UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MARIA VIDRO	:	
Petitioner,	:	
	:	**Crim. No. 3:94CR112 (AHN)**
v.	:	**Civ. No. 3:01CV1309 (AHN)**
	:	
UNITED STATES OF AMERICA,	:	
Respondent.	:	

RULING ON PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2255

Petitioner Maria Vidro seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2255, requesting that her September 1995 conviction be vacated. Vidro was convicted by a jury for racketeering and racketeering conspiracy, 18 U.S.C. §§ 1962(c) & (d), violent crimes in aid of racketeering (conspiracy to murder, murder, and aiding and abetting), 18 U.S.C. §§ 1959(a)(1),(2), & (5), and narcotics conspiracy, 21 U.S.C. § 846. She was sentenced on January, 17, 1996, to seven concurrent life terms and two ten-year terms. She now challenges her sentence pursuant to Apprendi v. New Jersey, 120 S.Ct. 2348 (2000), and on procedural due process grounds. As set forth below, her petition [Dkt. #1751] is denied.

BACKGROUND

Vidro was a member of a Connecticut narcotics racketeering enterprise known as the "Latin Kings." She was tried before a jury and was found guilty on nine counts. In

particular, Vidro served as a leading officer of the Latin Kings New Haven chapter, and, to that end, the jury found that she engaged in narcotics trafficking, assault, and murder. A more detailed account of those events is contained in United States v. Diaz, 176 F.3d 52, 73 (2d Cir. 1999).

DISCUSSION

Vidro seeks to correct and/or vacate her sentence based on Apprendi and procedural due process standards. The government contends that Vidro's petition should be denied because it is time-barred, procedurally-barred, and substantively without merit. Because the court finds that Vidro's petition is time-barred, the government's latter objections are not discussed.

A. Time-Bar Under § 2255

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") imposes a one-year statute of limitations within which a petitioner may seek habeas relief from a federal conviction under § 2255. See 28 U.S.C. 2255. The one-year period begins to run from the latest of four possible dates. Two of those dates are relevant to the time-bar issue here: 1) the date on which the judgment of conviction becomes final under § 2255(1); and, (2) the date on which the facts supporting the claim or claims presented could have been

discovered through the exercise of due diligence under § 2255(4).[1] The government argues that because Vidro's conviction became final on October 4, 1999, her petition, which was filed more than one year later on June 25, 2001, is untimely under § 2255(1) and must be denied.

1. Timeliness Under Subsections (1) & (4) of §2255

Vidro does not dispute that she filed her petition outside the one-year period set by § 2255(1). Rather, she argues, by necessary implication, that her petition is timely under § 2255(4) because she could not have discovered the facts supporting her claim until June 25, 2000. See Wims v. United States, 255 F.3d 186 (2d. Cir. 2000).

Specifically, Vidro claims that she did not file her habeas petition until twenty months after her conviction became final because her counsel mistakenly led her to believe that a § 2255 petition could be brought only if there was newly discovered evidence. She submits a May 8, 1999 letter

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[1] Although not relevant to the court's discussion here, the other two possible dates are (1) 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, and (2) 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. See 28 U.S.C. §§ 2255(2) & (3).

from her counsel advising her that her conviction had been affirmed on direct appeal by the Second Circuit and that she had the option to appeal to the Supreme Court. In the letter, counsel tells her that she should "keep in mind [to look] for any new[]. . . evidence that . . . would have affected the verdict [and] that could form the basis of a 2255 Petition that can be brought within one year after the Supreme Court decision, if it should decide against you." (Pet. Supp. Br., A.) Vidro maintains that because the letter misled her, her petition is timely under Wims. The court, however, disagrees.

In Wims, the petitioner moved to vacate a drug conspiracy conviction seventeen months after it became final, claiming ineffective assistance of counsel. 225 F.3d at 188. Wims argued that his petition was timely under § 2255(4) because, unbeknownst to him, his attorney had failed to file a direct appeal. See id. at 188. The narrow issue there was whether the due diligence language of § 2255(4) required Wims to have checked on his counsel's pursuit of an appeal on the very day that his conviction became final, or whether it was reasonable for him to have waited five months to do so. See id. at 189-91. The Second Circuit held that a five-month delay was not so unreasonable as to render the petition *per se* untimely. See id. In doing so, it recognized that a determination of

when the limitations clock under subsection (4) begins to run is fact-specific and should be based on the particular circumstances of each case. See id. at 190-91.

Unlike the petitioner in Wims, however, Vidro does not advance any substantive claim that is cognizable in a § 2255 petition. Although § 2255 does not explicitly define the term "claim," the analysis in Wims, and the well-established strictures of collateral review, lead to the conclusion that subsection (4) necessarily contemplates a claim that could support a habeas petition. Here, Vidro only claims that she misunderstood her attorney's letter. (See Pet. Obj. to Gov. Res., at 5.) Absent an ineffective assistance of counsel claim, however, Vidro's own misunderstanding is not a proper basis for bringing a collateral attack. The court, therefore, cannot find that the one-year limitation period began to run on any day other than the day that her conviction became final, October 4, 1999. See § 2255(1).

In the alternative, even if Vidro had alleged a claim that was cognizable on habeas review, there is no evidence showing that she was diligent in discovering facts supporting it, and similarly, Wims does not apply. Under the analysis in Wims, the court must determine when a duly diligent person in Vidro's circumstances would have discovered that a habeas

petition may be filed even absent new evidence. 225 F.3d at 190. In making this determination, the court assumes that on June 25, 2000, Vidro discovered that her attorney's letter did not mean what she initially thought it meant. See id. at 189. While the eight-month period between the time that her conviction became final, October 4, 1999, and the date on which the court assumes she discovered her misunderstanding, June 25, 2000, is not so clearly unreasonable as to render Vidro's petition *per se* untimely, the reasons she gives for her delay do not support a finding that she exercised due diligence.[2] To the contrary, a duly diligent person in her

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[2] The court notes that because subsection (4) defines rather than tolls the limitations period, a determination of Vidro's due diligence does not relate to the manner in which she pursued her claim during the one year limitations period. See Wims, 225 F.3d at 189. Instead, the relevant inquiry here is whether the facts supporting her claim (that in turn start the one-year clock) could not, in the exercise of due diligence, have been discovered prior to June 25, 2000. Under § 2255, when a petitioner seeks to begin the limitations clock from a date other than the date of final conviction provided for in subsection (1) -- which acts as a kind of *de facto* default date -- the petitioner is required to make some kind of preliminary showing. In this case, where Vidro argues that subsection (4) applies, she must show that she exercised due diligence in discovering the facts that give rise to her claim. Essentially, the AEDPA proscribes petitioners from "sleeping" on the *assessment* of their rights, even if it allows them to hold off for another day (in fact, up to one year from the relevant date) the actual filing of a petition. Any other interpretation of the limitations scheme under § 2255 would enable a petitioner to impermissibly circumvent the time restraints that Congress clearly meant to impose when it

circumstances should have clarified any misconceptions about the basis for filing a habeas petition before the eight months that passed here, despite, as Vidro claims, a lack of formal legal training.

Indeed, the letter from her attorney, which she claims caused her confusion as to the law, does not unambiguously inform her that the discovery of new evidence is the only basis for seeking § 2255 relief. While not a model of clarity, the letter simply suggests that new evidence is one possible basis for seeking a habeas petition. Vidro did not exercise due diligence because, despite her confusion, she did not contact her attorney to clarify his letter in an objectively reasonable amount of time.

Although Vidro may not be charged with a duty to understand every facet of her criminal case, and even though due diligence may not have required her to tirelessly question her attorney, see Wims, 228 F.3d at 190, a duly diligent person in her circumstances would have clarified what her attorney's letter meant prior to the eight months that passed here. This is especially true because, as his letter conveys, her attorney was willing to assist her and to meet with her. Moreover, it appears that Vidro actually had subsequent

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enacted the AEDPA. See id.

communications with her attorney because he assisted her in her Supreme Court petition for certiorari. [See Dkt. #1751 at 3, 6-7.] Thus, unlike the petitioner in Wims, who was abandoned by his attorney without notice, Vidro clearly had ample opportunity to discuss with her attorney the various grounds on which she could bring a collateral attack, and the time limits for filing. Given the complete lack of any evidence that she was somehow impeded from informing herself about the habeas process, the court cannot find that Vidro acted with due diligence or that it was reasonable for eight-months to have passed before she realized that she could file a habeas petition even if she did not have any new evidence. Indeed, to hold otherwise on this issue would fly in the face of one of the AEDPA's main goals –- to prevent undue delays in federal habeas review. See Wims, 225 F.3d at 189. As stated, no justifiable basis exists for doing so here. Thus, the court concludes that the one-year limitations period began to run on the date that Vidro's conviction became final, pursuant to § 2255(1), and not § 2255(4). Vidro's petition, therefore, is time-barred.

2. Timeliness Under Subsection (3) of §2255

Similarly, there is no merit to Vidro's alternate argument that because her petition was filed within one year

of Apprendi it should be allowed under § 2255(3). The government contends that Apprendi has not been made retroactive to cases on collateral review and thus it cannot render Vidro's petition timely. In support, the government cites Forbes v. United States, 262 F.3d 143 (2d Cir. 2001), in which the Second Circuit held that Apprendi could not be relied on to allow a second motion to vacate sentence under § 2255. However, as Vidro points out, Forbes only applies to successive petitions under § 2255, not to initial ones such as her's. See id. at 146 n.5.

Vidro argues that this Court's ruling in Parise v. United States, 135 F.Supp.2d 345, 349 (D. Conn. 2001) (Dorsey, S.J.) applies instead. Parise held that Apprendi may be applied retroactively to cases on collateral review because it is a "watershed rule" necessary to the fundamental fairness of criminal proceedings. See Parise, 135 F.Supp.2d at 349. However, Parise was effectively overruled by the Second Circuit's decision in Coleman v. United States, 329 F.3d 77, 89 (2d Cir. 2003). In Coleman, the court held that Apprendi did not announce a watershed rule, but merely clarified and extended the scope of two well-settled principles of criminal procedure: the defendant's right to a jury trial, and the government's burden of proof beyond a reasonable doubt. See

id. Thus, under Coleman, Apprendi cannot be applied retroactively -- even on initial motions to vacate -- and therefore the one-year period for filing a habeas petition in this case began to run on the date that Vidro's conviction became final under § 2255(1). Consequently, Vidro's petition is untimely and must be denied.

CONCLUSION

For the foregoing reasons, plaintiff's petition for a writ of habeas corpus [Dkt. #1751.] is DENIED.

So ordered this ___ day of December, 2003, at Bridgeport, Connecticut.

/s/
Alan H. Nevas
Senior United States District Judge