

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

MARNAIL WASHINGTON,)	
)	
Petitioner,)	
)	CIVIL ACTION NO.
v.)	2:10cv279-MHT
)	(WO)
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

OPINION AND ORDER

On September 26, 2011, the magistrate judge entered a recommendation that the 28 U.S.C. § 2255 motion filed by petitioner Marnail Washington should be denied because it was not filed within the controlling federal-limitation period. On October 21, 2011, in the wake of there being no objections filed to the recommendation, the court entered an opinion and a final judgment adopting the recommendation.

On November 2, 2011, Washington filed a motion to alter or amend pursuant to Fed.R.Civ.P. 59(e), in which

he states that he never received a copy of the magistrate judge's recommendation and that, consequently, he was denied the opportunity to file timely objections to the recommendation.* Accordingly, he requests that this court set aside its final opinion and judgment of October 21, 2011, and allow him to file objections to the recommendation.

In light of the foregoing and for good cause, it is ORDERED as follows:

(1) Petitioner Marnail Washington's motion to alter or amend pursuant to Fed.R.Civ.P. 59(e) (Doc. no. 17) is granted.

*Rule 59(e) provides that, "A motion to alter or amend a judgment must be filed no later than 28 days after entry of the judgment." Although Washington's motion was date-stamped "received" in this court on November 10, 2011, the court under the "mailbox rule" deems his motion filed on the date he delivered it to prison authorities for mailing, presumptively November 2, 2011, the day that he signed it. See Houston v. Lack, 487 U.S. 266, 271-72 (1988); Washington v. United States, 243 F.3d 1299, 1301 (11th Cir. 2001).

(2) The opinion and final judgment (Doc. nos. 15 & 16) are vacated.

(3) The clerk of the court is to mail to petitioner Washington another copy of the magistrate judge's recommendation (doc. no. 14).

(4) Petitioner Washington is allowed until December 9, 2011, to file his objections to the recommendation (doc. no. 14).

(5) This case is referred back to the magistrate judge for further appropriate proceedings.

DONE, this the 17th day of November, 2011.

 /s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE