

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

TREVOR K. RYAN,

Defendant.

ORDER

08-cr-164-bbc
10-cv-295-bbc

Defendant Trevor K. Ryan filed a motion for post conviction relief under 28 U.S.C. § 2255 on June 1, 2010. He acknowledged that the motion was untimely, but argued that the government had impeded his ability to file a timely motion by keeping him “in transit” for the first three months following his March 2009 sentencing. I concluded that even if he had been in transit for the first three months following his sentencing, he still had more than nine months in which to prepare a motion for post conviction relief. He ceased being in transit on June 4, 2009 and had until March 22, 2010 or one-year after the date on which his conviction had become final, in which to file a post conviction motion. (Defendant did not appeal his sentence, so his conviction became final ten days after entry of the judgment

and commitment order on March 12, 2009.)

Defendant has appealed the order denying his motion. Plaintiff United States of America wants to supplement the record with a copy of the United States Marshals Service Form 106 for defendant showing that defendant was not in transit for the first three months following his sentence but was actually housed in the Columbia County (Wisconsin) jail for more than a month of the first three month-period or from March 10 until April 16, 2009. Defendant opposes the motion, arguing that the information contained in the form was not before the court when it decided his motion for post conviction relief under 28 U.S.C. § 2255.

Defendant is correct when he argues that inclusion of the Marshals Service Form 106 would be improper because the form was not part of the record before this court when his post conviction motion was pending. When I decided that defendant's motion was untimely, I was unaware that defendant had been in the Columbia County jail for more than a month following his sentence, but this additional information would not have affected the decision I reached. I will deny the government's motion to supplement, so that the court of appeals can decide whether I made the correct decision on the basis of the record that was before the court at the time.

ORDER

IT IS ORDERED that the government's motion to supplement the record with a copy of United States Marshals Service Form 106 for defendant Trevor K. Ryan is DENIED.

Entered this 20th day of May, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge