

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JACK ERVAN,

Defendant.

ORDER

99-CR-0106-03

Defendant Jack Ervan has submitted a third motion to for an enlargement of time in which to file a § 2255 motion. Although he has included a lengthy argument in support of his motion, he has not provided any factual evidence about his circumstances that would warrant a finding that he is entitled to a finding of equitable tolling of the one-year limitations period for filing such a motion. He says only that he has been in segregation until February of this year, that when he is in segregation, he does not have access to a “complete” library and that he could not have discovered the facts that support his claim before February 2, 2002, when he was first placed in segregation. He does not say what facts he could have learned or what claims he might bring if allowed to file a late motion for vacation or modification of his sentence. It is true that § 2255 is subject to equitable

tolling, at least in theory. United States v. Marcello, 212 F.3d 1005, 1010 (7th Cir. 2000) (“Although the cases have not been as clear as they might have been, a close reading shows that we have consistently held that “ 2255's period of limitation is not jurisdictional but is instead a procedural statute of limitations subject to equitable tolling.”) (citing Taliani v. Chrans, 189 F.3d 597 (7th Cir.1999)). However, “Equitable tolling of the statute of limitations is such exceptional relief that “we have yet to identify a circumstance that justifies equitable tolling in the collateral relief context.” Modrowski v. Mote, 322 F.3d 965, 967 (7th Cir. 2003) (citing Lloyd v. VanNatta, 296 F.3d 630, 633 (7th Cir. 2002)). Whatever circumstances may be identified eventually, it is clear that they do not include the mere allegation that one has not been able to gather facts or gain access to a “complete” library because he has been in segregation status.

ORDER

IT IS ORDERED that defendant Jack Ervan’s third motion for an enlargement of time

to file a motion pursuant to 28 U.S.C. § 2255 is DENIED.

Entered this 4th day of March, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge