

1 Circuit dismissed his appeal of the judgment of dismissal on August 27, 2012 when
2 it denied the issuance of a certificate of appealability. Having reviewed Begay's
3 latest post-judgment motion in light of the relevant record, the Court finds that it
4 should be denied.

5 Begay states that his motion is filed pursuant to Fed.R.Civ.P. Rule 6)(b)(6),
6 which permits relief from a final judgment for "any ... reason that justifies relief" other
7 than the more specific reasons set out in Rule 60(b)(1)-(5). Wood v. Ryan, 759 F.3d
8 1117, 1119-20 (9th Cir.2014). In order to be entitled to relief under this rule, Begay
9 must show the existence of "extraordinary circumstances" justifying the reopening
10 of the final judgment in his § 2255 action, and the Supreme Court has made it clear
11 that such circumstances "rarely occur in the habeas context." Gonzalez v. Crosby,
12 545 U.S. 524, 535 (2005). Even assuming that Begay's motion is a legitimate Rule
13 60(b)(6) motion and is sufficient to meet the rule's extraordinary circumstances
14 requirement, Begay is not entitled to equitable tolling unless he also meets his heavy
15 burden of establishing (1) that he has been pursuing his rights diligently, and (2) that
16 some extraordinary circumstance stood in his way. Pace v. DiGuglielmo, 544 U.S.
17 408, 418 (2005). He has also show a causal link between the extraordinary
18 circumstance and the untimeliness of his § 2255 action.

19 Begay, who has previously argued to the Court that he neither knew that the
20 direct appeal had been filed on his behalf nor that the Ninth Circuit had denied it,
21 argues that the required extraordinary circumstance in this case is the failure of the
22 Clerk of the Ninth Circuit Court of Appeals to comply with the Ninth Circuit's general
23 order requiring that the Clerk forward all returned mail sent to a prisoner in a federal
24 institution to the appropriate United States Attorney with an instructional letter
25 requiring that office to use all reasonable means to effect delivery to the prisoner and
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1 to submit proof of such efforts and the results of that effort to the Clerk within
2 fourteen days. Begay asserts that the Clerk of the Ninth Circuit failed to comply with
3 this requirement, and that as a result he was deprived of vital information of when
4 his judgment of conviction became final. Begay's contention, as the Court
5 understands it, is that had he timely received a copy of the Ninth Circuit's decision
6 denying his direct appeal, he "would have known the 28 U.S.C. § 2255 time limit
7 began Oct. 21, 2002, and expired on Oct. 23, 2003." Apparently Begay would have
8 the Court reopen his § 2255 action so that he can argue that the statute of limitations
9 should be equitably tolled due to his failure to receive notice of the denial of his
10 appeal. The Court concludes that Begay has not established his right to equitable
11 tolling as to this new ground.

12 First, Begay has not been reasonably diligent about raising this ground.
13 Begay never states when he first learned that his direct appeal had been denied. But
14 even assuming that he did not in fact contemporaneously know about the existence
15 of the appeal or its denial, Begay clearly learned about them from the Government's
16 response (Doc. 4) to his § 2255 motion, which the Government filed on January 28,
17 2011.¹ Begay did not thereafter raise an equitable tolling issue based on his lack of
18 knowledge of the denial of the appeal in his reply (Doc. 5) in support of his § 2255
19 motion or in his objections (Doc. 7) to the Report and Recommendation. Nor did he
20 raise the issue in any of his subsequent post-judgment motions, *i.e.*, Docs. 13, 14,
21 15, 21, 25, 26, 27, 28, 29, 30, 32, 33, 35, and 36. Begay first raised this issue in the

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24 The Government's response stated in part: "Defendant's counsel filed
25 a notice of appeal on September 18, 2001. ... Defendant argued on appeal that the
26 sentencing court erred by imposing a 2-level enhancement for restraining the
victims. The enhancement was upheld by the Ninth Circuit on July 22, 2002. The
Mandate issued September 20, 2002."

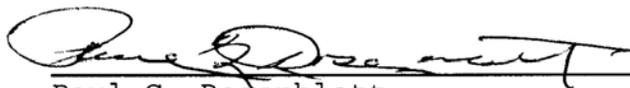
1 pending motion, which he filed some 4½ years after he clearly knew about the denial
2 of his direct appeal.

3 Second, Begay has not shown that his lack of knowledge of the denial of his
4 direct appeal constitutes an extraordinary circumstance that prevented him from
5 timely filing a § 2255 action. If Begay in fact did not know of the existence of his
6 direct appeal until years after it was filed, as he has repeatedly stated, then his delay
7 in filing had nothing to do with him waiting until this appeal was resolved. Rather,
8 as Begay has made clear in his § 2255 motion and in various of his subsequent
9 motions prior to the pending motion, the actual cause of his failure to timely file his
10 § 2255 action was his belief that his federal public defender told him not to appeal
11 until eight years after his sentencing, which is a contention that the Court has
12 already rejected as not credible, and his claimed lack of any knowledge of the
13 existence of § 2255 and its time limits. Therefore,

14 IT IS ORDERED that defendant Begay's Motion to Reinstate Habeas Corpus
15 Proceedings (Doc. 39), filed pursuant to Fed.R.Civ.P. 60(b)(6), is denied.

16 IT IS FURTHER ORDERED that a certificate of appealability shall not issue
17 and that defendant Begay shall not be allowed to appeal *in forma pauperis* because
18 jurists of reason would not find it debatable whether the Court abused its discretion
19 in denying Begay's Fed.R.Civ.P. 60(b) motion, and jurists of reason would not find
20 it debatable whether Begay's underlying § 2255 motion stated a valid claim of the
21 denial of a constitutional right.

22 DATED this 4th day of August, 2015.

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25 Paul G. Rosenblatt
26 United States District Judge