

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

LARRY SULLIVAN,

Defendant.

ORDER

11-cr-79-bbc

On November 10, 2011, defendant Larry Sullivan pleaded guilty to one count of distribution of a mixture or substance containing cocaine base (crack cocaine) in violation of 21 U.S.C. § 841(a)(1) and 851. He was sentenced on February 16, 2012 to a term of imprisonment of 168 months. He did not appeal his conviction.

On November 21, 2014, defendant filed a document titled “Motion for Reconsideration Pursuant to Civil L.R. 15.1; Fed. R. Civ. P. 50; 59(a),(B); 2” in which he alleged, among other things, that his counsel was ineffective. In an order entered on November 24, 2014, I construed defendant’s motion as one brought under 28 U.S.C. § 2255 and denied it as untimely because it was not filed within one year from the date his conviction became final.

Now, defendant has filed a motion for extension of time to file an appeal of the court’s November 24, 2014 order. He explains that his failure to file a timely notice of

appeal was the result of his limited access to the law library and to the inmate assisting him with his legal matters. According to defendant, the other inmate is housed in another area of the prison and can communicate with defendant only by mail.

In fact, defendant's time for filing an appeal does not run until January 23, 2015. Defendant is appealing the denial of what I have determined is a motion brought under 28 U.S.C. § 2255, which is governed by the civil rules. Appeals of civil cases fall under subsection (a) of Fed. R. App. P. 4, which provides that a notice of appeal must be filed within 30 days after entry of judgment complained of unless one of the parties is the United States, in which case the time for filing is 60 days. Since one of the parties in this case is the United States, defendant has 60 days from November 24, 2014, the date on which his motion was denied, in which to file his appeal. If he finds he cannot prepare his appeal by that time, he may request an extension, but he must be prepared to show good cause or excusable neglect for his inability to file by the deadline. Fed. R. App. P. 4(a)(5)(A)(ii).

In addition, defendant will need a certificate of appealability in order to take an appeal. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22. This court denied his request for such a certificate in its November 24, 2014 order. Dkt. #50. Under Fed. R. App. P. 22(b), if a district judge denies an application for a certificate of appealability, a defendant may request a circuit judge to issue the certificate.

ORDER

IT IS ORDERED that defendant Larry Sullivan's request for leave to file an untimely

notice of appeal is DENIED as unnecessary because his time for filing an appeal has not yet expired.

Entered this 6th day of January, 2015.

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