

Summary: The defendant filed a motion for extension of time to file a petition under 28 U.S.C. § 2255. The Court denied the motion finding that it lacked jurisdiction because the motion for extension of time was not filed with a petition under § 2255, nor could the motion be construed as a petition under § 2255.

Case Name: USA v. Todd Christopher Zastoupil

Case Number: 1-04-cr-76

Docket Number: 60

Date Filed: 3/20/08

Nature of Suit:

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

United State of America,)	
)	
Plaintiff,)	ORDER DENYING DEFENDANT’S
)	MOTION FOR EXTENSION OF TIME
vs.)	TO FILE PETITION UNDER 28 U.S.C.
)	§ 2255
)	
Todd Christopher Zastoupil,)	Case No. C1-04-076
)	
Defendant.)	

Before the Court is defendant Todd Zastoupil’s “Motion Requesting an Extention of Time for the Submission of Section 2255 of Title 28, United States Code -28-§ 2255/-Appellate Procedure-” filed on March 10, 2008. See Docket No. 56 (errors in original). On March 12, 2008, the Government filed a response in opposition to the motion. See Docket No. 59. For the reasons set forth below, Zastoupil’s motion is denied.

Zastoupil was convicted of sexual exploitation of minors and possession of material involving the sexual exploitation of minors. Zastoupil was sentenced to a 50-year term of imprisonment and a concurrent 20-year term of imprisonment. See Docket No. 47. Zastoupil appealed and on May 9, 2007, the Eighth Circuit Court of Appeals affirmed the conviction and sentence. See Docket No. 50.

Zastoupil has now filed a motion to extend the time for filing a petition to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. Zastoupil believes that the one-year statute of limitations for filing his § 2255 petition expires on May 9, 2008, and he requests an extension of time because of difficulties related to his housing and lack of access to a law library while incarcerated by the Bureau of Prisons.¹

The Government contends that the Court does not have jurisdiction to consider Zastoupil's motion for extension. A motion for extension alone does not present a "case or controversy" as required by Article III in order for a court to have jurisdiction. Ramirez v. United States, 461 F. Supp. 2d 439, 440 (E.D. Va. 2006). For a court to have jurisdiction over a motion for extension of time to file a § 2255 petition, the motion must be either (i) filed concurrently with or after a § 2255 petition or (ii) be construed as a § 2255 petition itself. Id. To be construed as a § 2255 petition itself, the motion for extension of time must contain "allegations sufficient to support a claim under section 2255." Id. at 441.

The Court finds that Zastoupil's motion for extension is not accompanied by a § 2255 motion and that the motion does not set forth any allegation which could be construed as a claim under § 2255. The Court finds, as a matter of law, that it is without jurisdiction to consider Zastoupil's motion for extension of time. The Court **DENIES** the motion for extension of time to file a petition under 28 U.S.C. § 2255. (Docket No. 56).

IT IS SO ORDERED.

Dated this 20th day of March, 2008.

¹ The Court notes that Zastoupil has a one-year period of time from the date his conviction became final to file a motion under § 2255. When a defendant unsuccessfully appeals, his conviction becomes final after the time to file a petition for certiorari has expired. Clay v. United States, 537 U.S. 522 (2003); United States v. Martin, 408 F.3d 1089, 1090 (8th Cir. 2005). The time to file a petition for certiorari is ninety (90) days after entry of judgment in the court of appeals. See Sup. Ct. R. 13(1). As such, Zastoupil's one-year period to file a cert petition expires on or before August 9, 2008, rather than May 9, 2009.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge
United States District Court