendering this report and recommendation.

hearing is unnecessary for disposition of Petitioner's motion and this matter as a whole. For the reasons set forth herein, the Court **RECOMMENDS** that Petitioner's motion [**Doc. 1**] be **DENIED** and that no certificate of appealability be issued.

I. BACKGROUND

In early February 2018, National Park Service Ranger Leszek Kwiatkowski ("Ranger Kwiatkowski") responded to reports of an orange vehicle driving the wrong way down a road in the Great Smoky Mountains National Park [Case No. 3:18-cr-61, Doc. 70 p. 32]. Ranger Kwiatkowski found an unoccupied vehicle matching that description in a parking lot along the road, noticed a dog leash in plain view within the vehicle, and observed dog tracks on the nearby trail—although signs in the area indicated that dogs were not permitted on that trail [*Id.* at 32–33, 36–40]. Ranger Kwiatkowski had previously been informed by park visitors that there were unrestrained dogs on the trail [*Id.* at 33].

Ranger Kwiatkowski traveled roughly 2 ½ miles down the trail and saw Petitioner, two unrestrained dogs, and a fire near the base of a tree [*Id.* at 43–44]. Thus, it appeared that Petitioner was violating multiple federal laws and regulations prohibiting pets and fires in certain restricted areas [*Id.* at 42–44]. As Ranger Kwiatkowski approached, Petitioner extinguished the fire, picked up a backpack containing a 12-inch knife with a 7-inch blade strapped onto it, and

started walking away [*Id.* at 43–46, 53 (noting that two lighters were also found in Petitioner's pockets, raising the ranger's suspicions concerning the fire at the base of the tree)].

Ranger Kwiatkowski directed Petitioner to stop, set down his backpack, and move back towards him; however, Petitioner initially ignored Ranger Kwiatkowski's instructions [*Id.* at 46]. Eventually, Petitioner set his backpack down and moved a short distance away from it [*Id.* at 46–48]. Petitioner was asked for his name and date of birth, but he provided a false last name and false birth year, causing concerns that he may have been wanted by law enforcement [*Id.* at 52].

Petitioner stated he was cold and wanted to get pants from his backpack [*Id.* at 48]. Ranger Kwiatkowski told Petitioner he had seen the knife on the backpack, and he directed Petitioner to leave it alone [*Id.* . Petitioner continued to ignore Ranger Kwiatkowski's commands, walked over towards the backpack, and picked it up again [*Id.*]. Ranger Kwiatkowski—concerned that Petitioner would retrieve the knife—pushed Petitioner to the ground to gain control of his movement and then helped him stand up [*Id.* at 48–49]. Petitioner refused to release the backpack, but Ranger Kwiatkowski was able to pull it away from him [*Id.* at 49]. Petitioner was "showing a high energy level" and appeared to be "under the influence of some kind of drug." [*Id.* at 53]. Ranger Kwiatkowski carried Petitioner's backpack as they hiked back to the parking lot with the two dogs in tow [*Id.* at 55, 57–58]. During the return trip, National Park Service Ranger Dylan Jones

("Ranger Jones") joined Petitioner and Ranger Kwiatkowski [*Id.* at 58, 118]. Petitioner was hiking "very quickly" and appeared to be "trying to outpace" the rangers, even though they repeatedly directed him to slow down [*Id.* at 57–58].

When they neared the parking lot, the rangers attempted to arrest Petitioner by simultaneously grabbing both of his arms [*Id.* at 58–59, 123–24]. Petitioner resisted arrest, "violently struggle[d]," and "lowered his center of gravity," broke free, and ran through the woods, stopping beside his vehicle [*Id.* at 59–61]. The rangers chased Petitioner for nearly four minutes and tased him several times before placing handcuffs on him with assistance from bystanders [*Id.* at 64–67, 77–78, 128–33]. Petitioner continued resisting arrest with a "high level of strength" and an "extremely high" level of energy [*Id.* at 69, 74–75].

After being handcuffed, Petitioner appeared to suffer a seizure lasting at least ten seconds [*Id.* at 61–62]. Ranger Jones—a trained paramedic—prepared to administer an anti-seizure medication, but the seizure subsided, and Petitioner then reported a history of seizures, leading to him being flown to a hospital for medical evaluation [*Id.* at 61–62, 136]. Upon arriving at the hospital, roughly one hour after being arrested, the rangers noticed that the leg shackles that had been placed on Petitioner were missing [Case No. 3:18-cr-61, Doc. 71 pp. 22–23]. The rangers took turns accompanying Petitioner while he was in the hospital; however, the rangers had to repeatedly handcuff Petitioner

because the handcuffs kept being unlocked or removed when they were not watching [*Id.* at 6–12, 22–24].

The following day, National Park Service Ranger Kent Looney ("Ranger Looney") discovered that Petitioner had concealed a handcuff key in his groin area and had been repeatedly unlocking the handcuffs [*Id.* at 6, 13]. Meanwhile, Ranger Jones had conducted an inventory search of Petitioner's vehicle and found what he suspected was marijuana hash oil as well as Petitioner's driver's license, revealing he was someone other than who had claimed to be [Case No. 3:18-cr-61, Doc. 70 pp. 137–40]. Hanson was later charged with six (6) petty offenses [Case No. 3:18-po-53, Doc. 1].

Ranger Kwiatkowski later obtained and executed a warrant to search Petitioner's backpack, which contained 5.7 grams of a green leafy substance suspected to be marijuana [Case No. 3:18-cr-61, Doc. 70 pp. 85–87]. Forensic testing was performed on the substance, and the National Park Service learned in April 2018 that the substance was marijuana [Case No. 3:18-cr-61, Doc. 27-1 (Lab Report)].

On May 9, 2018, the Government filed an information charging Petitioner with the two misdemeanor offenses of forcibly resisting arrest, opposing, impeding, and interfering with a federal officer, in violation of 18 U.S.C. § 111(a)(1), and possessing marijuana, in violation of 36 C.F.R. § 2.35(b)(2) [Case No. 3:18-cr-61, Doc. 1 (Information)]. Petitioner was arraigned on those charges in June 2018 [Case No. 3:18-cr-61, Doc. 76 pp. 1-20; Doc. 87 p. 2]. Petitioner moved to dismiss

the information as allegedly violating the Speedy Trial Act and to suppress the marijuana found in his backpack [Case No. 3:18-cr-61, Docs. 12 & 13]. Judge Guyton denied both motions, as the Speedy Trial Act was not implicated and a valid search warrant authorized the search of the backpack [Case No. 3:18-cr-61, Doc. 24].

Petitioner also sought to exclude evidence that he "was caught with a Handcuff Key and attempted to remove his Handcuffs" while in the hospital, arguing that such evidence was inadmissible under Fed. R. Evid. 404(b) [Case No. 3:18-cr-61, Doc. 26]. The Government responded that the evidence was not 404(b) evidence because Petitioner first unlocked and removed his restraints within an hour after his arrest and continued to do so repeatedly, indicating a continuous pattern of interfering with the rangers' efforts to keep him in custody [Case No. 3:18-cr-61, Doc. 30]. Alternatively, the Government argued the evidence was admissible under Rule 404(b) to prove his intent, preparation, and plan to hinder law enforcement from arresting him [*Id.*]. Judge Guyton found that evidence concerning the handcuff key and Petitioner's use of it was admissible at trial for the limited purpose of showing intent [Case No. 3:18-cr-61, Doc. 36].

Upon Petitioner's consent, all of the charges were tried together before Judge Guyton with a jury deciding his guilt only as to the Class A misdemeanor of resisting arrest [Case No. 3:18-cr-61, Doc. 8]. Petitioner was convicted on all charges excluding one petty offense that had previously been dismissed by the

Government [Case No. 3:18-cr-61, Doc. 71 pp. 86–92]. Petitioner unsuccessfully sought a judgment of acquittal or a new trial in regard to the resisting-arrest misdemeanor offense [Case No. 3:18-cr-61, Doc. 60]. Petitioner was sentenced to 10 months' imprisonment and one year of supervised release [Case No. 3:18-cr-61, Doc. 67].

Petitioner appealed to the district court, which affirmed the convictions [Case No. 3:18-cr-193, Doc. 33]. Petitioner subsequently appealed to the Sixth Circuit Court of Appeals, which affirmed the convictions as well. *United States v. Hanson*, Nos. 19-5614/5615, 2020 U.S. App. LEXIS 12012 (6th Cir. Apr. 15, 2020). No petition for a writ of certiorari was filed; thus, Petitioner's convictions became final on September 14, 2020. *Clay v. United States*, 537 U.S. 522, 532 (2003) (explaining that where no petition for a writ of certiorari is filed, a conviction becomes final at the expiration of the period for doing so); *see also* Supreme Court, Miscellaneous Order (Mar. 19, 2020), https://www.supremecourt.gov/orders/courtorders/031920zr_dlo3.pdf ("In light of the ongoing public health concerns relating to COVID-19 . . . the deadline to file any petition for a writ of certiorari due on or after the date of this order is extended to 150 days from the date of the lower court judgment. . . .").

More than a year later, on November 16, 2021, Petitioner filed this § 2255 motion [Doc. 1].[3] The issues have been fully briefed and are ready for disposition by the Court.

II. ANALYSIS

Section 2255(a) of Title 28 of the United States Code permits a prisoner in custody under sentence of a federal court to move the court that imposed the sentence to vacate, correct, or set aside the sentence, if "the sentence was imposed in violation of the Constitution." In order to obtain relief for an alleged constitutional error, the record must reflect a constitutional error of such magnitude that it "had a substantial and injurious effect or influence on the proceedings." *Watson v. United States*, 165 F.3d 486, 488 (6th Cir. 1999) (citing *Brecht v. Abrahamson*, 507 U.S. 619, 637–38 (1993)). The burden is on the petitioner to establish the claims arising out of the petition. *Bowers v. Battles*, 568 F.2d 1, 5 (6th Cir. 1977). The petitioner has the burden to prove he is entitled to relief by a preponderance of the evidence. *Pough v. United States*, 442 F.3d 959, 964 (6th Cir. 2006).

Petitioner raises several arguments in his § 2255 motion, with most of them centering on disputes with the evidence. For example, Petitioner repeatedly accuses the rangers involved in the events at the Great

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[3] The docket entry for the § 2255 motion indicates it was electronically filed (or docketed) on November 17, 2021; however, the motion is stamped November 16, 2021 [*See* Doc. 1 p. 1].

Smoky Mountain National Park of assault and other improper conduct; Petitioner disputes the circumstances surrounding the handcuff key that was found on his person; and Petitioner attempts to relitigate issues related to his previous suppression motions. In addition, Petitioner raises many underdeveloped arguments related to trial and courtroom management, the limited role of the jury, and alleged overreach by Judge Guyton.

The Government submits that the Petition should be dismissed for three reasons. First, Petitioner is statutorily ineligible for any relief through a § 2255 motion because Petitioner was not "in custody" when he filed his § 2255 motion [Doc. 4. p. 6]. Second, Petitioner's § 2255 motion is untimely and he has not established that equitable tolling should apply to his case [*Id.* at 7]. Third, Petitioner's claims are unreviewable because they are procedurally defaulted or previously litigated [*Id.* at 8]. As explained below, the undersigned finds that any one of the Government's three arguments would serve as an appropriate basis to dismiss the Petition.

A. Petitioner is Statutorily Ineligible for Relief, As He Was Not "In Custody" When he Filed his § 2255 Motion

It is well established in the Sixth Circuit that "courts do not consider the merits of § 2255 motions filed by persons no longer in custody." *Pilla v. United States*, 668 F.3d 368, 372 (6th Cir. 2012) ("[P]art of the

substance of a § 2255 motion is that it is filed by '[a] prisoner *in custody* under sentence of a court established by Act of Congress (emphasis in original)); *Blanton v. United States*, 94 F.3d 227, 231 (6th Cir. 1996) (explaining that a § 2255 motion is generally unavailable when the petitioner has served his sentence completely and thus is no longer "in custody"); *see also United States v. Zack*, No. 98-1526, 1999 WL 96996, at *1 (6th Cir. Feb. 1, 1999) (finding that a petitioner still serving a term of supervised release remains "in custody" for purposes of § 2255 relief). Petitioner completed his custodial sentence on August 30, 2019. *See* Inmate Locator, Federal Bureau of Prisons, https://www.bop.gov/inmateloc/ (last accessed on June 13, 2022); *see also Hernandez v. United States*, Nos. 3:18-CV-129, 3:13-CR-014, 2021 WL 1124760, at *3 (E.D. Tenn. Mar. 24, 2021) ("A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources who accuracy cannot be questioned. . . . This rule governs only judicial notice of adjudicative facts." (quoting Fed. R. Evid. 201(a) & (b))). Petitioner's one-year term of supervised release ended exactly one year later, August 30, 2020 [*See* Doc. 1 p. 3 (stating that Petitioner "finish[ed] his maximum year of probation")].

Petitioner did not file his § 2255 motion until November 16, 2021, more than a year later, when he was no longer "in custody" for purposes of securing § 2255 relief [Doc. 1]. The Court agrees with the Government

that Petitioner's § 2255 motion would have been appropriately filed had it been filed *prior* to Petitioner completing his supervised release, *Hampton v. United States*, 191 F.3d 695, 697 (6th Cir. 1999); however, that is not what occurred here. Petitioner completed his sentence, including the one-year term of supervised release, before filing his § 2255 motion, so the plain language of the statute bars any relief. 28 U.S.C. § 2255(a) ("A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released . . . may move the court which imposed the sentence to vacate, set aside, or correct the sentence.").

Accordingly, the undersigned finds Petitioner is ineligible for § 2255 relief, as he was not "in custody" at the time he filed his § 2255 motion.

B. Petitioner's § 2255 Motion Is Untimely, and Petitioner Has Not Established that Equitable Tolling Applies to this Case

Petitioner's § 2255 motion is untimely. A one-year period of limitation applies to § 2255 motions and typically runs from the date on which the judgment of conviction becomes final—in other words, "at the conclusion of direct review." *Johnson v. United States*, 246 F.3d 655, 657 (6th Cir. 2001). In Petitioner's case, judgment became final on September 14, 2020, upon expiration of time for Petitioner to seek certiorari. Petitioner then had one year, until September 14, 2021, to timely file a § 2255 motion. However, Petitioner did

not file his § 2255 motion until November 16, 2021 [Doc. 1].

Petitioner claims he submitted his § 2255 motion to the Court via certified mail ("Receipt Number 7020 0090 00008770 3234") on September 10, 2021—prior to the expiration of the statute of limitations [Doc. 1 p. 13]. He references a "Picture attached," but no such picture is attached [*Id.*]. And the tracking number Petitioner provided refers to a mailing delivered to Cincinnati, Ohio, not this Court. *See* USPS Tracking, https://tools.usps.comigo/TrackConfirmAction_input (last accessed May 25, 2022); *see also Hernandez*, 2021 WL 1124760, at *3 (explaining circumstances under which a court can take judicial notice).

In any case, the one-year statute of limitations for § 2255 motions is not a jurisdictional bar and may be tolled under limited, extraordinary circumstances. *Jones v. United States*, 689 F.3d 621, 626–27 (6th Cir. 2012); *Dunlap v. United States*, 250 F.3d 1001, 1007 (6th Cir. 2001). As explained by the Sixth Circuit Court of Appeals:

> Equitable tolling is used sparingly and "only if two requirements are met. First, the petitioner must establish that he has been pursuing his rights diligently. And second, the petitioner must show that some extraordinary circumstance stood in his way and prevented timely filing."

Jones, 689 F.3d at 627 (quoting *Hall v. Warden, Lebanon Corr. Inst.*, 662 F.3d 745, 749 (6th Cir. 2011)

(omitting citations and internal quotation marks)); *Jurado v. Burt*, 337 F.3d 638, 642 (6th Cir. 2003) (explaining that equitable tolling typically "applies only when a litigant's failure to meet a legally-mandated deadline unavoidably arose from circumstances beyond that litigant's control"). The petitioner bears the burden of establishing that equitable tolling applies to his case. *Allen v. Yukins*, 366 F.3d 396, 401 (6th Cir. 2004). Petitioner's burden is considerable, as "[a]bsent compelling equitable considerations, a court should not extend limitations by even a single day." *Jurado*, 337 F.3d at 643 (quoting *Graham-Humphreys v. Memphis Brooks Museum of Art, Inc.*, 209 F.3d 552, 560 (6th Cir. 2000)).

In his reply, Petitioner makes vague assertions to "extraordinary circumstances" existing within his case such that the one-year statute of limitations should be equitably tolled [Doc. 5 p. 18]. Petitioner fails to elaborate on this point. Petitioner also argues that he should not be subjected to the statute of limitations because of alleged "false evidence" utilized by the Government at trial, but again, Petitioner's argument is vague and unsubstantiated [*Id.* at 16–17]. The Court has also considered Petitioner's status as a *pro se* litigant, but that will not clear the burden to establish the appropriateness of equitable tolling in this case. *Hall*, 662 F.3d at 751 (finding that a petitioner's *pro se* status and limited law-library access do not change the analysis).

The undersigned finds that Petitioner's § 2255 motion must also be dismissed for being untimely filed, and Petitioner has failed to establish that equitable

tolling of the statute of limitations is appropriate in this case.

C. Petitioner's Claims Are Unreviewable, as they Are Procedurally Defaulted or Previously Litigated

The undersigned finds Petitioner's claims are unreviewable because they are procedurally defaulted or previously litigated. Petitioner contends he was a victim of a "staggering" "number of constitutional violations . . . during his arrest," and that he was "protect[ing] himself" and "trying to safely secure his pets" rather than resisting arrest [Doc. 1 pp. 3, 6–8, 11–14]; that his speedy-trial rights were violated [*id.* at 4, 9]; that the Court erred by allowing evidence at trial related to Petitioner's possession and use of a handcuff key [*id.* at 4, 14]; and that the Court erred by "formatting" the trial as a simultaneous bench and jury trial as opposed to submitting all of the charges to the jury [*id.* at 4–6, 10]. Petitioner raised the latter three of these claims on appeal, and they were rejected. *Hanson*, 2020 U.S. App. LEXIS 12012, at *4–9. Moreover, the Sixth Circuit found sufficient evidence to sustain Petitioner's conviction for resisting arrest, contradicting Petitioner's claim of lawful self-defense. *Id.* at *3–4.

Petitioner disagrees with the Sixth Circuit's findings; however, a § 2255 motion cannot be used to relitigate issues already decided on appeal, absent exceptional circumstances such as an intervening

change in the law. *Wright v. United States*, 182 F.3d 458, 467 (6th Cir. 1999); *DuPont v. United States*, 76 F.3d 108, 110–11 (6th Cir. 1996). Petitioner has failed to identify any exceptional circumstances. On collateral review, the petitioner must "clear a significantly higher hurdle than would exist on direct appeal" and establish a "fundamental defect in the proceedings which necessarily results in a complete miscarriage of justice or an egregious error violative of due process." *Fair v. United States*, 157 F.3d 427, 430 (6th Cir. 1998). The Court finds Petitioner has made no such showing here.

Furthermore, any new challenge raised by Petitioner regarding the legality of his arrest are procedurally defaulted, as he did not raise them on appeal. Aside from a claim of ineffective assistance of counsel, any claim first raised in a § 2255 motion is procedurally defaulted. *Massaro v. United States*, 538 U.S. 500, 504 (2003).

For all of these reasons, the undersigned finds Petitioner's § 2255 motion is not well taken.

III. CERTIFICATE OF APPEALABILITY

The Court may issue a certificate of appealability only when a petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make this showing, the petitioner must demonstrate that reasonable jurists would find the Court's assessment of those claims "debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

The undersigned finds that reasonable jurists would not find that dismissal of Petitioner's claims is debatable or wrong. The undersigned therefore **RECOMMENDS** no certificate of appealability be issued to Petitioner.

IV. CONCLUSION

For the reasons expressed herein, the undersigned **RECOMMENDS**[4] that Petitioner's Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 **[Doc. 1]** be **DENIED** and that no certificate of appealability be issued.

Respectfully submitted,

/s/ Jill E. McCook
Jill E. McCook
United States Magistrate Judge

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[4] Any objections to this Report and Recommendation must be served and filed within fourteen (14) days after service of a copy of this recommended disposition on the objecting party. Fed. R. Civ. P. 72(b)(2). Such objections must conform to the requirements of Federal Rule of Civil Procedure 72(b). Failure to file objections within the time specified waives the right to appeal the District Court's order. *Thomas v. Am*, 474 U.S. 140, 153–54 (1985). "[T]he district court need not provide *de novo* review where objections [to the Report and Recommendation] are '[f]rivolous, conclusive or general.'" *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986) (quoting *Nettles v. Wainwright*, 677 F.2d 404, 410 n.8 (5th Cir.1982)). Only specific objections are reserved for appellate review. *Smith v. Detroit Fed'n of Teachers*, 829 F.2d 1370, 1373 (6th Cir. 1987).

No. 23-5166

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOHN WILLIAM HANSON III, Petitioner-Appellant, v. UNITED STATES OF AMERICA, Respondent-Appellee.	)	ORDER (Filed Sep. 18, 2023)

Before: READLER, MURPHY, and DAVIS, Circuit Judges.

John William Hanson III, proceeding pro se, petitions this court for rehearing of its July 13, 2023, order denying his application for a certificate of appealability. He also moves for a "hearing on Document 27," which is a notice of expert testimony filed by the government on September 11, 2018, in his criminal cases. Lastly, he moves to alter or amend a judgment entered in his criminal cases in 2018.

On careful consideration, this court concludes that it did not overlook or misapprehend any point of law or fact when it issued its order. *See* Fed. R. App. P. 40(a)(2). The petitions for rehearing and motions for a

"hearing on Document 27" and to alter or amend the judgment are therefore **DENIED**.

ENTERED BY ORDER OF
THE COURT

/s/ Deborah S. Hunt
Deborah S. Hunt, Clerk