

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MARIO CASTILLO,
Movant,

v.

UNITED STATES OF AMERICA,
Respondent.

MOTION TO VACATE
28 U.S.C. § 2255

CRIMINAL ACTION NO.
1:19-CR-76-LMM-CCB-8

CIVIL ACTION NO.
1:25-CV-1744-LMM-CCB

FINAL REPORT AND RECOMMENDATION

Movant Mario Castillo, confined at FMC Devens in Ayer, Massachusetts, submitted a pro se Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody.¹ [Doc. 1377]. In the motion, Movant challenges his sentence on the ground that a portion of his sentence that was imposed to run consecutively should have instead been imposed to run concurrently. [*Id.*]. The Government filed a response in opposition [Doc. 1397], and Movant filed a reply [Docs. 1410, 1417].

¹ Movant filed a handwritten and untitled pro se motion asking the Court to resentence him. [Doc. 1377]. The District Judge issued an Order notifying Movant that, absent a timely filed objection, the motion would be construed as a § 2255 motion. [Doc. 1378]. Movant did not respond to the Order, and his motion is therefore proceeding as one under § 2255. *See* [Doc. 1383].

For the reasons stated below, I recommend that the § 2255 motion [Doc. 1377] be **DENIED**.

I. BACKGROUND

An investigation by the Drug Enforcement Administration, which involved the seizure of “more than a hundred kilograms of methamphetamine, as well as kilogram quantities of heroin and fentanyl,” showed that “beginning by at least December 2018 and continuing through February 2019, [Movant] helped facilitate the distribution and sale of methamphetamine, heroin, fentanyl and marijuana[.]” [Doc. 1393 at 13]. On December 21, 2018, a search uncovered “a make-shift structure covered in tarps containing approximately two kilograms of methamphetamine, 2254 pills containing fentanyl, 332 grams of heroin, some marijuana, and a model D.T.I. 15 firearm.” [*Id.*]. Movant “was found . . . during the execution of the search warrant” with “a keltec nine-millimeter luger pistol in his waistband. Three firearms, in addition to the D.T.I. 15 and keltec luger, were found during the search.” [*Id.* at 14]. Along with nineteen co-defendants, on August 26, 2019, Defendant was charged in a 35-count second superseding indictment, and on September 25, 2019, Movant pled guilty to Count One, conspiracy to possess multiple drugs with intent to distribute in violation of 21 U.S.C. § 846, and Count Sixteen, possession of a firearm in furtherance of a drug trafficking offense in

violation of 18 U.S.C. § 924(c)(1)(A)(i). [Docs. 393, 528]. On February 12, 2020, Movant was sentenced to 120 months of imprisonment for Count One and 60 months of imprisonment for Count Sixteen, to run consecutively. [Doc. 686]. He did not file a direct appeal.

On January 19, 2025, Movant filed the instant motion to vacate, arguing that his sentence for Count Sixteen should run concurrent to his sentence for Count One. [Doc. 1377].

II. DISCUSSION

A motion to vacate, set aside, or correct sentence may be made “upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack[.]” 28 U.S.C. § 2255(a). “[C]ollateral review is not a substitute for a direct appeal[.]” *Lynn v. United States*, 365 F.3d 1225, 1232 (11th Cir. 2004). Section 2255 relief “is reserved for transgressions of constitutional rights and for that narrow compass of other injury that could not have been raised in direct appeal and would, if condoned, result in a complete miscarriage of justice.” *Id.* (internal quotation marks omitted). A § 2255 movant “has the burden of sustaining

his contentions by a preponderance of the evidence.” *Tarver v. United States*, 344 F. App’x 581, 582 (11th Cir. 2009) (internal quotation marks omitted).

A § 2255 motion is subject to a one-year statute of limitations, which runs from the latest of the following:

- (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.

28 U.S.C. § 2255(f).

In this case, there is no claim that the circumstances set forth in subparagraphs (2), (3), and (4) of § 2255(f) apply. Movant’s conviction became final, for the purposes of § 2255(f)(1), on February 26, 2020. *See* Fed. R. App. P. 4(b)(1)(A)(i) (providing that a criminal defendant’s notice of appeal must be filed in the district court within fourteen days of the entry of judgment); *see also* *Murphy v. United States*, 634 F.3d 1303, 1307 (11th Cir. 2011) (“[W]hen a defendant does not appeal his conviction or sentence, the judgment of conviction becomes final when the time for seeking that review expires.”).

Movant does not claim that extraordinary circumstances might excuse the late filing of his § 2255 motion. *See Outler v. United States*, 485 F.3d 1273, 1280 (11th Cir. 2007) (“The statute of limitations can be equitably tolled where a petitioner untimely files because of extraordinary circumstances that are both beyond his control and unavoidable even with diligence. . . . The burden of establishing entitlement to this extraordinary remedy plainly rests with the petitioners.”) (internal quotation marks and citations omitted). Nor does Movant claim that he is actually innocent. *See McKay v. United States*, 657 F.3d 1190, 1196 (11th Cir. 2011) (“[A] movant’s procedural default is excused if he can show that he is actually innocent . . . of the crime of conviction[.]”).

Movant suggests that his motion is untimely because he only recently “learn[ed] more about [his] own case and how [he] may have not been properly represented.” [Doc. 1410 at 1]. Movant further claims that the untimely nature of his motion is “due to learning more about this particular section of the law given recent updates to the Sentencing Guidelines available to [him].” [*Id.*]. However, Movant has not shown extraordinary circumstances, nor that he was diligently pursuing his rights. Movant’s claims that he has “improved [his] English proficiency” and just recently learned that he may not have been properly represented are not sufficient to entitle him to equitable tolling. [*Id.* at 1–2].

“An inability to understand English does not constitute extraordinary circumstances justifying equitable tolling.” *Perez v. Fla.*, 519 F. App’x 995, 997 (11th Cir. 2013) (citing *United States v. Montano*, 398 F.3d 1276, 1280 n. 5 (11th Cir. 2005)); *Montano*, 398 F.3d at 1280 n.5 (“Montano also claims that this filing requirement should be equitably tolled due to his difficulties with the English language. Montano claims that his attorney was either ignorant or ineffective in failing to challenge the § 924(c) conviction, and that his language difficulties prohibited him from timely discovering this challenge on his own. We find, however, that Montano has not shown such ‘extraordinary circumstances’ as to justify equitable tolling of the one-year filing requirement in § 2255[.]”). And “a lack of a legal education and related confusion or ignorance about the law [are not] excuses for a failure to file in a timely fashion.” *Perez*, 519 F. App’x at 997 (citing *Rivers v. United States*, 416 F.3d 1319, 1323 (11th Cir. 2005)); *see also Outler*, 485 F.3d at 1282 n.4 (“[P]ro se litigants, like all others, are deemed to know of the one-year statute of limitations.”).

Accordingly, Movant’s § 2255 motion should be denied as untimely.²

² In light of the fact that the motion is untimely, I decline to address the other arguments raised by Respondent. That being said, I do note that the plain language of § 924(c) requires that a sentence for possessing a firearm in furtherance of a drug-trafficking crime not “run concurrently with any other term of imprisonment

III. CERTIFICATE OF APPEALABILITY

Under Rule 11(a) of the Rules Governing Section 2255 Proceedings, “[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. . . . If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2).” 28 U.S.C. foll. § 2255, Rule 11(a). Section 2253(c)(2) states that a certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” A substantial showing of the denial of a constitutional right “includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the [motion to vacate] should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation marks omitted).

When the district court denies a [motion to vacate] on procedural grounds without reaching the prisoner’s underlying constitutional claim

imposed on the person, including any term of imprisonment imposed for the . . . drug trafficking crime” itself. 18 U.S.C. § 924(c)(1)(D)(ii); *see also Barrett v. United States*, 607 U.S. ___, 2026 WL 96659, at *5 (2026) (noting that Congress made clear that the sentence for the subsection (c) conviction must “run consecutively, not concurrently,” to the sentence for the predicate crime). Petitioner admitted his guilt as to both the predicate drug trafficking crime as well as the subsection (c) crime, and those sentences had to run consecutively. Thus, on the merits, Petitioner would not have been entitled to relief, even if he had filed in a timely manner.

... a certificate of appealability should issue only when the prisoner shows both that jurists of reason would find it debatable whether the [motion] 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.

Jimenez v. Quarterman, 555 U.S. 113, 118 n.3 (2009) (citing *Slack*, 529 U.S. at 484) (internal quotation marks omitted).

I **RECOMMEND** that a certificate of appealability be denied because the resolution of the issue presented—that Movant did not timely file his § 2255 motion—is not debatable. If the District Judge adopts this recommendation and denies a certificate of appealability, Movant is advised that he “may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22.” 28 U.S.C. foll. § 2255, Rule 11(a).

IV. CONCLUSION

For the reasons stated above, I **RECOMMEND** that the motion to vacate [Doc. 1377] be **DENIED**, that a certificate of appealability be **DENIED**, and that civil action number 1:25-cv-1744-LMM-CCB be **CLOSED**.

SO RECOMMENDED, this 12th day of February, 2026.



CHRISTOPHER C. BLY
UNITED STATES MAGISTRATE JUDGE