

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

JAMES SEXTON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

OPINION AND ORDER

16-cv-762-bbc

14-cr-86-bbc

Petitioner James Sexton has filed a motion for post conviction relief under 28 U.S.C. § 2255. He asserts that he was denied the effective assistance of counsel. Unfortunately for petitioner, he has filed his motion too late.

Section 2255 has a one-year period of limitations that begins running from the latest of the following dates: (1) the date on which the defendant's conviction becomes final; (2) the date on which any impediment to the filing of the motion has been removed, provided that the impediment was an illegal one created by government action and one that actually prevented the defendant from filing his motion; (3) the date on which the right asserted was recognized initially by the Supreme Court, provided that the right was both newly

recognized by the Court and made retroactively applicable to cases on collateral review; or
(4) the date on which the defendant could have discovered the facts supporting his claims through the exercise of due diligence. § 2255

Petitioner was sentenced on August 20, 2015. His judgment and commitment were entered on the docket on August 21, 2015. He did not appeal his sentence or the judgment of conviction. Under § 2255, petitioner 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 14 days after August 21, 2015, when the time for taking an appeal expired, or September 4, 2015. Therefore, petitioner had until September 4, 2016 in which to file a § 2255 motion unless he can show he comes within one of the special circumstances in which the time for filing begins running later. Petitioner has not alleged any facts from which an inference may be drawn that any one of those special circumstances applies in his case, and I am aware of none. Therefore, I conclude that petitioner’s motion is untimely because it was not filed until November 15, 2016.

Under Rule 11 of the Rules Governing Section 2255 Proceedings, the court must issue or deny a certificate of appealability when entering a final order adverse to a defendant. To obtain a certificate of appealability, the applicant must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); Tennard v. Dretke, 542 U.S. 274, 282 (2004). This means that "reasonable jurists could debate whether (or, for that

matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 336 (2003) (internal quotations and citations omitted). Petitioner has not made a substantial showing of a denial of a constitutional right so no certificate will issue.

ORDER

IT IS ORDERED that petitioner James Sexton's motion for post conviction relief under 28 U.S.C. § 2255 is DENIED as untimely. Petitioner is not entitled to a certificate of appealability because he has not made a substantial showing of the denial of a constitutional right.

Entered this 22d day of November, 2016.

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