

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

STERLING C. DANIELS,

Defendant.

ORDER

01-CR-0009-C
05-C-0709-C

Defendant Sterling Daniels has filed a motion pursuant to 28 U.S.C. § 2255, contending his court-appointed counsel was constitutionally ineffective. It is not necessary to determine whether defendant has any basis for his contentions because he has waited too long to file the motion. Defendant was sentenced on September 19, 2001. He appealed from his conviction and sentence on September 28, 2001. The Court of Appeals for the Seventh Circuit granted defendant's motion to dismiss his appeal voluntarily on May 9, 2002. Defendant did not petition for a writ of certiorari. Under § 2255, he 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 90 days after May 9, 2002, or August 7, 2002. Clay v. United States, 537 U.S. 529-30 (2003) (one-year statute of

limitations does not begin to run until 90 days after time for filing petition for writ of certiorari has expired, even if defendant does not file such petition). Therefore, defendant had until August 7, 2003, in which to file a § 2255 motion unless he fits within one of the special circumstances in which the time for filing is extended. However, defendant has not alleged that the government has taken any action to impede his right to move for collateral relief or that the facts supporting his claim could not have been discovered before now. Therefore, I conclude that defendant had only until August 7, 2003, in which to file a § 2255 motion.

ORDER

IT IS ORDERED that defendant Sterling Daniels' motion for post conviction relief, filed pursuant to 28 U.S.C. § 2255, is DENIED as untimely.

Entered this 12th day of December, 2005.

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