

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

RICKEY RANDELL WREX SMITH,)
)
Petitioner,)
)
v.) Civil Action No. 1:12cv1006-WKW
) (WO)
UNITED STATES OF AMERICA,)
)
Respondent.)

O R D E R

Pursuant to this court's orders, the United States has filed a supplemental response (Doc. No. 21) in which it argues that Smith's claims in the amendment to his § 2255 motion are time-barred pursuant to the one-year limitation period set forth in 28 U.S.C. § 2255(f). With regard to Smith's claim of sentencing error based on the Supreme Court's recent decision in *Peugh v. United States*, ____ U.S. ___, 133 S.Ct. 2072 (2013), the Government further argues that Smith cannot avail himself of the limitation period in § 22255(f)(3) because *Peugh* did not announce a new right and it did not make any new right retroactively applicable on collateral review. In addition, the Government argues that the facts in Smith's case do not support his allegation that *Peugh* affects his sentence. The Government also argues that both Smith's *Peugh* claim and his claim of prosecutorial misconduct related to the grand jury are procedurally barred from this court's review because they could have been raised and decided on direct appeal, but were not. The Government argues that even if these claims are not time-barred and procedurally barred, they are without merit.

Accordingly, it is

ORDERED that on or before **March 10, 2014**, Smith may file a reply to the supplemental response filed by the United States.

Done this 18th day of February, 2014.

/s/ Susan Russ Walker

SUSAN RUSS WALKER
CHIEF UNITED STATES MAGISTRATE JUDGE