

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

June 15, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TIMOTHY JON ELGIN,

Defendant - Appellant.

No. 22-4094
(D.C. Nos. 2:22-CV-00576-DAK &
2:20-CR-00048-DAK-1)
(D. Utah)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **MORITZ, EID**, and **CARSON**, Circuit Judges.

The district court denied Timothy Jon Elgin’s 28 U.S.C. § 2255 motion as time-barred. Mr. Elgin requests a certificate of appealability so that he can appeal.¹ *See* 28 U.S.C. § 2253(c)(1)(B). We deny his request and dismiss this matter.

I. Background

Mr. Elgin did not file a direct appeal, so his conviction became final on July 13, 2020, fourteen days after the district court entered its judgment. *See United States v.*

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

¹ Mr. Elgin represents himself, so we construe his filings liberally. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

Prows, 448 F.3d 1223, 1227–28 (10th Cir. 2006); Fed. R. App. P. 4(b)(1)(A)(i). He then had one year to file a § 2255 motion. *See* § 2255(f)(1).

Mr. Elgin did not file a timely § 2255 motion. More than six months after the deadline for such a motion had passed, he unsuccessfully moved to extend the deadline. And more than thirteen months after the deadline had passed, he filed his § 2255 motion.

In the § 2255 motion, he sought equitable tolling of the one-year limitations period based on several circumstances. He first cited “COVID restrictions,” though he did not describe them. R. at 4. He then claimed that the law library at his detention center in Utah had been “broken for over a year” and that, even after it had been repaired, he could only access it for an hour per week. *Id.* When marshals transferred him to the Bureau of Prisons, he said, they destroyed his legal research. As a result, he had to start over from scratch when he arrived at prison in April 2021. In addition to requesting equitable tolling, he argued that enforcing the limitations period would violate the Suspension Clause.

The district court rejected Mr. Elgin’s claim to equitable tolling and denied his motion as time-barred.

II. Discussion

To obtain a certificate of appealability, Mr. Elgin must show that reasonable jurists could debate both whether his motion states a valid constitutional claim and whether the district court’s procedural ruling was correct. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Equitable tolling is “available when an inmate diligently pursues his claims and demonstrates that the failure to timely file was caused by extraordinary circumstances beyond his control.” *Marsh v. Soares*, 223 F.3d 1217, 1220 (10th Cir. 2000). Mr. Elgin did not satisfy this standard. His § 2255 motion did not explain how he had diligently pursued his claims. Nor did his motion even attempt to explain why he could not have filed a § 2255 motion during the period between his arrival at prison (April 2021) and the deadline for his motion (July 2021).

Mr. Elgin attempts to remedy these shortcomings now. In his brief, he says that he diligently pursued his claims by researching as much as he could, as fast as he could. And he adds that his prison experienced a “COVID lockdown” for an unidentified period and that its law library had only one “generally inaccessible” computer. Aplt. Br. at 2. Yet Mr. Elgin offers no reason why he did not include these claims in his motion, so “we adhere to our general rule against considering issues for the first time on appeal.” *United States v. Viera*, 674 F.3d 1214, 1220 (10th Cir. 2012). Even if we considered these new arguments, however, our conclusion would not change. The new information does not show that the circumstances of Mr. Elgin’s confinement prevented him from filing his motion on time, let alone that those circumstances prevented him from filing it for more than thirteen months after the deadline.²

² In his motion to extend the deadline to file his § 2255 motion, Mr. Elgin asserted that his institution was “locked down” and that he could not access research materials. Suppl. R. at 3. This information likewise does not show that equitable tolling was warranted. He provided the information more than more than six months after the deadline for his § 2255 motion had passed, and he did not say how long he had been without access to research materials.

We similarly reject Mr. Elgin’s new arguments that his conviction did not become final in July 2020. Mr. Elgin highlights that the Supreme Court temporarily extended the time frame to file petitions for certiorari during the COVID-19 pandemic. He argues that the extension delayed the date his conviction became final and demonstrated that the pandemic “rendered all timelines unreasonable.” Aplt. Br. at 3. We will not entertain arguments raised for the first time now. *See Viera*, 674 F.3d at 1220. And in any case, Mr. Elgin’s new arguments lack merit. Because he did not file a direct appeal, the extension of the time frame to seek certiorari did not affect the date his conviction became final. *See Prows*, 448 F.3d at 1227–28. Nor did that extension show that “all timelines” were unreasonable during the pandemic. Aplt. Br. at 3.

Finally, enforcing the time bar in § 2255(f) against Mr. Elgin did not violate the Suspension Clause. *See* U.S. Const. art. I, § 9, cl. 2 (“The Privilege of the Writ of Habeas Corpus shall not be suspended . . .”). Although there may be some circumstances when the limitations period “raises serious constitutional questions and possibly renders the habeas remedy inadequate and ineffective,” *Miller v. Marr*, 141 F.3d 976, 978 (10th Cir. 1998), those circumstances do not exist here. For example, Mr. Elgin has not shown grounds for equitable tolling or alleged actual innocence or incompetence. *See id.*

III. Conclusion

The propriety of the district court's procedural ruling is not debatable. We deny Mr. Elgin's request for a certificate of appealability, and we dismiss this matter. We grant Mr. Elgin's motion to proceed without prepaying costs or fees.

Entered for the Court

Allison H. Eid
Circuit Judge