

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

In re: LAMONDA ALFONZO KING,

Petitioner,

ORDER

05-C-0145-C

Petitioner Lamonda Alfonzo King is an inmate at the Federal Correctional Institution in Oxford, Wisconsin, serving a sentence imposed by the District Court for the Northern District of Illinois on February 4, 2004. It appears that petitioner is contending that sentences imposed upon him in 1995, 1998 and 2002 are illegal under United States v. Booker, 375 F.3d 508 (7th Cir. 2004) and because he had ineffective assistance of counsel.

Motions made pursuant to 28 U.S.C. § 2255 must be filed in the court that imposed his sentence. Rule 4, Rules Governing Section 2255 Proceedings for the United States District Courts. This court lacks jurisdiction to hear his motion.

Instead of dismissing a § 2255 motion filed in the wrong district, a district court is allowed to transfer the case to the proper district “if it is in the interests of justice” to do so. 28 U.S.C. § 1631. In Phillips v. Seiter, 173 F.3d 609 (7th Cir. 1999), a petitioner filed in the wrong court a § 2255 motion styled as a § 2241 habeas corpus petition. The court of

appeals noted that in deciding whether the interests of justice required transfer of the case rather than its dismissal, district courts are authorized to consider whether the statute of limitations would bar a second filing but not the first. However, if the statute of limitations has already run, then the case would fall within “the ‘sure loser’ exception to section 1631,” and transfer would not be in the interests of justice. Id. at 611.

Peeking at petitioner King’s § 2255 motion, I note first off that his decision to challenge three different judgments violates the requirement in Rule 2(d) of the Rules Governing Section 2255 Proceedings that “a moving party who seeks relief from more than one judgment must file a separate motion covering each judgment.” This error in pleading is of no moment here, however, because the time has expired for petitioner to bring a § 2255 motion on each of his judgments.

The public records available through the federal court’s PACER system reveals that the judgment and commitment for petitioner’s motion recent sentence was filed on February 6, 2004, and that petitioner did not take a direct appeal from that judgment. For persons who do not file a direct appeal, a conviction becomes "final" under 28 U.S.C. § 2255 ¶ 6(1) no later than when the 10-day period for taking a direct appeal under Fed. R. App. P. 4(b)(1)(A)(i) expires, in this case on February 16, 2004. Cf. Clay v. United States, 537 U.S.522, 524 (2003) (for federal prisoner who takes unsuccessful direct appeal from judgment of conviction but does not petition Supreme Court for writ of certiorari, judgment

becomes "final" under § 2255's 1-year statute of limitations when time period for seeking writ of certiorari expires). Petitioner signed his § 2255 motion on March 7, 2005. Even if I consider that he deposited the motion in the institution's internal mailing system on that same day, see, Rule 3(d), Rules Governing Section 2255 Proceedings, his motion is untimely. Therefore, I conclude that it is not in the interests of justice to transfer petitioner's motion to the District Court for the Northern District of Illinois because it would have to be dismissed immediately as untimely filed.

ORDER

IT IS ORDERED that Lamonda Alfonzo King's motion brought pursuant to 28 U.S.C. § 2255 is DISMISSED for lack of jurisdiction.

Entered this 10th day of March, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge