

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

JAN 02 2025

UNITED STATES OF AMERICA

v.

GLADYS HARUN

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CR 323-003

FILED

O R D E R

Presently before the Court is Defendant Gladys Harun's motion to extend the time in which to file for relief under 28 U.S.C. § 2255. This motion is filed nearly six months after the Court entered an Order denying Defendant's motion to appoint counsel to assist her in filing a § 2255 petition and reminding her that she waived her right to collaterally attack her conviction and sentence in her plea agreement. (Order of July 12, 2024, Doc. No. 46.)

The criminal judgment in the case was entered on January 23, 2024. Thus, Defendant is still within the one-year period of limitation to file a § 2255 petition from the date upon which the judgment of conviction becomes final.¹ See 28 U.S.C. § 2255(f).

¹ Notably, because Defendant did not provide substantive grounds for § 2255 relief, the Court cannot tell whether one of the three factors delineated in § 2255(f) might apply to extend the limitation period. Defendant only claims that she recently changed her mind about filing a § 2255 petition because she learned of a "constitutional violation." (Doc. No. 49, at 1.)

While the deadline, in Defendant's words, "rapidly approaches," the district court does not have authority to extend the one-year limitation period in the absence of a substantive § 2255 motion. See Swichkow v. United States, 565 F. App'x 840, 844 (11th Cir. 2014) (explaining that because the filing of a § 2255 petition initiates a civil action, there is no case or controversy without a substantive petition, and any opinion on timeliness would be advisory). Moreover, the Court cannot treat the nominal extension request as a substantive motion for relief because it does not contain allegations sufficient to support a claim under § 2255. See Green v. United States, 260 F.3d 78, 83 (2d Cir. 2001). Finally, the Court cannot consider the doctrine of "equitable tolling" because equitable tolling only applies if the § 2255 petition is untimely filed after the exercise of due diligence. See Sandvik v. United States, 177 F.3d 1269, 1271 (11th Cir. 1999) (stating that the limitation period may be equitably tolled in habeas cases "when a movant untimely files because of extraordinary circumstances that are both beyond his control and unavoidable with diligence"). Here, Defendant admits that she has been sitting on her rights since July 12, 2024. (See Doc. No. 49 ("Petitioner has since changed her mind and was not going to file a [§] 2255").)

Upon the foregoing, Defendant Harun's motion for extension of time to file a petition for habeas relief under 28 U.S.C. § 2255 (doc. no. 49) is DENIED.

ORDER ENTERED at Augusta, Georgia, this 2nd day of January, 2025.


UNITED STATES DISTRICT JUDGE