

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO
3
4

JOHNNY AYALA-GARCÍA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 14-1587 (JAF)

(Crim. No. 06-66-2)

5
6 **OPINION AND ORDER**

7 Petitioner Johnny Ayala-García (“Ayala-García”) comes before the court with a
8 petition under 28 U.S.C. § 2255 to vacate, set aside, or correct the sentence we imposed
9 in Criminal No. 06-66-2. (Docket No. 1.) Because it is time-barred and because he has
10 not supported his claim of actual innocence, we must deny his petition.

11 **I.**

12 **Background**

13 On November 15, 2006, Ayala-García pleaded guilty to his role in a deadly armed
14 carjacking. (Docket Nos. 62, 70.) On February 21, 2007, we sentenced him to 420
15 months’ imprisonment. (Docket No. 84.) Ayala-García filed a notice of appeal, and his
16 counsel submitted a motion under Local Rule 46.6(c)(4), stating that there were no non-
17 frivolous issues for the First Circuit to consider. *United States v. Ayala-García* (1st Cir.
18 2008). On July 9, 2008, the First Circuit wrote that based “on our review of the
19 transcripts and record materials, we conclude that counsel’s invocation of Local Rule
20 46.6(c)(4) is well taken,” and summarily affirmed the judgment. *United States v. Ayala-*

1 *García* (1st Cir. 2008). On July 31, 2014, Ayala-García filed the instant motion to vacate
2 his sentence under 28 U.S.C. § 2255.

3 **II.**

4 **Jurisdiction**

5 Ayala-García is currently in federal custody, having been sentenced by this district
6 court. To file a timely motion, Ayala-García had one year from the date his judgment
7 became final; one year from the date on which an impediment to such motion created by
8 governmental action was removed; one year from the date on which the Supreme Court
9 recognized a new retroactively-applicable right; or one year from when the relevant facts
10 could have been discovered through the exercise of due diligence. 28 U.S.C. § 2255(f).
11 Ayala-García does not argue that the government created an impediment to such motion;
12 that there is a new retroactively-applicable Supreme Court rule; or that he discovered new
13 facts after the disposition of his case. *See* Docket No. 1. His judgment became final on
14 the last day that he could have filed a petition for a writ of certiorari, which was ninety
15 days after the entry of the Court of Appeals' judgment. SUP. CT. R. 13(1); *Clay v. United*
16 *States*, 537 U.S. 522 (2003). Therefore, his judgment became final on October 7, 2008,
17 and he had until October 7, 2009, to file the instant motion. Ayala-García did not file
18 until July 31, 2014, nearly three years too late. Therefore, we lack jurisdiction and must
19 deny his petition.

20 **III.**

21 **Actual Innocence**

22 In an attempt to defeat the time bar, Ayala-García claims actual innocence.
23 (Docket No. 1.) Actual innocence, if shown, would allow us to consider the merits of his
24 case, because courts aim to correct clear miscarriages of justice. *See Schlup v. Delo*, 513

1 U.S. 298 (1995). Ayala-García writes that “he is actually and factually innocent of the
2 crime to which he entered a guilty plea [...and] that his guilty plea was the product of
3 threats and coercion by a corrections officer and family member of the victim.” (Docket
4 No. 1 at 15.) The Supreme Court stated that actual innocence requires a showing that “no
5 reasonable juror would have found the defendant guilty.” *Schlup*, 513 U.S. at 329. To
6 support a claim of actual innocence, the petitioner must “support his allegations of
7 constitutional error with new reliable evidence – whether it be exculpatory scientific
8 evidence, trustworthy eyewitness accounts, or critical physical evidence – that was not
9 presented at trial.” *Schlup*, 513 U.S. at 324. Ayala-García has presented no new reliable
10 evidence.

11 Further, at the change of plea hearing, Ayala-García repeatedly asserted that he
12 had not been coerced into pleading guilty. The following transcript portion is illustrative:

13 THE COURT: Has anyone threatened you or anybody else
14 related to you in order to force you or induce you to plead in
15 this case?

16
17 DEFENDANT AYALA GARCIA: No.

18
19 (Crim. No. 06-66-2, Docket No. 70 at 19.)

20 We later asked:

21 THE COURT: Has anybody made any promise to you, any
22 promise to you, in order to induce you or force you to plead
23 in this case?

24
25 DEFENDANT AYALA GARCIA: No.

26
27 (Crim. No. 06-66-2, Docket No. 70 at 20.) According to the First Circuit, we are entitled
28 to “give weight to the defendant’s statements at his change-of-plea colloquy absent a
29 ‘good reason for disregarding them’ [...] Without independent corroboration, ‘we not

1 only view his plea colloquy as ‘evidential,’ but sufficiently ‘conclusive’ to contradict his
2 claims.’” *U.S. v. Santiago Miranda*, 654 F.3d 130, 138 (1st Cir. 2011). Therefore,
3 Ayala-García’s claim of actual innocence fails.

4 IV.

5 Ineffective Assistance of Counsel

6 Ayala-García also claims ineffective assistance of counsel. He claims that “trial
7 counsel refused to investigate petitioner’s claims that he was being threatened and
8 harassed by a corrections officer-family member of the victim” and that “trial counsel
9 lied about investigating petitioner’s claims that he had been beaten by corrections officers
10 who stated that if Petitioner did not plead guilty, officers would harm Petitioner’s family
11 member.” (Docket No. 1 at 15.) For the reasons stated above, this claim is both time-
12 barred and contradicted by Ayala-García’s own statements before the court.

13 V.

14 Certificate of Appealability

15
16 In accordance with Rule 11 of the Rules Governing § 2255 Proceedings, whenever
17 issuing a denial of § 2255 relief we must concurrently determine whether to issue a
18 certificate of appealability (“COA”). In this respect, we state that it has become common
19 practice to collaterally challenge federal convictions in federal court by raising arguments
20 of dubious merit. This practice is overburdening federal district courts to the point of
21 having some of these criminal cases re-litigated on § 2255 grounds. We look at this
22 matter with respect to the rights of litigants, but also must protect the integrity of the
23 system against meritless allegations. *See Davis v. U.S.*, 417 U.S. 333, 346 (1974) (in a
24 motion to vacate judgment under §2255, the claimed error of law must be a fundamental
25 defect which inherently results in a complete miscarriage of justice); *see also Dirring v.*

1 U.S., 370 F.2d 862 (1st Cir. 1967) (§ 2255 is a remedy available when some basic
2 fundamental right is denied—not as vehicle for routine review for defendant who is
3 dissatisfied with his sentence).

4 We grant a COA only upon “a substantial showing of the denial of a constitutional
5 right.” 28 U.S.C. § 2253(c)(2). To make this showing, “[t]he petitioner must demonstrate
6 that reasonable jurists would find the district court's assessment of the constitutional
7 claims debatable or wrong.” *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003) (quoting
8 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). While Ayala-García has not yet requested
9 a COA, we see no way in which a reasonable jurist could find our assessment of his
10 constitutional claims debatable or wrong. Ayala-García may request a COA directly
11 from the First Circuit, pursuant to Rule of Appellate Procedure 22.

12 **VI.**

13 **Conclusion**

14 For the foregoing reasons, we hereby **DENY** Ayala-García’s § 2255 motion
15 (Docket No. 1). Pursuant to Rule 4(b) of the Rules Governing § 2255 Proceedings,
16 summary dismissal is in order because it plainly appears from the record that Ayala-
17 García is not entitled to § 2255 relief from this court.

18 **IT IS SO ORDERED.**

19 San Juan, Puerto Rico, this 3rd day of October, 2014.

20 S/José Antonio Fusté
21 JOSE ANTONIO FUSTE
22 U. S. DISTRICT JUDGE