

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

LARRY HARVEY, JR.,

Defendant.

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ORDER

05-cr-12-bbc

Defendant Larry Harvey, Jr. has filed a motion for a two-month extension of time to December 29, 2008, in which to file a § 2255 motion. In support of his motion, he says that he has been delayed in obtaining laboratory records he needs to assist him in preparing his motion. Defendant's motion for an extension of time 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 assertion that one is being delayed in gaining access to documents. Moreover, the possibility that a defendant could obtain relief after a deadline has run does not mean that he could obtain relief from the deadline in advance simply because he fears he might not be able to prepare a motion before the deadline has run.

ORDER

IT IS ORDERED that defendant Larry Harvey’s motion for an extension of time in which to file a motion pursuant to 28 U.S.C. § 2255 is DENIED.

Entered this 3d day of October, 2008.

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