

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

JACK ERVAN,

Defendant.

ORDER

99-CR-106-C-03

Defendant Jack Ervan has filed a letter in which he asks for an enlargement of time in which to file a § 2255 motion. I construe the motion as one to toll the running of the statute of limitations for filing a § 2255 motion.

In support of his motion, defendant explains that he has been in segregation at the Federal Correctional Institution in Milan, Michigan since February 2002, and that his access to a “complete” law library and his personal property has been restricted. He argues that these circumstances should entitle him to more time in which to file a § 2255 motion.

Although defendant’s circumstances present some impediments to legal research, they are not so restrictive as to establish the kind of extraordinary conditions that would justify equitable tolling. The Court of Appeals for the Seventh Circuit has set the bar for

“extraordinary circumstances” at a high level. United States v. Montenegro, 248 F.3d 585, 594 (7th Cir. 2001) (although defendant alleged that he never heard from his trial counsel, that he was unable to understand docket sheet his lawyer sent him because of language barrier, that his lawyer never consulted him about appealing, that he had limited education and lack of knowledge about United States legal system and that he was being transferred from prison to prison, he did not make out claim of extraordinary circumstances) (citing United States v. Marcello, 212 F.3d 1005, 1010 (7th Cir. 2000)).

The statute of limitations for defendant’s § 2255 motion started running when the time for petitioning for a writ of certiorari in the United States Supreme Court expired. That was 90 days from November 6, 2001, when the court of appeals issued its opinion on defendant’s appeal. Clay v. United States, 537 U.S. 522, 529 (2003). Because defendant has not shown extraordinary circumstances warranting a tolling of the limitations period, his motion to toll the running of the statute of limitations for filing a § 2255 motion will be denied.

ORDER

IT IS ORDERED that defendant Jack Ervan’s motion for a tolling of the statute of

limitations for filing a motion pursuant to 28 U.S.C. § 2255 is DENIED.

Entered this 29th day of December, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge