

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

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PAMELA J. TSCHIRLEY,

Petitioner,

v.

ORDER  
05-C-258-S  
03-CR-98-S-05

UNITED STATES OF AMERICA,

Respondent.

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Petitioner Pamela J. Tschirley moves to vacate her sentence pursuant to 28 U.S.C. §2255. The government responded to defendant's motion. Petitioner's reply was due not later than June 27, 2005 and has not been filed to date.

FACTS

On December 24, 2003 petitioner Pamela Tschirley was convicted of conspiracy to manufacture methamphetamine. Petitioner did not appeal her conviction.

Petitioner filed this 28 U.S.C. § 2255 motion on April 25, 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 through the exercise of due diligence.

Since petitioner's conviction became final on December 24, 2003 she had until December 24, 2004 to file her motion but she did not file it until April 25, 2005. Accordingly, petitioner's petition will be dismissed as untimely.

Petitioner argues that the Court's decision in United States v. Booker, 125 S.Ct. 738 (2005) should be applied retroactively to her. Even had petitioner's motion been timely, Booker does not apply retroactively to criminal cases that became final before its release on January 12, 2005. See McReynolds, et al v. United States, 397 F.3d 479 (7<sup>th</sup> Cir. 2005). Accordingly, Booker does not apply to petitioner's case.

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 she must offer argument not cumulative of that already provided to undermine this Court's conclusion that her motion must be denied 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 1<sup>st</sup> day of July, 2005.

BY THE COURT:

/s/

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JOHN C. SHABAZ  
District Judge