

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

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CHARLES WHALEN,

Petitioner,

v.

ORDER  
06-C-488-S  
89-CR-135-S-01

UNITED STATES OF AMERICA,

Respondent.

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Petitioner Charles Whalen moves to vacate his sentence pursuant to 28 U.S.C. §2255. This motion has been fully briefed and is ready for decision.

FACTS

On April 25, 1990 petitioner was sentenced to 144 months in prison followed by five years of supervised release. Petitioner appealed challenging his conviction and sentence. The United States Court of Appeals for the Seventh Circuit affirmed petitioner's conviction on August 14, 1991. United States v. Whalen, 940 F.2d 1027 (7<sup>th</sup> Cir. 1991). The United States Supreme Court denied petitioner's petition for a writ of certiorari on November 4, 1991. He filed his 28 U.S.C. § 2255 motion on December September 5, 2006.

MEMORANDUM

The statute, 28 U.S.C. § 2555 provides as follows:

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of -

(1) the date on which the judgment of conviction becomes final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

This statute took effect on April 24, 1996. Since petitioner's conviction became final on November 4, 1991 he had a year after the effective date of the act or until April 24, 1997 to file his petition and failed to do so.

Although petitioner argues in his motion that he has a claim that this Court lacked jurisdiction he has not shown that this claim could not have been presented earlier through the exercise of due diligence. Accordingly, petitioner's motion under 28 U.S.C. § 2255 is untimely and will be denied.

Petitioner is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his motion must

be dismissed as untimely. See Newlin v. Helman, 123 F.3d 429, 433 (7<sup>th</sup> Cir. 1997).

ORDER

IT IS ORDERED that petitioner's motion under 28 U.S.C. § 2255 is DENIED as untimely.

Entered this 17<sup>th</sup> day of November, 2006.

BY THE COURT:

S/

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JOHN C. SHABAZ  
District Judge