

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

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ALONZO L. WILSON,

Petitioner,

v.

ORDER  
05-C-188-S  
01-CR-41-S-01

UNITED STATES OF AMERICA,

Respondent.

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

FACTS

Petitioner's judgment of conviction was entered in this Court on September 27, 2001. The United States Court of Appeals for the Seventh Circuit dismissed petitioner's appeal on August 21, 2002. Petitioner's conviction became final 90 days thereafter on November 19, 2002. He filed his 28 U.S.C. § 2255 motion on April 1, 2005.

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 though the exercise of due diligence.

Since petitioner's conviction became final on November 19, 2002 he had until November 19, 2003 to file his motion but he did not file it until April 1, 2005. Accordingly, the Court finds that petitioner's 28 U.S.C. § 2255 motion is untimely and must be dismissed.

Petitioner argues that his one-year statute of limitation should commence to run on January 12, 2005, the date that United States v. Booker, 125 S.Ct. 738 (2005) was decided. This new rule of law has not been made retroactively applicable to cases on collateral review. McReynolds, et al v. United States, 397 F.3d 479, 481 (7<sup>th</sup> Cir. 2005). Accordingly, Booker does not apply to petitioner's case and does not affect his statute of limitations.

Petitioner's motion under 28 U.S.C. § 2255 is untimely and will be denied.

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ORDER

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

Entered this 3<sup>rd</sup> day of March, 2005.

BY THE COURT:

/s/

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JOHN C. SHABAZ  
District Judge