

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

TONY LEWIS SHARPE,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No. 2:09cv489-WHA
	)	(WO)
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

**ORDER**

On May 20, 2009, petitioner Tony Lewis Sharpe (“Sharpe”), a federal inmate, filed a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255, in which he challenges the sentence imposed on him in 1999 for sexual exploitation of a minor and possession of a firearm by a convicted felon.<sup>1</sup> (Doc. No. 1.) Upon review of Sharpe’s motion, this court directed the government to file a limited response addressing the applicability of § 2255’s one-year limitation period to Sharpe’s motion, *see* § 105 of the Antiterrorism and Effective Death Penalty Act (“AEDPA”).<sup>2</sup> (Doc. No. 4.) In its response (Doc. No. 11), the government argues that Sharpe’s motion is time-barred by the limitation period. Specifically, the government argues that Sharpe’s convictions became final on April

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<sup>1</sup>Although Sharpe’s motion was stamped “received” in this court on May 26, 2009, under the “mailbox rule,” the court deems his motion filed on the date he delivered it to prison authorities for mailing, presumptively, May 20, 2009, 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 (11<sup>th</sup> Cir. 2001).

<sup>2</sup>“Section 105 amended 28 U.S.C. § 2255, establishing a one-year ‘period of limitation’ for motions filed pursuant to § 2255.” *Goodman v. United States*, 151 F.3d 1335, 1336 (11<sup>th</sup> Cir. 1998). This section became effective on April 24, 1996.

22, 2002 – 10 days after the district court’s judgment of conviction was entered, as no direct appeal was filed – and that the instant § 2255 motion was filed well after expiration of the one-year period of limitation. (Doc. No. 11 at 4-7.)

Paragraph 6 of 28 U.S.C. § 2255 specifies that the one-year period of limitation begins from the latest date of

(1) the date on which the judgment of conviction becomes final;

(2) 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;

(3) 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; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

The pleadings and record reflect that Sharpe was convicted on January 14, 1999, and that he was sentenced on March 30, 1999. (Doc. 11 at 2.) Judgment was entered by the district court on March 31, 1999. (*Id.*) Sharpe did not file a direct appeal. By operation of law, then, Sharpe’s convictions became final on April 13, 1999, upon expiration of the time for him to file a direct appeal (i.e., the first business day 10 days after entry of judgment by the district court).<sup>3</sup> Thus, Sharpe had until April 13, 2000, to file a timely § 2255 motion.

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<sup>3</sup>See Fed.R.App.P. 4(b)(1) (defendant’s notice of appeal in a criminal case must be filed in the district court within ten days after entry of the district court’s judgment); *Mederos v. United States*, 218 F.3d 1252, 1253 (11<sup>th</sup> Cir. 2000) (for a defendant who does not file a direct appeal, the conviction becomes final ten days after the district court’s judgment is entered); *see also Sanchez-*

