

A P P E N D I X

" A "

United States Court of Appeals For the First Circuit

No. 17-1565

SANTOS MIRANDA-MARTINEZ,

Petitioner, Appellant,

v.

UNITED STATES,

Respondent, Appellee.

Before

Howard, Chief Judge,
Lynch and Thompson, Circuit Judges.

JUDGMENT

Entered: November 30, 2017

After a thorough review of the record and of the petitioner's submissions, we deny the request for a certificate of appealability ("COA"). We see no debatable claim that petitioner Santos Miranda-Martinez's ("Miranda's") challenge to the criminal convictions in D.P.R. Nos. 11-cr-175 and 12-cr-769 was timely-filed. The limitations period for filing a motion pursuant to 28 U.S.C. § 2255 to challenge those convictions began running on the date that the Supreme Court denied Miranda's petition for writ of certiorari in those cases: November 2, 2015. See Clay v. United States, 537 U.S. 522, 527 (2003) (citations omitted). The 2255 motion was filed over a year later, in December 2016. Miranda's suggestion that the one-year limitations period did not begin running until the Supreme Court denied his petition for writ of certiorari in a separate revocation proceeding is contrary to the plain language of 28 U.S.C. § 2255(f)(1).

Furthermore, we see no debatable claim that any alleged omissions on the part of Miranda's attorney created the kind of "extraordinary circumstances" that would support the equitable tolling of the limitations period here, see Holland v. Florida, 560 U.S. 631, 651-52 (2010), or that Miranda has demonstrated that he was diligently pursuing his rights in a way that would justify equitable tolling. See Holmes v. Spencer, 685 F.3d 51, 62 (1st Cir. 2012); Trapp v. Spencer, 479 F.3d 53, 61 (1st Cir. 2007).

Finally, it appears that, in substance, Miranda's motion also sought to challenge the judgment revoking his supervised release in P.R.D. No. 05-cr-445, in that he complained that his attorney in that case provided ineffective assistance at sentencing by failing to convince the court to order that his revocation sentence run concurrently with his sentence in case nos. 11-cr-175 and 12-cr-769. To the extent that the motion challenged the judgment of revocation in No. 05-cr-445, it was timely-filed. Nevertheless, given that the relevant sentencing guideline recommended a consecutive sentence, see U.S. Sentencing Guidelines Manual § 7B1.3(f), and given that Miranda's supervised release was revoked due to his involvement in two serious crimes, we see no debatable claim that the motion presented a meritorious claim of ineffective assistance of counsel. See Slack v. McDaniel, 529 U.S. 473, 484 (2000).

The request for a certificate of appealability is denied, and the appeal is terminated. The motion for appointment of counsel is denied.

By the Court:

/s/ Margaret Carter, Clerk

cc:

Santos Miranda-Martinez
Mariana E. Bauza Almonte

A P P E N D I X

" B "