

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 07-11752-RWZ

THOMAS A. SHAY

v.

UNITED STATES OF AMERICA

ORDER
November 9, 2007

ZOBEL, D.J.

In July 1993, a jury found Thomas A. Shay guilty on two counts of a three-count superseding indictment: Count Three which charged violations of 18 U.S.C. § 844 and Count One, which charged a conspiracy under 18 U.S.C. § 371 to violate the substantive counts. He was acquitted on Count Two, another charge of violating 18 U.S.C. § 844. The court sentenced Shay to a term of imprisonment of 188 months. His appeal from the sentence and judgment resulted ultimately in a remand for a new trial. Thereafter, in October 1998, Shay pled guilty to Counts One and Three and was sentenced to a term of imprisonment of 144 months. Judgment entered on November 9, 1998. He did not appeal.

On September 19, 2007, Shay filed a "Motion Pro Se for Writ of Habeas Corpus and Motion to set aside 1998 Conviction Through Involuntary Guilty Plea" (#1 on the docket). The government has filed an opposition (#7) and petitioner, a response thereto (#14). Petitioner has also moved for the appointment of counsel (#15).

First, the motion for counsel is denied.

Second, treating his submission as a motion under 28 U.S.C. § 2255, it is too late. The amendments to the statute that became effective in April 1997 provide for a one-year limitations period from the date on which the judgment of conviction becomes final.¹ The relevant judgment was entered on November 9, 1998 and, not counting weekend days and holidays, the appeal period expired on November 23, 1998, nearly nine years before the instant motion appeared. While the statute provides for collateral attacks on the sentence on later dates under certain circumstances, e.g., the date on which the right asserted was initially recognized by the Supreme Court, if made retroactive to petitioner's case, none of these extensions apply in this case. See 28 U.S.C. § 2255, Shay simply asserts now and for the first time that his counsel after remand coerced him into pleading guilty and that the plea was involuntary. He cites no reason why this claim could not have been raised within the time allowed. See, e.g., Lattimore v. Dubois, 311 F.3d 46, 54 (1st Cir. 2002) (strictly enforcing one-year AEDPA limitations period).

Third, considering his petition as brought under 28 U.S.C. § 2241, it fails because the savings clause of § 2255 cannot save petitioner. This is so because he cannot show that "the remedy by motion is inadequate or ineffective to test the legality of his detention." That petitioner misses deadlines and time limits does not make § 2255 either inadequate or ineffective. See United States v. Barrett, 178 F.3d 34, 50 (1st

¹See Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. No. 104-132, Title I, § 105, 110 Stat. 1220.

Cir. 1999).

The motion is denied.

November 9, 2007

DATE

/s/Rya W. Zobel

RYA W. ZOBEL

UNITED STATES DISTRICT JUDGE