

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT D. SUTTON,

Defendant.

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ORDER

01-CR-0032-C-03

Defendant Robert Sutton has filed a motion for a two month extension of time to February 10, 2005, in which to file a § 2255 motion. In support of his motion, he says that after the Supreme Court denied his petition for a writ of certiorari on December 1, 2003, he had to wait two months before he received receiving discovery documents and transcripts from his appellate counsel. Defendant's motion will be denied.

In the first place, it is not clear that courts have the authority to grant extensions of time from the statutory one-year filing period. In theory at least, § 2255 is subject to equitable tolling. United States v. Marcello, 212 F.3d 1005, 1010 (7th Cir. 2000) ("Although the cases have not been as clear as they might have been, a close reading shows that we have consistently held that " 2255's period of limitation is not jurisdictional but is

instead a procedural statute of limitations subject to equitable tolling.”) (citing Taliani v. Chrans, 189 F.3d 597 (7th Cir.1999)). However, “[e]quitable tolling of the statute of limitations is such exceptional relief that “we have yet to identify a circumstance that justifies equitable tolling in the collateral relief context.” Modrowski v. Mote, 322 F.3d 965, 967 (7th Cir. 2003) (citing Lloyd v. VanNatta, 296 F.3d 630, 633 (7th Cir. 2002)). Whatever circumstances may be identified eventually, it is clear that they do not include the assertion that one was delayed in gaining access to documents for two months. Moreover, the possibility that a defendant could obtain relief after a deadline has run does not mean that he could obtain prospective relief from the deadline simply because he fears he might not be able to prepare a motion before the deadline has run.

#### ORDER

IT IS ORDERED that defendant Robert Sutton’s motion for an extension of time in which to file a motion pursuant to 28 U.S.C. § 2255 is DENIED.

Entered this 14th day of April, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge

