

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CAROLE ANN SMITH,)	
)	
Petitioner,)	
)	
v.)	Criminal Action No. 97-62-SLR
)	Civil Action No. 00-791-SLR
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

Carole Ann Smith, petitioner, pro se.

Carl Schnee, United States Attorney; Beth Moskow-Scholl,
Assistant United States Attorney, United States Attorney's
Office, Wilmington, Delaware. Attorneys for respondent.

MEMORANDUM OPINION

Dated: January 31, 2001
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

Petitioner Carole Ann Smith is an inmate at the Federal Prison Camp in Danbury, Connecticut. (D.I. 45) Currently before the court is petitioner's application for habeas corpus relief filed pursuant to 28 U.S.C. § 2255. Because petitioner's application was not timely filed, the court shall dismiss it without reaching its merits.

II. BACKGROUND

On October 20, 1997, petitioner waived indictment and pled guilty in federal court to an Information charging her with bank fraud in violation of 18 U.S.C. § 1344, money laundering in violation of 18 U.S.C. § 1956(a)(1)(A)(i), and criminal forfeiture in violation of 18 U.S.C. § 982. (D.I. 17) On February 20, 1998, based on a Criminal History Category I and a total offense level of 28, petitioner was sentenced to 78 months imprisonment. (D.I. 34) Because the offenses were grouped under U.S.S.G. § 3D1, petitioner's sentencing guideline range was based on the money laundering offense. (Id.) Judgment was entered on March 4, 1998. (Id.) Petitioner did not appeal the judgment. On October 18, 1999, petitioner filed a motion to correct or reduce her sentence pursuant to Federal Rule of Criminal Procedure Rule 35(a), which was denied by the court on May 15, 2000. (D.I. 36, 41) Petitioner's instant motion to vacate, set

aside, or correct her sentence pursuant to 28 U.S.C. § 2255 is dated August 23, 2000. (D.I. 45)

III. DISCUSSION

On April 24, 1996, the President signed into law the Antiterrorism and Effective Death Penalty Act ("AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214 (1996).¹ AEDPA amended 28 U.S.C. § 2255 to impose a one-year statute of limitations on the filing of a § 2255 motion by a federal prisoner. See 28 U.S.C. § 2255; Miller v. New Jersey State Dep't of Corrs., 145 F.3d 616, 619 n.1 (3d Cir. 1998) (holding that one-year limitations period set forth in § 2255 is statute of limitations subject to equitable tolling, not jurisdictional bar). The one-year limitations period begins to 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 [constitutional] right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

¹Since petitioner's sentence was entered on February 20, 1998 and she filed her § 2255 motion in August 2000, AEDPA applies to petitioner without any retroactivity problem. See Lindh v. Murphy, 521 U.S. 320, 326-27 (1997).

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

Id.

Applying these standards to the case at bar, the statute of limitations with respect to petitioner began to run on March 14, 1998, ten days after the entry of judgment, which is the date on which the judgment of conviction became final. See Fed. R. App. P. 4(b) (stating that in criminal case, defendant's notice of appeal must be filed within ten days of entry of judgment). Petitioner, therefore, had until March 13, 1999 to file her application for habeas relief. Since petitioner filed her habeas petition on August 23, 2000,² it is barred by the statute of limitations.

Petitioner argues that her habeas petition is not untimely for two reasons. First, she contends that since her claims are predicated on a right that was not recognized by the United States Supreme Court until after the statute of limitations had run, her petition is timely. Second, petitioner argues that her claims should be permitted under the doctrine of equitable tolling. Since neither of these arguments has merit, the court

²Courts in this district have treated the date the petition was signed (in the absence of proof of mailing) as the relevant date for purposes of calculating compliance with the limitations period. See, e.g., Murphy v. Snyder, Civ. A. No. 98-415-JJF, at 4 (D. Del. Mar. 8, 1999).

concludes that petitioner's habeas petition is barred by the statute of limitations.

A. Newly-Recognized Right by the Supreme Court

Petitioner argues that the Supreme Court's decision in Apprendi v. New Jersey, 120 S.Ct. 2348 (June 26, 2000), recognizes a new right that renders her sentence unconstitutional, therefore, the one-year period for filing her habeas application does not run until June 26, 2001. In Apprendi, the Supreme Court held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." 120 S.Ct. at 2362-63. Petitioner challenges certain sentencing enhancements made pursuant to the Sentencing Guidelines.³ However, none of these enhancements raised petitioner's sentence above the prescribed statutory maximums. The maximum penalty for bank fraud under 18 U.S.C. § 1344 is 30 years imprisonment, and money laundering under 18 U.S.C. §1956(a)(1)(A)(i) provides for a maximum of 20

³Petitioner challenges her sentence under the money laundering guideline, U.S.S.G. § 2S1.1, and the enhancements for involving a financial institution and abusing a position of trust under the fraud guideline, U.S.S.G. § 2F1.1. The court notes that even if petitioner's application was timely-filed, an alleged misapplication of the Sentencing Guidelines is not a "substantial showing of the denial of a constitutional right" under 28 U.S.C. § 2253(c). See United States v. Cepero, 224 F.3d 256, 268 (3d Cir. 2000) (citing Buggs v. United States, 153 F.3d 439, 443 (7th Cir. 1998) ("[E]rrors in the implementation of the Sentencing Guidelines are generally not cognizable in a collateral attack.")).

years imprisonment. Petitioner was sentenced to 78 months imprisonment. Thus, Apprendi is not relevant to petitioner's case. See Cepero, 224 F.3d at 268, n.5 ("Because application of the Sentencing Guidelines in this case does not implicate a fact that would increase the penalty of a crime beyond the statutory maximum, the teachings of Apprendi are not relevant here."); United States v. Williams, No. 99-5431, 2000 WL 1864351, at *5 (3d Cir. Dec. 21, 2000) (same).

B. Equitable Tolling

Petitioner also argues that her claims should be heard by the court under the doctrine of equitable tolling. In Miller, the Third Circuit recognized that the one-year statute of limitations for habeas petitions was subject to equitable tolling, but that this tolling was limited:

[E]quitable tolling is proper only when the "principles of equity would make [the] rigid application [of a limitation period] unfair." Generally, this will occur when the petitioner has "in some extraordinary way . . . been prevented from asserting his or her rights." The petitioner must show that he or she "exercised reasonable diligence in investigating and bringing [the] claims." Mere excusable neglect is not sufficient.

Miller, 145 F.3d at 618 (internal citations omitted). See also Jones v. Morton, 195 F.3d 153, 159 (3d Cir. 1999) (citation omitted) ("In the final analysis, however, a statute of limitations should be tolled only in the rare situation where

equitable tolling is demanded by sound legal principles as well as the interests of justice.").

Petitioner retained three experienced criminal defense attorneys to represent her at different times in her case. These attorneys, as well as others with whom petitioner consulted, doubted the merits of challenging her conviction.⁴ (D.I. 46, Exs. E, F, G, O) Despite this, petitioner claims that she relied on the advice of her civil attorney who told her to "wait a couple of years" before filing a habeas petition.⁵ (D.I. 46, Ex. K) None of these circumstances are "extraordinary" so as to warrant an equitable tolling in this case.

IV. CONCLUSION

For the aforementioned reasons, the court shall deny petitioner's application for habeas corpus relief. An appropriate order shall issue.

⁴The court notes that plaintiff did not file **any** challenge to her conviction until October 18, 1999, well after the March 13, 1999 deadline set by 28 U.S.C. § 2255.

⁵Any mistake or miscalculation by petitioner's counsel regarding the applicable statute of limitations does not warrant equitable tolling. See, e.g., Steed v. Head, 219 F.3d 1298, 1300 (11th Cir. 2000) (holding that attorney's miscalculation based on "interpretation of novel legal issue" of habeas limitations period is not basis for equitable tolling); Kreutzer v. Bowersox, 231 F.3d 460, 463 (8th Cir. 2000) (holding that counsel's confusion about applicable statute of limitations does not warrant equitable tolling for filing habeas petition); Harris v. Hutchinson, 209 F.3d 325, 330-31 (4th Cir. 2000) (same); Taliani v. Chrans, 189 F.3d 597, 598 (7th Cir. 1999) (same).

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 Respondent.)

O R D E R

At Wilmington, this 31th day of January, 2001, consistent with the memorandum opinion issued this same day,

IT IS ORDERED that:

1. Petitioner Carole Ann Smith's above captioned application for habeas corpus relief (D.I. 45) filed pursuant to 28 U.S.C. § 2255 is dismissed and the writ denied.

2. For the reasons stated above, petitioner has failed to make a "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), and a certificate of appealability is not warranted. See United States v. Eyer, 113 F.3d 470 (3d Cir. 1997); 3d Cir. Local Appellate Rule 22.2 (1998).

United States District Judge