

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

CALVIN BRUCE,

Defendant.

ORDER

07-cr-57-bbc

Defendant Calvin Bruce has filed a motion for extension of time in which to file a motion for post conviction relief under 28 U.S.C. § 2255. On August 16, 2007 a jury found defendant guilty of one count of possession with intent to distribute more than 50 grams of cocaine base. He was sentenced by District Judge John Shabaz on October 31, 2007 to a term of imprisonment of 360 months. Defendant appealed his conviction. On December 18, 2008, the court of appeals affirmed defendant's conviction but vacated the sentence and remanded the case for resentencing in light of Kimbrough v. United States, 128 S. Ct. 558 (2007). On February 20, 2009, defendant was resentenced by this court to a term of imprisonment of 324 months. Defendant appealed his amended sentence; his appeal was dismissed on May 26, 2010. Defendant filed a petition for a writ of certiorari with the

Supreme Court, which was denied on October 4, 2010. Under § 2255, defendant has one year from October 4, 2010 or until October 4, 2011 in which to bring a post conviction motion. The Supreme Court has held that courts have the authority to accept petitions after the statutory one-year filing period has expired, but only in extraordinary circumstances. In Holland v. Florida, 130 S. Ct. 2549, 2560 (2010), the Court held that the one-year statute of limitations on petitions for federal habeas relief by state prisoners was subject to tolling for equitable reasons “in appropriate cases,” but a petitioner is entitled to such tolling only if he can show “(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way.” Id. (citing Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005)). In Holland, the extraordinary circumstances were the grossly negligent, egregious actions and omissions of petitioner’s court-appointed counsel.

In his motion, defendant states that he has been unable to complete his § 2255 motion because he is unfamiliar with the law and has not yet received documents he has requested from the clerk of court. Defendant has not alleged any circumstances that come close to those discussed in Holland. The court of appeals has found similar claims insufficient to justify tolling of the time limits for filing. E.g., Modrowski v. Mote, 322 F.3d 965, 967 (7th Cir. 2003) (incapacity of counsel did not justify tolling); (Lloyd v. VanNatta, 296 F.3d 630, 633 (7th Cir. 2002) (state’s failure to provide defendant transcript of trial did not justify tolling); Montenegro v. United States, 248 F.3d 585, 594 (7th Cir. 2001) (equitable

tolling not justified in circumstances in which defendant's counsel failed to respond to a letter defendant sent him, defendant was unable to understand the docket sheet his counsel sent him because he spoke little English, he lacked knowledge of legal matters and had been transferred to a different prison before his year for filing had elapsed) overruled on other grounds by *Ashley v. United States*, 266 F.3d 671 (7th Cir. 2001); *United States v. Marcello*, 212 F.3d 1005, 1010 (7th Cir. 2000) (death of attorney's father several weeks before deadline and uncertainty about deadlines did not justify equitable tolling); *Taliani v. Chrans*, 189 F.3d 597 (7th Cir. 1999) (counsel's mistake about deadline did not justify tolling)).

Defendant has not alleged that he has been working diligently on his § 2255 motion but that extraordinary circumstances prevented him from completing it. In short, he has provided no reason for granting him an extension of time in which to file a motion for post conviction relief. Defendant still has approximately one month in which to complete his § 2255 motion. If he works diligently, he should be ready to file it before October 4, 2011.

ORDER

IT IS ORDERED that defendant Calvin Bruce's motion for an extension of time in which to file a motion pursuant to 28 U.S.C. § 2255 is DENIED without prejudice.

Entered this 14th day of September, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge