IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	
v.	)	
	)	**CASE NO. 3:14-cr-00033**
ALVIN THOMAS,	)	
	)	
Defendant.	)	

REPORT AND RECOMMENDATION

Defendant Alvin Thomas filed a *pro se* Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. [ECF 208]. This matter is before the undersigned for an initial review pursuant to Rule 4 of the Rules Governing Section 2255 Proceedings. For the reasons set forth below, the Court recommends that the motion be dismissed as untimely.

I. FACTUAL AND PROCEDURAL BACKGROUND

On June 12, 2014, the United States filed an Indictment against Thomas in the District Court of the Virgin Islands, charging him with five counts related to an armed robbery: (1) conspiracy to interfere with commerce by robbery, 18 U.S.C. § 1951(a); (2) interference with commerce by robbery, 18 U.S.C. § 1951(a); (3) possession of a firearm in furtherance of a crime of violence, 18 U.S.C. § 924(c); (4) conspiracy to possess a firearm in furtherance of a crime of violence, 18 U.S.C. § 924(o); and (5) possession of a firearm with an obliterated serial number, 18 U.S.C. § 924(k). [ECF 1]. On July 23, 2014, a jury found Defendant guilty on Counts One, Two, and Four. [ECF 75]. The District Court sentenced Defendant on January 29, 2015 [ECF 99] and entered judgment on April 20, 2015. [ECF 123].

Defendant appealed [ECF 105], contending the trial court erred in denying his motion to suppress his statement, and on April 7, 2017, the Third Circuit issued judgment affirming in part and vacating and remanding in part. [ECF 135-2]; *United States v. Fredericks*, 684 F. App'x 149, 155 (3d Cir. 2017). Specifically, the appellate court affirmed Defendant's conviction and sentence, but vacated the District Court's order denying the motion to suppress and remanded for a determination of whether there was probable cause to arrest and, if not, whether Defendant's statement was still admissible. [ECF 135-2] at 2; *Fredericks*, 684 F. App'x at 157. The District Court made findings and again denied the motion to suppress. *United States v. Thomas*, 2018 WL 5292049 (D.V.I. Oct. 24, 2018). Defendant appealed that decision, and on January 10, 2020, the Third Circuit affirmed the District Court's probable cause finding. *United States v. Thomas*, 797 F. App'x 730 (3d Cir. 2020).

On April 14, 2020, Defendant filed a *pro se* Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody. [ECF 186]. In a June 3, 2020 Order, the Court directed Defendant to exercise his *Miller* options by July 3, 2020. [ECF 190] at 2. Defendant timely responded by letter dated June 29, 2020, stating he wished to withdraw the motion and file one all-inclusive § 2255 motion within the one-year statute of limitations. [ECF 191].[1]

Defendant made no further filings in this action until June 23, 2023, when he filed the instant § 2255 motion. [ECF 208].[2] On initial review, the Court observed that Defendant's motion appeared to be subject to summary dismissal as untimely, and further that Defendant conceded

[1] *See also* [ECF 193] (letter dated June 22, 2020, stating same request to withdraw the motion); [ECF 192] (text order finding the § 2255 motion moot as withdrawn per defendant's request).

[2] The motion asserts four grounds for relief: (1) the Government changed the facts to obtain probable cause for arrest; (2) the statement is inadmissible due to lack of probable cause; (3) Detective Nigel James' testimony against Defendant is invalid; and (4) the District Court denied Defendant a proper chance to challenge restitution at sentencing. [ECF 208] at 1–2.

untimeliness. [ECF 210] at 2–3. Nevertheless, the Court afforded Defendant an opportunity to explain why his § 2255 motion should not be summarily dismissed as time-barred. *Id.* at 3. Defendant timely responded on April 23, 2024, and urges the Court "to look past the 'time bar' for two reasons: Prosecutorial misconduct and the Constitution of the United States." [ECF 213] at 1.

II. LEGAL STANDARD

"Motions pursuant to 28 U.S.C. § 2255 are the presumptive means by which federal prisoners can challenge their convictions or sentences that are allegedly in violation of the Constitution." *Okereke v. United States*, 307 F.3d 117, 120 (3d Cir. 2002). Section 2255 allows prisoners to collaterally attack their sentences by moving "the court which imposed the sentence to vacate, set aside or correct the sentence." 28 U.S.C. § 2255(a). The remedy is intended only where "the claimed error of law was 'a fundamental defect which inherently results in a complete miscarriage of justice.'" *Davis v. United States*, 417 U.S. 333, 346 (1974) (citation omitted); *see also United States v. Addonizio*, 442 U.S. 178, 184 (1979) ("an error that may justify reversal on direct appeal will not necessarily support a collateral attack on a final judgment").

To prevail on a § 2255 motion, a prisoner must show one of the following: (1) the sentence was imposed in violation of the Constitution or laws of the United States, (2) the court was without jurisdiction to impose the sentence, (3) the sentence was in excess of the maximum authorized by law, or (4) the sentence is otherwise subject to collateral attack. 28 U.S.C. § 2255(a). If the court finds any of these grounds, the court must vacate the judgment and discharge or resentence the prisoner, or grant a new trial as appropriate. *Id*. § 2255(b).

A § 2255 motion is not, however, a substitute for an appeal. *Hodge v. United States*, 554 F.3d 372, 378 (3d Cir. 2009). Thus, the general rule is that a prisoner procedurally defaults on a claim if he "neglected to raise [it] on direct appeal." *Id.* at 379; *accord Massaro v. United States*,

538 U.S. 500, 504 (2003).[3] Moreover, a § 2255 motion may not "be used to relitigate matters decided adversely on appeal." *Gov't of V.I. v. Nicholas*, 759 F.2d 1073, 1075 (3d Cir. 1985).

Additionally, federal district courts have a pre-service duty under Rule 4(b) of the Rules Governing Section 2255 Proceedings to screen and summarily dismiss a § 2255 motion prior to any response by the government when "it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief." *See United States v. Thomas*, 221 F.3d 430, 437 (3d Cir. 2000) (§ 2255 motion subject to summary dismissal when "none of the grounds alleged in the petition would entitle [the movant] to relief"); *McFarland v. Scott*, 512 U.S. 849, 856 (1994) ("[f]ederal courts are authorized to dismiss summarily any habeas petition that appears legally insufficient on its face"); *see also United States v. Bendolph*, 409 F.3d 155, 164 (3d Cir. 2005) (federal court has power to raise statute of limitations issue *sua sponte*). Thus, while a § 2255 movant is generally entitled to a hearing, the court may dismiss a motion without a hearing if "the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." 28 U.S.C. § 2255(b); *see Page v. United States*, 462 F.2d 932, 933 (3d Cir. 1972) (court acts within its discretion to dismiss without hearing "where the record affirmatively indicates that the claim for relief is without merit"); *Gov't of V.I. v. Forte*, 865 F.2d 59, 62 (3d Cir. 1989) ("the question of whether to order a hearing is committed to the sound discretion of the district court"); *Nicholas*, 759 F.2d at 1075 ("A section 2255 motion is addressed to the discretion of the trial judge in the first instance, and where the record affirmatively indicates

[3] With respect to allegations of ineffective assistance of counsel, however, such arguments are properly raised under § 2255 rather than on direct appeal. *Massaro*, 538 U.S. at 504–05 (explaining that it is "preferable" that such claims be brought in a collateral proceeding, where the district court is "the forum best suited to developing the facts necessary to determining" the claims); *accord United States v. Thornton*, 327 F.3d 268, 271 (3d Cir. 2003) ("It has long been the practice of this court to defer the issue of ineffectiveness of trial counsel to a collateral attack.").

that the claim for relief is without merit, a refusal to hold a hearing will not be deemed an abuse of such discretion." (citation omitted)).

III. DISCUSSION

The Court has reviewed defendant's § 2255 motion and recommends that it be summarily dismissed because it plainly appears from the motion and record that the motion is untimely.

The Antiterrorism and Effective Death Penalty Act ("AEDPA") establishes a one-year statute of limitations period for § 2255 motions, running from the latest of four specified dates. 28 U.S.C. § 2255(f).[4] A "judgment of conviction becomes final" under § 2255(f)(1) when the Supreme Court affirms a conviction on the merits on direct review or denies a petition for a writ of certiorari; if the prisoner does not seek certiorari, judgment becomes final when the time for filing a certiorari petition expires. *Gonzalez v. Thaler*, 565 U.S. 134, 149 (2012); *Clay v. United States*, 537 U.S. 522, 532 (2003). Here, the Third Circuit decided Defendant's second appeal on January 10, 2020.[5]

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[4] The one-year limitations period runs from the latest of:

> (1) the date on which the judgment of conviction becomes final;
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> (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;
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> (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
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> (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2255(f).

[5] Because the end result would be the same, the Court gives Defendant the benefit of the doubt in calculating finality by using the dates related to his appeal of the District Court's probable cause finding. The Court notes, however, that on direct appeal, the Third Circuit specifically affirmed the District Court's judgment of conviction and sentence, and vacated only the District Court's denial of the motion to suppress. [ECF 135-2] at 2. Using the Third Circuit's April 7, 2017 opinion date, Defendant's conviction became final on July 6, 2017, "when the time expire[d] for filing a petition for certiorari contesting the appellate court's affirmation of the conviction." *Clay*, 537 U.S. at 525; *see* Sup. Ct. R. 13(1), (3) (a party has 90 days from the date of entry of the judgment or order to be reviewed to file a petition for certiorari).

Defendant did not file a petition for writ of certiorari to the Supreme Court. Thus, his conviction became final at the latest on June 8, 2020, when the time for seeking certiorari expired.[6] The statute of limitations began to run the following day and expired one year later,[7] making defendant's June 23, 2023 § 2255 motion plainly untimely by more than two years.[8]

Defendant, recognizing that he has run afoul of the time bar, implores the Court to nevertheless entertain his motion "because [the] violations [alleged] are not mere in the slightest and have a long and grievous effect even after the sentence has been carried out." [ECF 208] at 2. In response to the Court's April 5, 2024 Order, Defendant specifically contends that federal prosecutors in Ohio are using his case in an attempt to extort money from him. [ECF 213] at 1. Defendant further argues that AEDPA's limitations period violates the Suspension Clause. *Id.* at 2–4; *see* U.S. Const. art. I, § 9, cl. 2 ("The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."). Neither of these arguments, however, can save Defendant's motion from the time bar.

First, Defendant's prosecutorial misconduct argument appears to be unrelated to his habeas motion or the statute of limitations issue. Defendant claims his detention in another matter is unlawful because there was no transfer of jurisdiction from the District of the Virgin Islands to the District of Ohio, and further states he is being detained for his refusal to sign a restitution payment plan. [ECF 213] at 1–2. Such allegations neither relate to any claim asserted in the § 2255 motion

[6] During the COVID-19 pandemic, the Supreme Court extended the time for filing a petition for certiorari from 90 days to 150 days. *See* Order Regarding Filing Deadlines (March 19, 2020), available at: https://www.supremecourt.gov/announcements/covid-19.aspx.

[7] *See Wilson v. Beard*, 426 F.3d 653, 662 (3d Cir. 2005) (Fed. R. Civ. P. 6(a) applies to AEDPA's limitations period).

[8] Defendant does not suggest, and the Court does not find, that any of the other provisions under § 2255(f) apply here or would render Defendant's motion timely.

nor excuse its untimeliness. Additionally, according to the Federal Bureau of Prisons Inmate Locator, Defendant was released from custody on June 3, 2024.

Second, Defendant's constitutional argument has been expressly rejected by the federal courts and is thus unavailing. *See Galloway v. Smith*, 2018 WL 3208162, at *1 n.1 (E.D. Pa. June 29, 2018) (courts within the Third Circuit have "uniformly rejected" arguments that "AEDPA's one-year limitations period . . . violates the Suspension Clause or is otherwise unconstitutional" (collecting cases)); *Henry v. Smith*, 2017 WL 2957819, at *5 (E.D. Pa. July 10, 2017) ("The AEDPA's one-year statute of limitations for initial petitions has repeatedly been found constitutional because the imposition of a one-year limit does not unduly burden the right to petition for habeas corpus." (collecting cases)); *e.g.*, *Hill v. Dailey*, 557 F.3d 437, 438 (6th Cir. 2009) ("Like every other court of appeals to address the issue, this court has held that AEDPA's one-year statute of limitations does not improperly suspend the writ of habeas corpus." (collecting cases)); *Wyzykowski v. Dep't of Corr.*, 226 F.3d 1213, 1217 n.3 (11th Cir. 2000) (holding AEDPA's limitations period is "is not an unconstitutional suspension of the writ of habeas corpus" and collecting cases); *Molo v. Johnson*, 207 F.3d 773, 775 (5th Cir. 2000) (application of one-year limitations period did not violate the Suspension Clause, where nothing prevented petitioner from filing his petition before the statute expired); *Miller v. Marr*, 141 F.3d 976 (10th Cir. 1998) (holding AEDPA's one-year limitations period did not violate petitioner's rights under the Suspension Clause); *M.P. v. Perlman*, 269 F. Supp. 2d 36, 38 (E.D.N.Y. 2003) ("The period of limitations set forth in AEDPA ordinarily does not violate the Suspension Clause."); *Cody v. Garman*, 2019 WL 3208361, at *2 (E.D. Pa. July 15, 2019) (rejecting as meritless claim that AEDPA's limitations period violates the Suspension Clause); *see also Castro v. U.S. Dep't of Homeland Sec.*, 835 F.3d 422 (3d Cir. 2016) ("a statute modifying the scope of habeas review is constitutional under the

Suspension Clause so long as the modified scope of review . . . 'is neither inadequate nor ineffective to test the legality of person's detention'" (quoting *Swain v. Pressley*, 430 U.S. 372, 381 (1977))); *United States v. Anselmi*, 207 F.2d 312 (3d Cir. 1953) (2255 does not unconstitutionally suspend writ of habeas corpus, as the remedy it provides is not inadequate or ineffective to test the legality of detention); *Leonard v. Gittere*, 686 F. Supp. 3d 1083, 1116 n.6 (D. Nev. 2023) (argument that AEDPA suspends the writ of habeas corpus and violates the separation of powers "lacks legal support" (citing *Crater v. Galaza*, 491 F.3d 1119, 1129 (9th Cir. 2007) ("We consider the Court's longstanding application of the rules set forth in AEDPA to be strong evidence of the Act's constitutionality."))); *Evans v. Thompson*, 465 F. Supp. 2d 62, 73 (D. Mass. 2006) ("AEDPA does not constitute a suspension of the writ. Furthermore, broad congressional authority to define the scope of the writ defeats the argument that AEDPA is a new remedial regime that fundamentally differs from the writ enshrined in Article I of the Constitution." (citing *Felker v. Turpin*, 518 U.S. 651, 664 (1996) (holding AEDPA's restrictions on successive petitions do not amount to a suspension of the writ))), *aff'd*, 518 F.3d 1 (1st Cir. 2008); *Rothwell v. Shartle*, 2015 WL 759216, at *2 (D.N.J. Feb. 23, 2015) ("the gatekeeping provisions that limit § 2255 motions do not violate the Suspension Clause"); *cf. Jones v. Hendrix*, 599 U.S. 465, 487 (2023) (the Suspension Clause does not require that a federal prisoner be allowed to file a habeas petition that would otherwise be barred as second or successive).[9]

[9] In the interest of justice, the Court has also considered whether there are grounds for tolling the limitations period.

The one-year limitations period for § 2255 motions "is subject to equitable tolling in appropriate cases." *Holland v. Florida*, 560 U.S. 631, 645 (2010); *Miller v. N.J. State Dep't of Corr.*, 145 F.3d 616, 619 n.1 (3d Cir. 1998); *see United States v. Thomas*, 713 F.3d 165, 174 (3d Cir. 2013) ("the doctrine of equitable tolling permits untimely habeas filings in 'extraordinary situations'"). Such tolling should be applied sparingly and is proper "only when the principles of equity would make the rigid application of a limitation period unfair." *Sistrunk v. Rozum*, 674 F.3d 181, 190 (3d Cir. 2012) (quoting *Miller*, 145 F.3d at 618). Specifically, "a defendant [must] show[] that (1) 'he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing.'" *Thomas*, 713 F.3d at 174 (quoting *Holland*, 560 U.S. at 649); *see Sistrunk* 674 F.3d at 190 (both elements must be shown before the court will permit tolling). Such circumstances may exist "if (1) the defendant has actively misled the plaintiff, (2) if the plaintiff has in some extraordinary way been prevented from asserting his rights, or (3) if the

IV. CONCLUSION

In sum, the Court finds that Defendant's § 2255 motion is untimely under AEDPA. The Court further finds that neither of Defendant's proffered bases can save his motion from the time bar, and that the application of equitable tolling also is not warranted here. Thus, because it plainly appears that Defendant's motion is barred by the statute of limitations, the Court recommends that

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plaintiff has timely asserted his rights mistakenly in the wrong forum." *Fahy v. Horn*, 240 F.3d 239, 244 (3d Cir. 2001) (citation omitted). Further,

> The word "prevent" requires the petitioner to demonstrate a causal relationship between the extraordinary circumstances on which the claim for equitable tolling rests and the lateness of his filing, a demonstration that cannot be made if the petitioner, acting with reasonable diligence, could have filed on time notwithstanding the extraordinary circumstances. If the person seeking equitable tolling has not exercised reasonable diligence in attempting to file after the extraordinary circumstances began, the link of causation between the extraordinary circumstances and the failure to file is broken, and the extraordinary circumstances therefore did not prevent timely filing.

Brown v. Shannon, 322 F.3d 768, 773 (3d Cir. 2003) (quoting *Valverde v. Stinson*, 224 F.3d 129, 134 (2d Cir. 2000)). Where the defendant "fail[s] to exercise the requisite diligence," the court "need not reach the 'extraordinary circumstance' prong of the analysis." *Martin v. Adm'r N.J. State Prison*, 23 F.4th 261, 275 (3d Cir.), *cert. denied sub nom. Martin v. Johnson*, 143 S. Ct. 257 (2022).

Here, Thomas does not allege, and the Court cannot discern, any basis for equitable tolling. His failure to appreciate the applicable deadline certainly is not sufficiently extraordinary to warrant tolling. Notwithstanding the fact that Defendant initially filed a § 2255 motion on April 14, 2020, he then waited three years after voluntarily withdrawing that motion before filing his second § 2255 motion in June 2023. There is no explanation from Defendant as to why he waited so long, nor does he contend he made any efforts to pursue habeas relief during that time period. Such delay does not demonstrate reasonable diligence under the circumstances. *See LaCava v. Kyler*, 398 F.3d 271, 277 (3d Cir. 2005) ("to claim an entitlement to equitable tolling, [the defendant] must show that he 'exercised reasonable diligence in . . . bringing [the] claims'" (citation omitted)); *Miller*, 145 F.3d at 619 ("Mere excusable neglect is not sufficient.").

Moreover, even if Defendant had been diligent, he has not been extraordinarily burdened or prevented from pressing his claims. To the extent Defendant argues he was prevented from timely filing his § 2255 motion because of lack of understanding of the law or inability to obtain assistance, such circumstances do not excuse the untimely filing of a federal habeas petition. *See Ross v. Varano*, 712 F.3d 784, 799–800 (3d Cir. 2013) ("The fact that a petitioner is proceeding pro se does not insulate him from the 'reasonable diligence' inquiry and his lack of legal knowledge or legal training does not alone justify equitable tolling."); *Fahy*, 240 F.3d at 244 ("attorney error, miscalculation, inadequate research, or other mistakes" generally do not "rise to the 'extraordinary' circumstances required for equitable tolling"); *United States v. Navarro*, 2017 WL 10351006, at *4–5 (D.V.I. Aug. 31, 2017) (collecting cases and finding lack of legal knowledge and access to legal materials insufficient to warrant tolling), *report and recommendation adopted*, 2018 WL 3599591 (D.V.I. July 27, 2018); *see also Delaney v. Matesanz*, 264 F.3d 7, 15 (1st Cir. 2001) ("courts have been loath to excuse late filings simply because a pro se prisoner misreads the law" (collecting cases)). In addition, Defendant fails to demonstrate how such circumstances actually prevented him from timely filing a § 2255 motion.

Accordingly, equitable tolling is not available to render Defendant's motion timely.

Defendant's motion be dismissed without requiring an answer from the Government or an evidentiary hearing.

Accordingly, for the foregoing reasons, IT IS HEREBY RECOMMENDED that Defendant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody be summarily DISMISSED as untimely, and the relief requested therein be DENIED. [ECF 208]. It is further RECOMMENDED that a certificate of appealability be DENIED.[10]

Any objections to this Report and Recommendation must be filed in writing within fourteen (14) days of receipt of this notice. Failure to file objections within the specified time shall bar the aggrieved party from attacking such Report and Recommendation before the assigned District Court Judge. 28 U.S.C. § 636(b)(1); LRCi 72.3.

ENTER:

Dated: November 7, 2024

/s/ G. Alan Teague
G. ALAN TEAGUE
U.S. MAGISTRATE JUDGE

[10] When a district court issues a final order on a § 2255 motion, it must determine whether it will permit a certificate of appealability. 3d Cir. L.A.R. 22.2; FED. R. APP. P. 22(b)(1). A district court will issue a certificate of appealability only upon a finding of a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). As the Supreme Court has explained,

> When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a [certificate of appealability] should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. . . . Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further. In such a circumstance, no appeal would be warranted.

Slack v. McDaniel, 529 U.S. 473, 484 (2000). Here, "[j]urists of reason would not find debatable the District Court's dismissal of the petition on statute of limitations grounds," and "would not disagree that [Defendant's] per se challenge to AEDPA's statute of limitations, brought under the Suspension Clause . . . , is without merit." *Tyler v. Superintendent Houtzdale SCI*, 2017 WL 3662470, at *1 (3d Cir. May 2, 2017). Accordingly, a certificate of appealability should be denied.