

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

TIMOTHY JEVON SEWELL,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No. 2:10cv658-ID
	)	(WO)
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

**O R D E R**

In a supplemental answer filed pursuant to this court’s orders, the government argues, among other things, that Sewell’s § 2255 motion was filed after expiration of the applicable one-year limitation period and is therefore time-barred. (Doc. No. 17.)

Title 28 U.S.C. § 2255(f) specifies that the one-year limitation period 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.

Judgment in Sewell’s criminal case was entered by the district court on October 21,

2005. (Gov. Exh. I.) Sewell appealed to the Eleventh Circuit, and the appellate court affirmed his conviction on February 23, 2007. (Gov. Exh. J.) Sewell did not seek certiorari review in the Supreme Court. Therefore, his conviction became final, for the purpose of 28 U.S.C. § 2255, on May 24, 2007, i.e., 90 days after the Eleventh Circuit's affirmance of his conviction. *See Close v. United States*, 336 F.3d 1283, 1284-85 (11<sup>th</sup> Cir. 2003); Sup.Ct.R. 13(1) and (3). Thus, for the purpose of § 2255(f)(1), Sewell had until May 24, 2008, to file a timely § 2255 motion. The instant § 2255 motion, however, was not filed until July 8, 2010.

Sewell claims that § 2255(f)(3) is the relevant subsection for determining the timeliness of his motion and that the Supreme Court's decision in *Chambers v. United States*, 555 U.S. 122 (2009), created a newly recognized right retroactively applicable to his case. The government maintains that even assuming arguendo that *Chambers* created a new retroactively applicable right, Sewell's § 2255 motion is nevertheless untimely, because it was filed more than a year after the Supreme Court's January 13, 2009, decision in *Chambers*. (Doc. No. 17 at 17-18.)

The government further maintains that, in light of the recent en banc decision of the Eleventh Circuit in *Gilbert v. United States*, No. 09-12513, 2011 WL 1885674 (11<sup>th</sup> Cir. May 19, 2011) (en banc), Sewell cannot demonstrate that he was "actually innocent" of being a career offender for the purpose of U.S.S.G. § 4B1.1, because his claim of sentencing error relates only to the calculation of his sentencing guidelines and the sentence he attacks does

