

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

RONNIE RAINES,

Defendant.

ORDER

01-CR-0009-C-04

01-CR-0098-C-01

Defendant Ronnie Raines has filed a motion for appointment of counsel or in the alternative, for an extension of time in which to file a § 2255 motion.¹ In support of his motion, he says that he is being held in segregation until he is transferred sometime in the next twelve months and that prison officials have confiscated his presentence report and case file material.

Defendant understands that he has no right to a lawyer. It is within my discretion to appoint one for him but as a general rule, I do not appoint counsel on post-conviction motions until and unless the defendant has brought a motion that requires an evidentiary

¹ When defendant was indicted, his name was given as *Rodney* Raines. His real name is Ronnie.

hearing. Defendant is a long way from that point. He has not filed a motion or even identified an issue he wishes to raise. His motion for appointment of counsel will be denied.

As for defendant's motion for an extension of time in which to file his motion, that too will be denied. In the first place, it is not clear that courts have the authority to grant extensions of time from the statutory one-year filing period. In theory at least, § 2255 is subject to equitable tolling. 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, "[e]quitable 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 documents because he has been in segregation status. Moreover, the possibility that a defendant could obtain relief after a deadline has run does not mean that he could obtain prospective relief from the deadline simply because he fears he might not be able to prepare a motion before

the deadline has run.

ORDER

IT IS ORDERED that defendant Ronnie Raines's motion for appointment of counsel or an extension of time in which to file a motion pursuant to 28 U.S.C. § 2255 is DENIED.

Entered this 9th day of April, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge