

Farnan, District Judge.

Pending before the Court is a Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside Or Correct Sentence By A Person In Federal Custody (D.I. 56) filed by Defendant, Michelle A. Bruce. For the reasons set forth below, Defendant's Section 2255 Motion will be denied.

BACKGROUND

On January 20, 2000, Defendant pled guilty to bank fraud in violation of 18 U.S.C. § 1344. Judgement was registered against Defendant on January 24, 2000, and the Judgement Of Conviction against Defendant was entered on the Court's docket on January 31, 2000. Defendant did not file a direct appeal of her conviction or sentence.

More than one year later, Defendant filed the instant Section 2255 Motion. By her Motion, Defendant raises one claim, specifically, that her counsel was ineffective for failing to thoroughly advise her before she entered her guilty plea. (D.I. 56 at 5).

The Government has filed a response to Defendant's Motion alleging that the Motion is time-barred under the Anti-Terrorism and Effective Death Penalty Act, 28 U.S.C. § 2255. Accordingly, the instant Section 2255 Motion is ripe for the Court's review.

DISCUSSION

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), effective April 24, 1996, amended 28 U.S.C. § 2255 to impose a one year limitations period on the filing of Section 2255 motions. In pertinent part, Section 2255 provides that the statute of limitations begins to run from the latest of:

- (1) the date on which the judgment 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;
- (3) the date on which the right asserted was initially 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.

In this case, Defendant was sentenced on January 20, 2000, and the Judgement Of Conviction against Defendant was entered on the Court's docket on January 31, 2000. Pursuant to Federal Rule of Appellate Procedure 4(b)(1)(A)(i), Defendant was required to file a notice of appeal within ten (10) days after entry of the Court's judgment on the docket. See Fed. R. App. P. 4(b)(6) ("A judgment or order is entered

for purposes of this Rule 4(b) when it is entered on the criminal docket."). In this case, Defendant did not file a direct appeal of her conviction, and therefore, for purposes of applying the AEDPA Defendant's conviction became final upon the expiration of the time for filing a direct appeal. Kapral v. United States, 166 F.2d 565, 577 (3d Cir. 1999) ("If a defendant does not pursue a timely direct appeal to the court of appeals, his or her conviction and sentence become final, and the statute of limitations begins to run, on the date on which the time for filing such an appeal expired."). Thus, in this case, Defendant's conviction became final on February 10, 2000. See Fed. R. App. P. 26(a)(2) (excluding intermediate Saturdays, Sundays, and legal holidays when computing time periods less than 7 days).

Applying the one year statute of limitations, Defendant was required to file her Section 2255 Motion no later than February 9, 2001. However, in this case, Defendant's Motion is deemed filed March 26, 2001, more than one month after the expiration of the statute of limitations.¹ Further, Defendant has not offered any evidence suggesting that the statute of

¹ Absent proof of mailing, the date on Defendant's motion is deemed the filing date. Johnson v. Brewington-Carr, Civ. Act. No. 99-181- JJF, mem. op. at 4 (D.Del. Feb. 22, 2000).

limitations should be tolled. Accordingly, the Court concludes that Defendant's Motion is time barred under the AEDPA, and therefore, Defendant's Section 2255 Motion will be denied.

CONCLUSION

For the reasons discussed, the Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside Or Correct Sentence By A Person In Federal Custody filed by Defendant, Michelle A. Bruce, will be denied.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
 :
 v. :
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 :
 :
MICHELLE A. BRUCE, :
 :
 :
 Defendant. :

O R D E R

At Wilmington, this 13 day of November 2001, for the reasons set forth in the Memorandum Opinion issued this date,

IT IS HEREBY ORDERED that:

1. Defendant's Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence By A Person In Federal Custody (D.I. 56) is DENIED.

2. Because the Court finds that Defendant has failed to make "a substantial showing of the denial of a constitutional right" under 28 U.S.C. § 2253(c)(2), a certificate of appealability is DENIED.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE