

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

MAGDALENA CORREA,

Defendant.

ORDER

02-CR-0092-C
07-C-433-C

Defendant Magdalena Correa has filed a motion pursuant to 28 U.S.C. § 2255, in which she contends that her conviction and sentence are invalid on three different grounds. It is not necessary to determine whether defendant has any basis for her contentions because she has waited too long to file the motion. Defendant was sentenced on April 11, 2003. She appealed from her conviction and sentence. On March 29, 2005, the court of appeals affirmed the district court's judgment but remanded the case for a determination whether the district court would have imposed the same or different sentence on defendant had it known that the sentencing guidelines were merely advisory. On remand, I concluded that I would have imposed the same sentence on defendant had I known that the sentencing guidelines are advisory and not binding and so advised the court of appeals in an order dated

April 27, 2005. The court of appeals affirmed the district court's judgment in an opinion entered on September 21, 2005. Defendant did not petition for a writ of certiorari. Under § 2255, defendant 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 September 21, 2005, or December 20, 2005. 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 December 20, 2005, in which to file a § 2255 motion unless she fits within one of the special circumstances in which the time for filing is extended. Defendant has not alleged any facts from which an inference may be drawn that any one of those special circumstances apply in her case, and I am aware of none. Therefore, I conclude that defendant had only until December 20, 2005, in which to file a § 2255 motion.

ORDER

IT IS ORDERED that defendant Magdalena Correa's motion for post conviction

relief, filed pursuant to 28 U.S.C. § 2255, is DENIED as untimely.

Entered this 13th day of August, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge