

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

ERNEST E. BROOKS, III,

Defendant.

ORDER

02-CR-0027-01

05-C-0469-C

Defendant Ernest E. Brooks, III has filed a motion pursuant to 28 U.S.C. § 2255, contending that the government violated his Sixth Amendment right to a fair and impartial trial and that his court-appointed counsel was constitutionally ineffective. He has also filed a motion for appointment of counsel. It is not necessary to determine whether defendant has any basis for his contentions because he has waited too long to file the motions. Defendant was sentenced on February 13, 2003. He appealed from his conviction and sentence without success. The court of appeals affirmed both in an opinion entered on December 29, 2003. Defendant did not petition for a writ of certiorari. Under § 2255, he had one year from the date on which “the judgment of conviction [became] final” in which to bring a post conviction motion. The conviction would have become final 90 days after

December 29, 2003, or March 29, 2004. Clay v. United States, 537 U.S. 529-30 (2003) (one-year statute of limitations does not begin to run until 90 days after time for filing petition for writ of certiorari has expired, even if defendant does not file such petition). Therefore, defendant had until March 29, 2005, in which to file a § 2255 motion unless he fits within one of the special circumstances in which the time for filing is extended. However, defendant has not alleged that the government has taken any action to impede his right to move for collateral relief or that the facts supporting his claim could not have been discovered before now. Therefore, I conclude that defendant had only until March 29, 2005, in which to file a § 2255 motion.

ORDER

IT IS ORDERED that defendant Ernest E. Brooks, III's motion for post conviction relief, filed pursuant to 28 U.S.C. § 2255, is DENIED as untimely. Defendant's motion for appointment of counsel is DENIED as moot.

Entered this 9th day of August, 2005.

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