

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANDRE LAWTON,

Defendant.

ORDER

02-CR-77-C-01

Defendant Andre Lawton has filed a motion 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 is in a county jail awaiting trial and does not have access to a federal law library. He states that he is not getting proper medical and dental care at the jail, is being mixed with state inmates in the general population and is being held longer than usual at the jail because of complexities with the state court proceedings. It appears that he believes that for all of these reasons, he is entitled 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)).

However, defendant’s request appears to be unnecessary in any event. The court of appeals has not yet ruled on his appeal. The statute of limitations does not start running on his § 2255 motion until the time for petitioning for a writ of certiorari in the United States Supreme Court has expired, which will be 90 days from the day that the court of appeals issues its opinion. Clay v. United States, 537 U.S. 522, 529 (2003). This means that defendant has ample time in which to prepare and file a motion for post-conviction relief, even with the restrictions under which he is operating.

To the extent that defendant may be seeking relief from the conditions of his confinement at the La Crosse County jail, he cannot obtain such relief through a motion filed in this action. If defendant believes that the conditions at the jail are so onerous as to

violate his Eighth Amendment right to be free from cruel and unusual punishment, or that jail officials are being deliberately indifferent to a serious medical need, then he is free to file a civil lawsuit to raise those issues.

ORDER

IT IS ORDERED that defendant Andre Lawton'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 26th day of November, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge