

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN L. DAVIS,

Defendant.

ORDER

11-cr-81-bbc

Defendant John L. Davis has filed a motion for an extension of time in which to file a motion for post conviction relief under 28 U.S.C. § 2255. In his motion, defendant states that he needs more time to get his materials together.

The one-year period in which defendant has for filing a § 2255 motion began running on the day on which his conviction became final, which was 69 days after April 1, 2014, the day on which the mandate issued from the Court of Appeals for the Seventh Circuit, denying his appeal. Clay v. United States, 537 U.S. 522 (2003). It expired on June 10 2015.

The Supreme Court has held that courts have the authority to accept petitions after the statutory one-year filing period has expired, but only in extraordinary circumstances. In Holland v. Florida, 130 S. Ct. 2549, 2560 (2010), the Court held that the one-year statute

of limitations on petitions for federal habeas relief by state prisoners was subject to tolling for equitable reasons “in appropriate cases,” but a petitioner is entitled to such tolling only if he can show “(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way.” Id. (citing Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005)). In Holland, the extraordinary circumstances were the grossly negligent, egregious actions and omissions of petitioner’s court-appointed counsel.

Defendant has not alleged any circumstances that come close to those discussed in Holland. His only allegation is that he needs more time to get his paperwork organized. The court of appeals has found similar claims insufficient to justify tolling of the time limits for filing. E.g., Modrowski v. Mote, 322 F.3d 965, 967 (7th Cir. 2003) (incapacity of counsel did not justify tolling); Lloyd v. VanNatta, 296 F.3d 630, 633 (7th Cir. 2002) (state’s failure to provide defendant transcript of trial did not justify tolling); Montenegro v. United States, 248 F.3d 585, 594 (7th Cir. 2001) (equitable tolling not justified in circumstances in which defendant’s counsel failed to respond to a letter defendant sent him, defendant was unable to understand the docket sheet his counsel sent him because he spoke little English, he lacked knowledge of legal matters and had been transferred to a different prison before his year for filing had elapsed), overruled on other grounds by Ashley v. United States, 266 F.3d 671 (7th Cir. 2001); United States v. Marcello, 212 F.3d 1005, 1010 (7th Cir. 2000) (death of attorney’s father several weeks before deadline and uncertainty about

deadlines did not justify equitable tolling); Taliani v. Chrans, 189 F.3d 597 (7th Cir. 1999) (counsel's mistake about deadline did not justify tolling)).

Defendant has not alleged that he has been working diligently on his § 2255 motion but that extraordinary circumstances prevented him from completing it. In short, he has provided no reason for granting him an extension of time in which to file a motion for post conviction relief.

ORDER

IT IS ORDERED that defendant John L. Davis's motion for an extension of time to file his motion for post conviction relief under 28 U.S.C. § 2255 is DENIED.

Entered this 16th day of June, 2015.

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