

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

CARLOS BADILLO,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 2:11cv354-MEF
)	(WO)
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

On May 4, 2011, petitioner Carlos Badillo (“Badillo”), a federal inmate, filed a *pro se* motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. (Doc. No. 1.) By his petition, Badillo challenges his guilty plea convictions and the resulting sentence imposed in 2007 for federal controlled substance and firearm offenses. He argues that his trial counsel rendered ineffective assistance and that the government breached the plea agreement in his case. (*Id.*) This court directed the government to file a limited response addressing the applicability of 28 U.S.C. § 2255’s one-year limitation period to Badillo’s motion, *see* § 105 of the Antiterrorism and Effective Death Penalty Act (“AEDPA”).¹ (Doc. No. 3.) In its response (Doc. No. 4), the government argues, among other things, that Badillo’s § 2255 motion was filed well after expiration of the one-year limitation period and is therefore time-barred.

¹“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 (11th Cir. 1998). This section became effective on April 24, 1996.

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.

The pleadings and court records reflect that Badillo was convicted pursuant to a guilty plea entered on June 21, 2007, and that he was sentenced on October 18, 2007. (Criminal Case No. 2:06cr213-MEF, Doc. Nos. 100 and 134.) Judgment was also entered by the district court on October 18, 2007. (*Id.*, Doc. No. 135.) Badillo did not file a direct appeal. By operation of law, then, his conviction became final on October 28, 2007, upon expiration of the time for him to file a direct appeal (i.e., 10 days after entry of judgment by the district court).² Thus, Badillo had until October 28, 2008, to file a timely § 2255 motion. The instant

²When the district court's judgment was entered in Badillo's case, Fed.R.App.P. 4(b)(1) provided that a defendant's notice of appeal in a criminal case must be filed within 10 days after entry of the district court's judgment. Effective December 1, 2009, Rule 4(b)(1) provides that a defendant's notice of appeal must be filed within 14 days after entry of the district court's judgment.

