

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

Defendant Larry Sullivan has 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 alleges, among other things, that his counsel was ineffective. Defendant did not label his motion as one brought under 28 U.S.C. § 2255, but the law is clear that I must treat his submission as a motion brought under that statute.

Any motion that is filed in the sentencing court that is substantively within the scope of § 2255 must be filed as a § 2255 motion. United States v. Carraway, 478 F.3d 845, 848 (7th Cir. 2007) ("The fact that [petitioner] labeled his motion as a request for relief under a Writ of Quo Warranto and Habeas Corpus rather than section 2255 is immaterial; it is the

substance of the petitioner's motion that controls how his request for relief should be treated.")

Defendant was sentenced in this court on February 16, 2012 and his motion is substantively within the scope of § 2255 because it is intended as a challenge to his sentence. In his motion, he asserts that he was denied the effective assistance of counsel. Unfortunately for defendant, he has filed his motion too late for it to be considered.

Section 2255 has a one-year period of limitations that begins running from the latest of (1) the date on which the defendant's conviction becomes final; (2) the date on which any impediment to the filing of the motion has been removed, provided that the impediment was an illegal one created by government action and one that actually prevented the defendant from filing his motion; (3) the date on which the right asserted was recognized initially by the Supreme Court, provided that the right was both newly recognized by the Court and made retroactively applicable to cases on collateral review; or (4) the date on which the defendant could have discovered the facts supporting his claims through the exercise of due diligence.

Defendant was sentenced on February 16, 2012. He did not appeal his conviction to the court of appeals. Therefore, his conviction became "final" under 28 U.S.C. § 2255 (f)(1) no later than the expiration of the 10-day period for taking a direct appeal under Fed. R. App. P. 4(b)(1)(A)(I), which was approximately February 27, 2012. At that point,

defendant had no avenue for appeal from his conviction, so the one-year limit period began running. Defendant filed this motion on November 19, 2014, well beyond the one-year limitation period set out in § 2255(f)(1), and he has not shown that he is entitled to a later filing date under subsections (2), (3) or (4) of that statute.

ORDER

IT IS ORDERED that defendant Larry Sullivan's "Motion for Reconsideration Pursuant to Civil L.R. 15.1; Fed. R. Civ. P. 50; 59(a),(B); 2" is construed as a motion for post conviction relief under 28 U.S.C. § 2255 and is DENIED as untimely. Defendant is not entitled to a certificate of appealability because he has not made a substantial showing of the denial of a constitutional right.

Entered this 24th day of November, 2014.

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