

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

UNITED STATES OF AMERICA,

ORDER

Plaintiff,

v.

02-CR-0027-C-01

ERNEST E. BROOKS,

Defendant.

Defendant Ernest E. Brooks has written to the court to request an extension of time in which to file a § 2255 motion. He says that he is being held in segregation and does not have access to the law library. Defendant's motion for an extension of time in which to file his motion 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 Ernest Brooks’ request for an extension of time in which to file a motion pursuant to 28 U.S.C. § 2255 is DENIED.

Entered this 31st day of May, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge

