

In the Supreme Court of the United States
Washington, D.C.

United States of America,
Plaintiff,

v.

Emanuel Moir,
Defendant,

Ninth Circuit Appeal No: 22-16453

D.C. No's, 2:21-cv-01175-KJM

2:18-cr-00065-KJM-1

Application for Issuance of a
Certificate of Appealability,

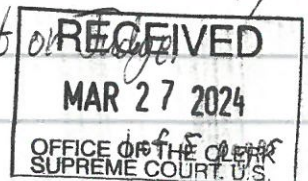
Relief Sought

Petitioner, Emanuel Moir, moves this Court for a Certificate of Appealability within the meaning of section 2353 (c) of Title 28 of the United States Code and Rule 22(b) of the Federal Rules of Appellate Procedure.

Grounds for Application

Nature of District Courts Proceeding

On June 28, 2021, Mr. Moir filed an Appeal under 28 U.S.C. § 2255 to vacate or set aside his sentence. In that Petition, Mr. Moir argued that he had insufficient assistance and being misled to sign a plea agreement. The government in the Ninth District Court in Sacramento, CA, moved to dismiss Mr. Moir's Petition due to "Timeliness" and Judge Kimberly J. Mueller granted the government's motion on September 14, 2022. Mr. Moir's main argument for "tolling" was due to strict restrictions while in the SHU during the start of the Covid-19 Pandemic, yet this factor was never taken into consideration by the government or Judge



On September 22, 2022, Mr. Mois filed a Notice of Appeal in the United States Court of Appeals for the Ninth Circuit regarding the dismissal of Mr. Mois's §2255 Petition on Sept. 14, 2022. (Appeal No. 22-16453)
On December 22, 2023, Mr. Mois received legal mail at FCI Sheridan, OR, with an enclosed notice from the Court of Appeals that his request for a certificate of appealability was denied because "appellant has not shown that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." and so the motion was denied.

Argument in Support of Issuance of Certificate of Appealability

Clearly, I, the Petitioner, Emanuel Mois, am not an attorney nor have I any legal training or education. I do not understand legal procedures for filing motions, and therefore wish for the Court to understand my limitations.

After I was sentenced in the Ninth Circuit District Court of Sacramento on June 10, 2019 I was transferred within July 2019 to USP Atwater, CA, where I needed to go to the SHU for Protective Custody to avoid physical harm or even death. In the SHU I was very limited to legal resource access but learned that I could be able to file an appeal §2255 to re-argue my case due to insufficient counsel and misleading to sign a Plea agreement. I asked for a time extension but did not know how long I had to reply by to file an appeal, nor did I receive a notice from the Ninth Circuit Court that a time extension was granted. (Which the government acknowledged in their request for dismissal) In January of 2020, due to the Covid-19 Pandemic, I was not allowed access

to the law library or legal resources because at USP Atwater, CA all inmates were not allowed to leave their cells, nor books allowed to be passed around. This should have been taken into consideration for "Equitable Tolling" due to its rare circumstances and conditions of a world wide Pandemic, but the government ignored this factor in the ~~ag~~ argument I submitted to the court in response to their argument of dismissal due to timeliness.

I wrote a very short note to the court clerk on March 23, 2020 to ask for this time extension (thinking that the court would send me a form that I needed to file a § 2255 motion) but never received any forms or reply. I also should have been more clear to the court on the strict restrictions to law research access due to Covid-19, but I figured that it was common knowledge, since most the world and especially prisons were shut down/locked-in, and for inmates basically impossible to get any legal forms or research done, especially in the SHU.

On August 31, 2020 I was transferred to FCI Victorville, CA, on the exact date that the unknown deadline to file my § 2255 motion was. I had to wait four months to receive my property from USP Atwater, CA so I could regain my legal documents and continue to research and get the forms I needed for filing a § 2255 motion. Through the aid of other inmates who were more knowledgeable in legal matters, I was able to file a § 2255 motion on June 28, 2021, by which the government reasoned was over two years too late.

In my argument of timeliness (Doc. No. ~~78~~ Sept. 14, 2022) I presented the

reasons for filing late and broke down the months I was unable to get any access or research done, which if taken into consideration of "extraordinary circumstances" should have accounted for "Equitable Tolling" and allotted me a few months to file my § 2255 motion within the one year time frame.

I appealed this denial to the Ninth Circuit Court of Appeals on September 22, 2022, filing a Certificate of Appealability against the government's issue of "Timeliness", but was denied on Dec. 15, 2023. I requested a form to file an appeal to the Supreme Court of the United States on Dec. 25, 2023, and received a notice to file such a motion directly to the Supreme Court on January 8, 2024. I wrote to the Supreme Court that day, Jan. 8, 2024, and requested an appeal form, but never received a response to date.

Now I am writing this "Certificate of Appealability" in hopes that the Supreme Court will review my case and allow the "Equitable Tolling" to be granted to me in order to pursue a § 2255 motion due to insufficient Counsel in the Ninth Circuit Court. I seek to be allowed to return to the Ninth Circuit Court upon this Supreme Court's favor granting appeal, so that right justice and fair sentencing in my case maybe served.

Conclusion

For the reasons stated above, Petitioner and Appellant Emmanuel Mo's respectfully requests that this Court issue the requested Certificate of Appealability on all of the issues set forth in this Application.

Respectfully submitted, *Emanuel Mo's*
Emanuel Mo's

Date: Feb. 29, 2024

Address: Emanuel Mo's - 77348097
Sheridan FCJ
P.O. Box 5000
Sheridan, OR 97378

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 15 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

EMANUEL MOIS,

Defendant-Appellant.

No. 22-16453

D.C. Nos. 2:21-cv-01175-KJM
2:18-cr-00065-KJM-1

Eastern District of California,
Sacramento

ORDER

Before: R. NELSON and COLLINS, Circuit Judges.

The request for a certificate of appealability is denied because appellant has not shown 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); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012).

Any pending motions are denied as moot.

DENIED.

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

United States of America,

Plaintiff/Respondent,

v.

Emanuel Mois,

Defendant/Petitioner.

No. 2:18-cr-00065-KJM

ORDER

Defendant Emanuel Mois moves this court to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. The government moves to dismiss the petition as untimely. Because Mois’s petition is untimely and equitable tolling does not apply, the government’s motion to dismiss is **granted**, and Mois’s motion to vacate is **denied**.

I. BACKGROUND

On February 11, 2019, Mois pled guilty to one count of receiving child pornography in violation of 18 U.S.C. § 2252(a)(2). *See generally* Plea Agreement, ECF No. 26. On June 18, 2019, the court sentenced Mois to 292 months’ imprisonment, the low end of the applicable guideline range, followed by a lifetime of supervised release. *See Hr’g Mins.*, ECF No. 35; Judgment & Commitment, ECF No. 36.

More than two years later, on June 28, 2021, Mois moved to vacate or set aside his sentence under 28 U.S.C. § 2255. *See Mot. Vacate*, ECF No. 50. Mois makes numerous claims,

1 most of which can be traced back to one principal issue: He did not understand the plea
2 agreement. *See generally id.* The government moves to dismiss the petition as untimely, arguing
3 his “filing is woefully and inexcusably late,” and noting his reasons for filing late are “internally
4 inconsistent,” Mot. Dismiss, ECF No. 59. Mois replied. *See* Req. Am., ECF No. 63.

5 II. TIMELINESS

6 Motions under § 2255 must be filed no more than one year after the latest of four possible
7 events: (1) the “final” conviction; (2) the date a government-imposed impediment to filing the
8 motion was removed; (3) the date the Supreme Court recognized and made retroactively
9 applicable a constitutional right; and (4) the date newly discovered facts supporting the § 2255
10 claim could reasonably have been discovered. 28 U.S.C. § 2255(f)(1)–(4).

11 Only one of these events is relevant here: Mois’s conviction on June 18, 2019. *See*
12 Judgment & Commitment. That judgment became “final” after the last day on which Mois
13 “could have sought review by direct appeal.” *United States v. Schwartz*, 274 F.3d 1220, 1223
14 (9th Cir. 2001). In a criminal case, when as here the government does not file a notice of appeal,
15 a defendant’s notice of appeal of the judgment must be filed within fourteen days after entry of
16 the judgment. *See* Fed. R. App. P. 4(b)(1)(A). Mois’s judgment thus became “final” for purposes
17 of calculating the one-year limitations period on July 2, 2019.

18 On March 23, 2020, Mois requested “a form to extend the time period to file a ‘2255’
19 motion,” saying he needed “some time to research law and cases.” Mot. Ext., ECF No. 48. The
20 court interpreted this filing as a motion for an extension of time and granted this request on
21 June 2, 2020, extending Mois’s deadline to August 31, 2020.¹ *See* Order, ECF No. 49. Mois
22 never sought another extension, and then filed his § 2255 motion almost ten months after the

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¹ As discussed below, courts are split on whether they have jurisdiction to grant such a request.

1 August 2020 deadline.² *See* Mot. Vacate. The motion was therefore untimely. The question,
2 then, is whether equitable tolling applies.

3 III. EQUITABLE TOLLING

4 The timeline of events in this case warrants two equitable tolling analyses. The court first
5 conducts a traditional equitable tolling analysis before exploring whether the court's extension of
6 Mois's time to file his § 2255 motion "affirmatively misled" him, necessitating equitable tolling.

7 A. Traditional Equitable Tolling Analysis

8 "[T]he threshold necessary to trigger equitable tolling . . . is very high, lest the exceptions
9 swallow the rule." *Miranda v. Castro*, 292 F.3d 1063, 1066 (9th Cir. 2002) (quotation marks and
10 citation omitted). Thus, while "equitable tolling is unavailable in most cases," *Miles v. Prunty*,
11 187 F.3d 1104, 1107 (9th Cir. 1999), a petitioner is entitled to equitable tolling if he can show
12 (1) "he has been pursuing his rights diligently," and (2) "some extraordinary circumstance stood
13 in his way and prevented timely filing." *Holland v. Fla.*, 560 U.S. 631, 649 (2010) (citation
14 omitted). Equitable tolling has a "very high bar" and is "reserved for rare cases." *Yow Ming Yeh*
15 *v. Martel*, 751 F.3d 1075, 1077 (9th Cir. 2014).

16 This is not one of those rare cases. Mois provides two inconsistent accounts of what kept
17 him from timely filing his motion, relying primarily on his lack of legal knowledge. In his
18 original account, Mois says he did not even know about § 2255 motions until at least August 31,
19 2020, the date of his deadline. *See* Mot. Vacate at 14. This is inconsistent with his March 2020
20 request, before the one-year filing deadline, for a "form to extend the time period to file a 2255
21 motion." In Mois's amended account, Mois says he learned of § 2255 motions in late March
22 2020 but did not know until late May 2021 that he had to file the motion himself. *See* Req. Am.
23 at 4.

² Mois signed his motion on June 28, 2021, and it was docketed on July 1, 2021. *See* ECF No. 50. Mois does not state when he delivered his motion to prison authorities, so the true filing date is unclear. *See Curriel v. Miller*, 830 F.3d 864, 867 n.1 (9th Cir. 2016) (en banc) (under prison "mailbox rule," "a habeas petition is deemed filed when the prisoner delivers it to prison authorities for forwarding to the clerk of the court, not when the petition is filed by the court."). This three-day difference is of no consequence because Mois filed his motion roughly ten months after the deadline.

1 Mois’s justifications are insufficient under either version of events: It is well established
2 that a prisoner’s ignorance of the law or lack of legal expertise is not an extraordinary
3 circumstance and does not equitably toll the limitations period. *See Johnson v. United States*,
4 544 U.S. 295, 311 (2005) (“[W]e have never accepted *pro se* representation alone or procedural
5 ignorance as an excuse for prolonged inattention when a statute’s clear policy calls for
6 promptness.”); *Rasberry v. Garcia*, 448 F.3d 1150, 1154 (9th Cir. 2006) (“A *pro se* petitioner’s
7 lack of legal sophistication is not, by itself, an extraordinary circumstance warranting equitable
8 tolling.”); *Waldron-Ramsey v. Pacholke*, 556 F.3d 1008, 1013, n.4 (9th Cir. 2009) (“While
9 [petitioner’s] *pro se* status is relevant, we have held that a *pro se* petitioner’s confusion or
10 ignorance of the law is not, itself, a circumstance warranting equitable tolling.”).

11 Moreover, Mois has not shown the diligence required to invoke equitable tolling. The
12 only affirmative step Mois appears to have taken between July 2019 and April 2021 was his
13 March 2020 request for a “form to extend the time period to file a 2255 motion.” Despite Mois’s
14 repeated assertions that he believed his case manager had to file the § 2255 motion on his behalf,
15 *see, e.g.*, Req. Am. at 4, nothing in the record allows the court to conclude Mois made any
16 attempt to contact his case manager and verify that understanding. Mois has not been diligent.
17 *See Smith v. Davis*, 953 F.3d 582, 601 (9th Cir. 2020) (“[R]easonable diligence seemingly
18 requires the petitioner to work on his petition with some regularity—as permitted by his
19 circumstances—until he files it in the district court.”); *id.* at 598–99 (“To demonstrate that he has
20 been pursuing his rights diligently, a petitioner must show that he has ‘been reasonably diligent in
21 pursuing his rights not only while an impediment to filing caused by an extraordinary
22 circumstance existed, but before and after as well, up to the time of filing his claim in federal
23 court.’”).

24 B. “Affirmatively Misled” Analysis

25 Equitable tolling might still be appropriate if the court “affirmatively misled” Mois about
26 his deadline. *Brambles v. Duncan*, 412 F.3d 1066, 1070 (9th Cir. 2005) (citing *Pliler v. Ford*,
27 542 U.S. 225, 235 (2004) (O’Connor, J., concurring)); *see also Rudin v. Myles*, 781 F.3d 1043,
28 1058 n.19 (9th Cir. 2014). As previously noted, on March 23, 2020—a little over three months

1 before Mois’s original deadline—Mois filed a letter addressed to the court clerk, “request[ing] a
2 form to extend the time period to file a ‘2255’ motion” because he “need[ed] some time to
3 research law and cases.” Mot. Ext. at 1. His request did not include any information on the
4 allegations he anticipated including in his § 2255 motion. *Id.* The court interpreted Mois’s filing
5 as a request to extend the time period to file a § 2255 motion and granted the motion on June 2,
6 2020, extending the filing deadline to August 31, 2020.³ *See* Order at 1–2. Mois claims he never
7 received the court’s order. *See* Req. Am. at 2. A review of the docket supports Mois’s assertion.
8 The court’s order granting Mois’s extension was electronically served on Mois’s former counsel,
9 given that nothing indicated that counsel had been relieved; the order was not served on Mois
10 himself. *See* ECF No. 49 (Notice of Electronic Filing including “Notice has been electronically
11 mailed to:” defense counsel and government counsel only). Mois never inquired about the status
12 of his request. Under these circumstances, the court’s order did not affirmatively mislead Mois.
13 The Ninth Circuit has found equitable tolling appropriate where, for example, a § 2255 petitioner
14 relies on the court’s extension, only for the court to change its mind once the motion is filed. *See*
15 *Sossa v. Diaz*, 729 F.3d 1225 (9th Cir. 2013); *accord Prieto v. Quarterman*, 456 F.3d 511, 513
16 (5th Cir. 2006) (same). But that is not what happened here. Mois requested a form to seek an
17 extension, without elaboration. The court granted a two-month extension. Mois reports he never

³ The court notes that, upon reflection, Mois’s extension request does raise an issue that neither the Supreme Court nor the Ninth Circuit has addressed: Does a court have jurisdiction to consider a federal prisoner’s request for more time to file a § 2255 motion if the request does not indicate the potential grounds for relief and the movant has not yet filed the motion itself? *See Wall v. Kholi*, 562 U.S. 545, 560 n.7 (2011) (“express[ing] no opinion” about whether a § 2255 motion “initiates an independent civil action or, instead, is merely a further step in the criminal prosecution” (quoting Postconviction Remedies § 3:5, at 251)). The Third Circuit has held courts have jurisdiction to rule on such requests. *See United States v. Thomas*, 713 F.3d 165, 169–74 (3d Cir. 2013) (finding no jurisdictional problem because actions under § 2255, unlike petitions brought under § 2254, are “a continuation of a defendant’s criminal case”); *accord United States v. Spencer*, No. 14-3221, 2017 WL 11592881, at *2 n.1 (D. Minn. Oct. 10, 2017). Most circuits to consider the issue come out the other way. *See United States v. Asakevich*, 810 F.3d 418, 419–23 (6th Cir. 2016) (Sutton, J.) (collecting cases, joining majority view endorsed by Second, Fourth, Fifth, Eleventh and D.C. Circuits and disagreeing with minority view adopted by Third Circuit).

The court does not reach the question here. Because an order issued without jurisdiction might still affirmatively mislead a litigant, especially a pro se litigant, the affirmatively misled analysis conducted above is necessary in any event.

1 received the court's order, so he could not have relied on it or been "affirmatively misled" by it.
2 To the contrary, the lack of a response from the court should have communicated to Mois that he
3 was required to file his petition within the original one-year deadline. He did not follow through
4 to file anything further until well past the deadline.⁴

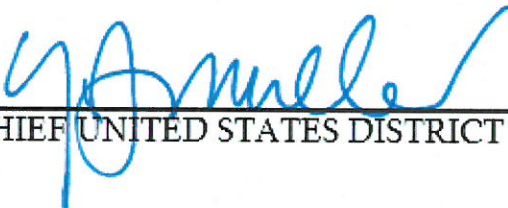
5 **IV. CONCLUSION**

6 The court recognizes Mois is proceeding pro se on his § 2255 motion and that his
7 pleadings must be liberally construed. However, even under the most generous construction of
8 Mois's motion, he has not demonstrated this is a "rare case" entitling him to equitable tolling.
9 The government's motion to dismiss is **granted**, and Mois's motion to vacate is **denied**.

10 This order resolves ECF Nos. 50 & 59.

11 **IT IS SO ORDERED.**

12 **DATED:** September 13, 2022.



CHIEF UNITED STATES DISTRICT JUDGE

⁴ Although the court does not reach the merits of Mois's motion, the court notes that Mois's claims appear to be contradicted by the record. *See generally, e.g.,* Change Plea Tr., ECF No. 57 (presiding District Judge thoroughly explaining terms of plea agreement, the consequences of Mois's entering plea agreement, and verifying Mois's understanding of agreement).

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

**JUDGMENT ON MOTION UNDER 28 USC
2255**

USA,

v.

CASE NO: 2:18-CR-00065-KJM

CASE NO: 2:21-cv-01175-KJM

EMANUEL MOIS ,

Decision by the Court:

The issues have been tried or heard in this case and IT IS ORDERED AND ADJUDGED

**THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE
COURT'S ORDER OF 9/14/2022**

Keith Holland
Clerk of Court

ENTERED: **September 14, 2022**

by: /s/ K. Zignago
Deputy Clerk

