

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

OLUWAGBEMIGA OTUFALE,
Movant,

v.

UNITED STATES OF AMERICA,
Respondent.

MOTION TO VACATE
28 U.S.C. § 2255

CRIMINAL ACTION NO.
1:22-CR-224-LMM-CCB-1

CIVIL ACTION NO.
1:24-CV-4197-LMM-CCB

FINAL REPORT AND RECOMMENDATION

Movant Oluwagbemiga Otufale, confined at FCI Memphis in Memphis, Tennessee, submitted a pro se Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. [Docs. 58, 60]. The Government filed a response in opposition. [Doc. 63]. Movant did not file a reply.

For the reasons stated below, I recommend that Movant's amended § 2255 motion [Doc. 60] be **DENIED**, and that Movant's original motion [Doc. 58] be **DENIED** as moot.

I. BACKGROUND

On June 21, 2022, Movant was charged with one count of conspiring to commit money laundering in violation of 18 U.S.C. § 1956(h) and eleven counts of money laundering in violation of 28 U.S.C. § 1956(a)(1)(B)(i). [Doc. 1]. On December 7, 2022, pursuant to a negotiated plea agreement, Movant entered a plea

of guilty to the conspiracy count alleged in the indictment. [Doc. 37-1]. On June 14, 2023, Movant was sentenced to 84 months of imprisonment to be followed by three years of supervised release, and judgment was entered on June 15, 2023. [Doc. 50]. He did not file a direct appeal.

On September 17, 2024, Movant filed a motion to vacate pursuant to 28 U.S.C. § 2255. [Doc. 58]. On December 19, 2024, he filed an “Amended/Supplemental” motion. [Doc. 60].

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 June 29, 2023. *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.”).

In his original motion, which he purports to incorporate by reference in his amended motion, *see* [Doc. 60 at 11], Movant argues that “the time limitation is not applicable in this matter” because “the restraint of [Movant’s] personal liberty by the Respondent” rendered Movant “unable to conduct adequate investigation . . . in time to submit for relief.” [Doc. 58 at 11]. Movant therefore “believe[s he is] entitled to equitable tolling on [his] claims under Section 2255(f)(4).” [*Id.*]. Movant claims to have “discovered” the facts presented in his motion in July of 2024 “through self-study of the Constitution, legal research from the law library provided by Respondent and review of the record.” [*Id.*]. In his amended motion, Movant further argues that he is entitled to equitable tolling because his conviction and sentence are “absolutely void ab initio” and “a challenge to a void judgment is an exception to the rule.” [Doc. 60 at 11].

Aside from the fact of his confinement itself, which does not constitute an extraordinary circumstance, 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). He simply claims that he is “entitled to equitable tolling on [his] claims” because his motion presents “meritorious federal questions discovered in July 2024,” and because his conviction and sentence are void. [Doc. 58 at 11; Doc. 60 at 11]. That Movant did not “discover” his claims until July of 2024 does not constitute a basis for equitable tolling. “[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 v. Fla.*, 519 F. App’x 995, 997 (11th Cir. 2013) (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.”).

And although he offers conclusory assertions that his conviction and sentence are void based on alleged constitutional violations, Movant does not 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[.]”).

Accordingly, Movant’s § 2255 motion should be denied as untimely.¹

¹ In light of the fact that the motion is untimely, I decline to address the merits of the motion or the other arguments raised by Respondent.

Additionally, an evidentiary hearing is not necessary in this case. A court is not required to hold an evidentiary hearing every time a § 2255 claim is raised. *See Futch v. Dugger*, 874 F.2d 1483, 1485 (11th Cir. 1989). Instead, a federal habeas corpus petitioner is entitled to an evidentiary hearing only where he alleges facts that, if proven, would entitle him to relief. *See id.* A court also is not required to hold an evidentiary hearing when “the record refutes the applicant’s factual allegations or otherwise precludes habeas relief.” *Schriro v. Landrigan*, 550 U.S. 465, 474 (2007). Here, the record conclusively shows that Movant is entitled to no relief; a hearing, therefore, is not required. *See* 28 U.S.C. § 2255(b).

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 . . . 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 Movant’s original motion to vacate [Doc. 58] be **DENIED** as moot, that Movant’s amended motion

[Doc. 60] be **DENIED** as untimely, that a certificate of appealability be **DENIED**, and that civil action number 1:24-cv-4197-LMM-CCB be **CLOSED**.

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



CHRISTOPHER C. BLY
UNITED STATES MAGISTRATE JUDGE