

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

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

AARON D. HUNTER,

04-cr-0079-bbc-01

Defendant.

Defendant Aaron D. Hunter has filed a motion for an extension of time within which to file a § 2255 motion, and a document titled “Notice of Appeal,” to which are attached documents titled “Quo Warranto” and “Notice and Certificate of Dishonor and Default. These submissions are presently before the court.

Beginning with defendant’s notice of appeal, I note that it is not accompanied by the \$455 fee for filing an appeal. Therefore, I construe the notice as including a request for leave to proceed in forma pauperis on appeal. That request will be denied.

Ordinarily, when a party files a notice of appeal, the appeal is directed at a previous ruling of the court. In this case, defendant’s notice of appeal is directed at “the matter at hand,” whatever that matter is. The notice is captioned A. Hunter-El, Sovereign Moorish-American National Jure Divino synonymous with “the people” v. Elizabeth G. Altman

(Assistant U.S. Attorney) and J.B. Van Hollen (U.S. Attorney), but there is no such action pending in this court. The subject matter of the appeal is impossible to discern and the attachments provide no greater insight. At best, it appears that defendant is challenging the credentials of members of the United States Attorney's office. Because there is absolutely no basis for defendant's notice of appeal, I must certify that it is not taken in good faith and defendant's request for leave to proceed in forma pauperis on appeal will be denied.

I turn then to defendant's motion for an enlargement of time within which to file a § 2255 motion. That request, too, will be denied.

For defendants who appeal their convictions but do not petition for certiorari in the United States Supreme Court, the judgment of conviction becomes final and the one-year limitation period within which to file a § 2255 motion begins to run when the 90-day time period expires for filing a petition for certiorari contesting the appellate court's affirmation of the conviction. Clay v. United States, 537 U.S. 522 (2003). In this case, an amended judgment and conviction was entered on April 18, 2006, from which defendant took an appeal. The Court of Appeals for the Seventh Circuit affirmed the judgment on April 25, 2007 in an unpublished decision. Defendant did not petition for certiorari in the Supreme Court. Therefore, he had until one year from July 24, 2007, in which to file a § 2255 motion. Defendant filed his motion for an extension of time to file a § 2255 motion on July 21, 2008, just three days before the deadline expired. In support of his request, defendant

explains that since April 20, 2008, he has been subject to an institutional lock-down. Defendant does not explain how the lockdown might be interfering with his ability to prepare his § 2255 motion, or what sort of non-frivolous issues he might raise in a § 2255 motion if he is allowed to file it late.

In any event, 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 mere allegation that one has not been able to gather facts or gain access to documents because he has been in lockdown status.

Second, even if I could grant defendant more time to file his motion, I am not persuaded he is entitled to it. Defendant had ample time before the time he was subjected

to an institutional lockdown to prepare his motion. Instead of doing so, he focused his energy on filing numerous frivolous documents in this court, starting with a document titled “Application for Release of Private Property Admiralty Vessel,” in which defendant called himself “property” under admiralty law, demanded his release from custody, and requested that I recuse myself from all further proceedings in the case. (When I declined to recuse myself and invited defendant in an order dated August 24, 2007, to advise the court whether he wished to pursue the application as a postconviction motion under § 2255, defendant responded expressly that he did not wish the application so treated.) In an order dated September 14, 2008, I denied defendant’s application because it did not raise a claim cognizable in this court. Defendant promptly filed a notice of appeal without prepaying the \$455 filing fee. I construed the notice as including a request for leave to proceed on appeal in forma pauperis and denied that request in an order dated October 19, 2007. In the same order, I certified that defendant’s appeal was not taken in good faith.

Defendant proceeded next to file a petition for a writ of mandamus in the court of appeals. The court of appeals denied the petition on December 13, 2007 and, on February 4, 2008, it dismissed defendant’s appeal for his failure to prepay the filing fee. On March 25, 2008, defendant filed a document titled “Form Letter to Request all Information on Criminal Bonds, etc.,” seeking copies of documents in the court’s record under the Freedom of Information Act. The court’s pro se law clerk responded to this request on

March 27, 2008, advising defendant that court records are not covered by the Freedom of Information Act, but that defendant was welcome to purchase copies of any documents in the court's record at the indigent rate of \$.10 a page. On April 14, 2008, defendant responded to this letter with a letter of his own, reasserting his entitlement to receive court records under FOIA. That letter was properly ignored. Also properly ignored was defendant's June 13, 2008 submission titled "Writ of Debt," in which defendant called himself a "strawman" for which no liability or debt exists and demanded to know "off the record" to what he is being held liable. At any point along the way, defendant might have filed a § 2255 motion raising a potentially meritorious claim. He chose not to and will have to live with that choice. Nothing in his request for an extension of time convinces me that he is entitled to an extension.

Finally, in light of defendant's persistence in filing legally frivolous documents that impede the court's ability to address flings that deserve its attention, I am imposing a filing restriction on defendant. From this date forward, before the clerk files any document defendant files in this case, he is to forward them to chambers. If the document raises non-meritorious issues or seeks frivolous forms of relief or is otherwise not a document permitted to be filed under the Federal Rules of Civil or Appellate Procedure at this stage of defendant's case, the document will be placed in the file and no response will be made to it.

ORDER

IT IS ORDERED that defendant's motion for an extension of time within which to file a motion for postconviction relief under 28 U.S.C. § 2255 is DENIED.

Further, IT IS ORDERED that defendant's motion for leave to proceed in forma pauperis on appeal is DENIED. I certify that defendant's appeal is not taken in good faith.

Further, IT IS ORDERED that the clerk is to forward to chambers before filing any future document defendant files in this case. If the document raises non-meritorious issues or seeks frivolous forms of relief or is otherwise not a document permitted to be filed under the Federal Rules of Civil or Appellate Procedure at this stage of defendant's case, the document will be placed in the file and no response will be made to it.

Entered this 6th day of August, 2008.

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