

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JARRELL MURRAY,

Defendant.

ORDER

08-cr-87-bbc
10-cv-502-bbc

Defendant Jarrell Murray was sentenced in this court on August 21, 2009. He did not appeal from his conviction and sentence, so he had until September 1, 2010 in which to file a post conviction motion under 28 U.S.C. § 2255. He filed a timely document on the forms for filing post conviction motions under § 2255, but it consists of only the broadest outline of possible defects in his sentence: “ineffective assistance of counsel regarding pre-plea phase”; “ineffective assistance of counsel regarding plea phase”; “ineffective assistance of counsel regarding sentencing phase”; and “ineffective assistance of counsel regarding failure to appeal.” Accompanying his motion is a motion for equitable tolling to allow him to file an amendment of his post conviction motion. Dkt. #1.

In support of the tolling motion, defendant says that he has been unable to obtain

copies of discovery, correspondence and court documents from his court-appointed trial counsel and that he has been trying since April 2010 to obtain them, without success. In support of this assertion, he encloses two letters from his counsel in which she states that she gave defendant copies of all discovery, all correspondence and all pleadings in his case while she was representing him. In the second letter, dated July 8, 2010, counsel says she will send additional copies of the discovery, defendant's plea agreement and other court documents. Defendant finds this response insufficient. He seems to think that her "files" consist of more than the documents she has sent him, but the documents he has been provided are what a lawyer would be expected to have in a client's file. In light of this response from counsel, defendant has no good reason to seek an extension of time for filing an amendment to his post conviction motion. He did not make any effort to obtain the documents until April, eight months after his conviction; he had copies of the documents in his possession during counsel's representation of him; he obtained additional copies from his counsel; and he should not need any documents to know what counsel did wrong or what she failed to do. As I noted in the order of April 8, 2010, denying defendant's motion for a copy of the trial transcript at government expense, "if [defendant] thinks that counsel was ineffective in not challenging his criminal history score, he should be able to identify some prior conviction that he thinks should not be included in the calculation of that score or, if he thinks he should not have been classified as a career offender, he should explain which of his two prior

convictions for crimes of violence or controlled substances should not have been taken into consideration. A mere allegation of ineffectiveness does not demonstrate that there is any merit to defendant's post conviction motion." Apr. 8, 2010 Order at 2, filed in 08-cr-87-bbc, dkt. #395..

Although defendant's motion is insufficient, I will give him thirty days in which to submit a brief in support of the motion, explaining exactly what aspect of his representation he believes was constitutionally ineffective.

ORDER

IT IS ORDERED that defendant Jarrell Murray may have until October 4, 2010, in which to file a brief in support of his motion for post conviction relief, setting out exactly how his counsel was ineffective in representing him. If he fails to file such a brief by October 4, 2010, his motion will be denied.

Entered this 2d day of September, 2010.

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