

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN HIGH,

Defendant.

ORDER

07-cr-91-bbc

Defendant John High has filed a motion for reconsideration of the court's June 15, 2011 order denying his motion for an extension of time in which to file a motion for post conviction relief under 28 U.S.C. § 2255. He also asks that the court appoint counsel to assist him in preparing his motion.

In his motion for reconsideration, defendant states that he should be allowed an extension of time because the prison has been on lockdown several times and he has been unable to work on his motion. He provides a copy of prison memoranda that confirms the lockdown status but he does not explain how the lockdown might have prevented him from working on his § 2255 motion in the 14 months since his appeal of his conviction was dismissed on June 9, 2010.

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.

Defendant has not alleged any circumstances that come close to those discussed in Holland. His only allegations are that he is unfamiliar with the law and that the prison has been on lockdown. 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), overruled on other grounds by Ashley v. United States, 266 F.3d 671 (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); 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 doing so. In short, he has provided no reason for granting him an extension of time in which to file a motion for post conviction relief.

As to defendant's request for appointment of counsel, he should understand that he has no right to a lawyer. It is within my discretion to appoint one for him, but as a general rule, I do not appoint counsel on post conviction motions until and unless the defendant has brought a motion that requires an evidentiary hearing. Defendant is a long way from that point. He has not filed a motion. Accordingly, his motion for appointment of counsel will be denied at this time.

ORDER

IT IS ORDERED that defendant John High's motion for reconsideration of the court's June 15, 2011 order is DENIED.

Defendant's motion for appointment of counsel is DENIED without prejudice.

Entered this 20th day of July, 2011.

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