

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

TRAVIS BALL, <div style="text-align: center;">Movant,</div> <div style="text-align: center;">v.</div> UNITED STATES OF AMERICA, <div style="text-align: center;">Respondent.</div> <hr style="width: 40%; margin-left: 0;"/>	: : : : : : : : : : :	Case No. 5:21-cr-065-CAR-CHW-1 Case No. 5:25-cv-269-CAR-CHW 28 U.S.C. § 2255
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REPORT AND RECOMMENDATION

Before the Court is the Government’s motion to dismiss Movant Travis Ball’s motion to vacate his sentence pursuant to 28 U.S.C. § 2255. For the following reasons, it is **RECOMMENDED** that the Government’s motion (Doc. 112) be **GRANTED** and Movant’s Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 (Doc. 111) be **DISMISSED**. It is further **RECOMMENDED** that a certificate of appealability be **DENIED**. Finally, it is **RECOMMENDED** that “Movant’s motion for the courts report and recommendation to 28 U.S.C. § 2255 motion to vacate, set aside or quash sentence” (Doc. 117) be **DISMISSED as moot**.¹

BACKGROUND

On November 17, 2021, Movant was indicted for one count of Threats Against the President. (Doc. 1). With the assistance of counsel, Movant pleaded guilty to one count of Threats

¹ Docketed at 115 is Movant’s “Motion to Oppose United States Motion to Dismiss Movant’s § 2255 Motion to Vacate, Set Aside or Correct Sentence.” (Doc. 115). This document appears to be a reply to the Government’s Motion to Dismiss (Doc. 112) rather than a true motion. As such, the Clerk of Court is **DIRECTED** to **TERMINATE** the motion at ECF No. 115.

Against the President under 18 U.S.C. § 871. (Docs. 65, 66). The Plea Agreement explained that this count carried a maximum term of five (5) years imprisonment, a maximum fine of \$250,000.00, and up to three years of supervised supervision (Doc. 65, pp. 2–3).

Although he faced a maximum prison sentence of 5 years, or 60 months, the presentence investigation report (PSR) indicated that Movant’s sentencing guideline range was 27 to 33 months based upon a total offense level of 14 and a criminal history category of IV. (Doc. 67, ¶¶ 70–71). Movant filed an objection to the PSR which, if granted, would have lowered the sentencing guideline range to 21 to 27 months. (Docs. 68; 70-1). The Court sentenced Movant to 33 months imprisonment and entered Judgment on December 1, 2022. (Doc. 73). Movant did not directly appeal his sentence.

On February 21, 2023, Movant filed a motion for acquittal which the Court denied. (Docs. 79, 85). Movant filed a second motion for acquittal on June 22, 2023, which the Court again denied. (Docs. 88, 93). On February 14, 2025, Movant filed a motion to dismiss all charges, and he filed a motion to dismiss the case four days later.² (Docs. 99, 100). On March 6, 2025, Movant filed a motion for an unconditional discharge. (Doc. 102). The Court denied these three motions on April 8, 2025. (Doc. 103).

Movant filed a second motion for unconditional discharge on May 14, 2025. (Doc. 106). The Court, out of an abundance of caution that Movant’s motion could be construed as a motion for relief under 28 U.S.C. § 2255, ordered Movant to recast his Section 2255 motion within thirty on the proper form. (Doc. 107). On June 10, 2025, Movant filed a new Section 2255 motion on

² Movant dated (Doc. 99) as February 20, 2025, which would normally be the date of filing pursuant to the Prison Mailbox Rule. However, because February 20, 2025, is after the date of docketing, Movant’s motion necessarily cannot have been sent on February 20, 2025. The same is true for (Doc. 100) which Movant dated as February 26, 2025, but was docketed on February 18, 2025.

the proper form. (Doc. 111). The Government moved to dismiss Movant's Section 2255 motion as untimely. (Doc. 112).

In his Section 2255 motion, Movant raises four grounds for relief. (Doc. 111). As explained below, because Movant's Section 2255 motion is untimely, and no tolling provisions apply to his case, the Court need not consider the merits of Movant's argument. The Government's motion to dismissed should be granted, and Movant's Section 2255 motion should be dismissed.

DISCUSSION

I. Movant's Section 2255 Motion is Untimely.

The Anti-Terrorism and Effective Death Penalty Act (AEDPA), enacted on April 24, 1996, was created primarily to put an end to the unacceptable delay in the review of prisoners' habeas petitions by adding a one-year limitation period for the filing of habeas corpus petitions. "The purpose of AEDPA is not obscure. It was to eliminate the interminable delays in the execution of state and federal criminal sentences, and the . . . overloading of our federal criminal justice system, produced by various aspects of [the Supreme Court of the United States's] habeas corpus jurisprudence." *Hohn v. United States*, 524 U.S. 236, 264–65 (1998) (Scalia, J., dissenting). In pertinent part, 28 U.S.C. § 2255(f) provides that:

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of--

- (1) the date on which the judgment of conviction becomes final;
- (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;

- (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
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

The triggering date applicable to this case is “the date on which the judgment of conviction becomes final.” 28 U.S.C. § 2255(f)(1).

Since Movant did not directly appeal his conviction or sentence, his judgment of conviction became final when the time for filing a direct appeal expired. *Murphy v. United States*, 634 F.3d 1303, 1307 (11th Cir. 2011). According to the Federal Rules of Appellate Procedure in effect at the time of Movant’s sentencing, Movant had fourteen days after the entry of judgment to file a notice of appeal. *See, e.g.*, FED. R. APP. P. 4(b)(1)(A)(i). Therefore, for purposes of AEDPA’s limitations period, Movant’s judgment of conviction became final on December 15, 2022, fourteen days after his judgment of conviction was entered on December 1, 2022. Absent tolling, the time for collateral review of that conviction expired a year later, on December 15, 2023. Because Movant filed this Section 2255 motion in May 2025—more than seventeen months after the limitation period expired—his motion is untimely, and thus subject to dismissal under 28 U.S.C. § 2255(f)(1).³

Further, Movant’s Section 2255 motion is not rendered timely due to equitable tolling. “[A] petitioner is entitled to equitable tolling only if he shows (1) that he has been pursuing his rights

³ Any argument that certain of Movant’s post-convictions filings should be considered as “properly filed application[s]” that toll the one-year statute of limitations period would be immaterial, because the combined tolling period of those motions does not render Movant’s Section 2255 application timely. In viewing the Court’s docket, Movant filed five post-conviction motions which could be argued as tolling the AEDPA’s one-year statute of limitations: the first “Motion for Acquittal” (Doc. 79) filed on February 21, 2023; the second “Motion for Acquittal” (Doc. 88) filed on June 22, 2023; a “Motion to Dismiss All Charges” (Doc. 99) filed on February 14, 2025; a “Motion to Dismiss Case” (Doc. 100) filed on February 18, 2025; and a “Motion for Unconditional Discharge” (Doc. 102) filed on March 7, 2025. The Court ruled on (Doc. 79) on April 7, 2023, (Doc. 88) on January 3, 2024, and (Docs. 99, 100, 102) on April 8, 2025. The total amount of time these documents remained pending was 293 days. If this time is subtracted from the period in this case, Movant’s Section 2255 motion would still be 223 days out of time.

diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing.” *Holland v. Florida*, 560 U.S. 631, 649 (2010) (internal quotations and citation omitted). Movant appears to argue that equitable tolling applies because he instructed his attorney to file a Section 2255 motion, but the attorney failed to do so. (Doc. 111, p. 14).

Movant’s argument fails for two reasons. First, he does not have any constitutional right to counsel during collateral proceedings such that his pre-conviction attorney was required to file a Section 2255 motion even if requested. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987) (“We have never held that prisoners have a constitutional right to counsel when mounting collateral attacks upon their convictions and we decline to so hold today. Our cases establish that the right to appointed counsel extends to the first appeal of right, and no further.”) (internal citation omitted). Second, even if Movant did have a constitutional right to an attorney during this collateral proceeding and that attorney failed to timely file this Section 2255 motion, the Supreme Court has made clear “that a garden variety claim of excusable neglect, such as a simple miscalculation that leads a lawyer to miss a filing deadline, does not warrant equitable tolling.” *Holland*, 560 U.S. at 651–52 (cleaned up); see *Steed v. Head*, 219 F.3d 1298, 1300 (11th Cir. 2000) (collecting cases). Movant is not represented by an attorney in this collateral proceeding, and he has not shown that any action or nonaction of a prior attorney would qualify as an extraordinary circumstance that prevented Movant from filing a timely petition. Indeed, Movant would be hard-pressed to make such a showing considering the numerous *pro se* motions he filed with the Court between judgment and this proceeding. *See generally* (Docket).

Movant has not shown that he was prevented in any way from filing this untimely Section 2255 motion. The record gives no indication that “extraordinary circumstances” warranting equitable tolling are present. *E.g.*, *Lawrence v. Florida*, 421 F.3d 1221, 1226 (11th Cir. 2005)

(“Equitable tolling . . . is available when a movant untimely files because of extraordinary circumstances that are both beyond his control and unavoidable even with diligence.” (internal quotations and citations omitted)). Therefore, Movant’s Section 2255 motion is not rendered timely due to equitable tolling.

CERTIFICATE OF APPEALABILITY

Rule 11(a) of the Rules Governing Section 2255 Proceedings for the United States District Courts provides that “[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” A certificate of appealability may issue only if the applicant makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

When a court denies a collateral motion on procedural grounds, this standard requires a movant to demonstrate 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.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Movant cannot meet this standard and, therefore, a certificate of appealability in this case should be denied.

CONCLUSION

For the reason discussed herein, it is **RECOMMENDED** that the Government’s motion to dismiss (Doc. 112) be **GRANTED** and Movant’s Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 (Doc. 111) be **DISMISSED**. It is further **RECOMMENDED** that a certificate of appealability be **DENIED**. Finally, it is **RECOMMENDED** that “Movant’s motion for the courts report and recommendation to 28 U.S.C. § 2255 motion to vacate, set aside or quash sentence” (Doc. 117) be **DISMISSED as moot**

OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, WITHIN FOURTEEN (14) DAYS after being served with a copy thereof. Any objection is limited in length to TWENTY (20) PAGES. See M.D. Ga. L.R. 7.4. The District Judge shall make a de novo determination of those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

The parties are further notified that, pursuant to Eleventh Circuit Rule 3-1, “[a] party failing to object to a magistrate judge’s findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court’s order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice.”

SO RECOMMENDED, this 2nd day of February, 2026.

s/ Charles H. Weigle
Charles H. Weigle
United States Magistrate Judge