

See United States v. Sanders, 247 F.3d 139, 142 (4th Cir. 2001) (where no appeal taken, statute of limitations begins to run on date the court entered the judgment of conviction). Therefore, Byrd had until March 19, 2013, to file a timely Motion to Vacate. He did not do so.

The one-year limitation period may be forgiven if a petitioner shows that “1) extraordinary circumstances, 2) beyond his control or external to his own conduct, 3) ... prevented him from filing on time.” *United States v. Sosa*, 364 F.3d 507, 512 (4th Cir. 2004) (citing *Rouse v. Lee*, 339 F.3d 238, 246 (4th Cir. 2003) (*en banc*)). A petitioner must show some wrongful conduct by a respondent contributed to the delay in filing, or that circumstances beyond his control caused the delay. *See Rouse*, 339 F.3d at 246. “[A]ny resort to equity must be reserved for those rare instances where ... it would be unconscionable to enforce the limitation period against the party and gross injustice would result.” *Harris v. Hutchinson*, 209 F.3d 325, 330 (4th Cir. 2006). Generally, the petitioner must show that he has been diligently pursuing his rights and some extraordinary circumstance prevented him from filing a timely petition. *See Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005); *Rouse*, 339 F.3d at 246.

Byrd does not argue equitable tolling. Rather, he invokes 28 U.S.C. § 2255(f)(3) to assert that his motion is timely because it was statutorily tolled as filed within one year of the U.S. Supreme Court decision in *Mathis*.

Byrd’s argument unavailing. 28 U.S.C. § 2255(f)(3) provides that the one-year limitation period shall run from 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. The Fourth Circuit has clarified that “to obtain the benefit of the limitations period stated in § 2255(f)(3), [a petitioner] must show: (1) that the Supreme Court

recognized a new right; (2) that the right ‘has been ... made retroactively applicable to cases on collateral review’; and (3) that [the movant] filed his motion within one year of the date on which the Supreme Court recognized the right.” *United States v. Mathur*, 685 F. 2d 396, 398 (4th Cir. 2012).

Byrd cannot utilize § 2255(f)(3) to justify the late filing of his motion. First, *Mathis* did not set forth a new rule of constitutional law.¹ *Mathis*, 136 S. Ct. at 2257 (indicating its decision was based on longstanding precedent). Multiple appellate courts have observed that the ruling in *Mathis* did not recognize a “new” right or rule; rather, it merely applied an existing principle to a new set of facts. *See, e.g., Dawkins v. United States*, 829 F. 3d 549, 551 (7th Cir. 2016) (holding *Mathis* did not announce a new rule of constitutional law made retroactive by the Supreme Court); *see also United States v. Taylor*, 672 Fed. App’x. 860, 864 (10th Cir. 2016) (*Mathis* did not announce a new rule of law); *Holt v. United States*, 843 F.3d 720, 722 (7th Cir. 2016) (*Mathis* is neither retroactive nor a new rule of constitutional law). Further, this court and other district courts have reached similar conclusions. *See Gary v. Kallis*, 2017 WL 2242680 at *4 (D. Md. 2017) (Supreme Court did not establish a new rule of law in *Mathis*); *Adams v. United States*, 2017 WL 1040346 at *3 (D. Maine 2017) (*Mathis* does not apply retroactively as it did not announce a new substantive rule applicable to cases on collateral review); *Blackwell v. United States*, 2016 WL 5849384, at *4-5 (W.D. Va. 2016) (*Mathis* did not announce a new rule of constitutional law). Thus, Petitioner’s motion is subject to dismissal as untimely.

¹ *Mathis*, which held that an Iowa burglary conviction was not a predicate offense under the Armed Career Criminal Act because the elements of the state’s burglary statute were broader than the elements of the enumerated offense of generic burglary, simply clarified the application of the modified categorical approach. *Mathis*, 136 S.Ct. at 2257.

