

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

RICARDO RIVERA-MORENO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 19-1759 (ADC)
[Related to Crim. No. 07-121-11 (ADC)]

OPINION AND ORDER

Pending before the Court is petitioner Ricardo Rivera-Moreno's ("Petitioner") motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. ECF No. 3. The government opposed. ECF No. 14. For the ensuing reasons, the Court **DENIES** Petitioner's motion.

I. Procedural History

On February 19, 2008, Petitioner pled guilty to conspiracy to possess with intent to distribute narcotics. **Crim. No. 07-121, ECF Nos. 1, 1066**. On June 25, 2008, he was sentenced to 365 months of imprisonment¹ and a supervised release term of 180 months. **Crim. No. 07-121, ECF Nos. 1611, 1622**. He appealed and the First Circuit Court of Appeals affirmed. **Crim. No. 07-121, ECF Nos. 1628, 2016**.

On December 2, 2011, Petitioner filed his first motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 arguing that his counsel rendered ineffective assistance for

¹ Petitioner's term of imprisonment was reduced to 293 months pursuant to Amendment 782 to the United States Sentencing Guidelines. **Crim. No. 07-121, ECF No. 2592**.

failing to cross-examine a government witness and permitting prosecutorial misconduct to occur. **Civil No. 11-2166, ECF No. 1.** The Court denied it on the merits on July 3, 2014. **Civil No. 11-2166, ECF No. 20.** Petitioner did not appeal. On August 7, 2019, Petitioner filed this second motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. **ECF No. 3.**

II. Discussion

It is well settled that “[a] federal prisoner seeking to file a second or successive § 2255 petition must first obtain authorization from the court of appeals to do so.” *Bucci v. United States*, 809 F.3d 23, 25 (1st Cir. 2015) (citing 28 U.S.C. §§ 2244(b)(3)(A), 2255(h)). “Such authorization is available only when the second or successive petition is based either on (1) newly discovered evidence that would establish innocence or (2) a new rule of constitutional law made retroactive on collateral review by the Supreme Court.” *Id.* at 25-26 (citing 28 U.S.C. § 2255(h)). The First Circuit interpreted this provision “as stripping the district court of jurisdiction over a second or successive habeas petition unless and until the court of appeals has decreed that it may go forward.” *Id.* at 26 (citing *Trenkler v. United States*, 536 F.3d 85, 96 (1st Cir. 2008)). As a result, “[w]hen faced with a second or successive § 2255 petition that has not been authorized by the court of appeals, a district court must either dismiss the petition or transfer it to the court of appeals.” *Id.* “From the district court’s perspective, these pre-clearance provisions are an allocation of subject-matter jurisdiction to the court of appeals.” *United States v. Barrett*, 178 F.3d 178 F.3d 34, 41 (1st Cir. 1999).

Here, the record does not indicate that the First Circuit authorized Petitioner to file the current motion. A review of the First Circuit's docket also reveals that Petitioner did not seek its authorization to file the section 2255 petition. As a result, the Court does not have jurisdiction over the petition. Therefore, the Court must deny the petition. *See Bucci*, 809 F.3d at 26.

Besides, Petitioner's motion is untimely. Under § 2255, "[a] 1-year period of limitation shall apply to a motion under this section" *See* 28 U.S.C. § 2255(f). Typically, the limitation period runs from the date on which the judgment of conviction becomes final. *See* 28 U.S.C. § 2255(f)(1). The Supreme Court denied his writ of certiorari on November 8, 2010. *See Rivera-Moreno v. United States*, 562 U.S. 1035 (2010). Therefore, Petitioner's motion is untimely because he presented this § 2255 motion on September 7, 2019, which is way past the deadline of November 8, 2011.

III. Conclusion

For the foregoing reasons, the Court **DENIES** Petitioner's § 2255 motion. **ECF No. 3.** Moreover, the Court **DENIES** Petitioner's motion for appointment of counsel. **ECF No. 4.** The Clerk of Court shall enter judgment accordingly.

SO ORDERED.

At San Juan, Puerto Rico, on this 8th day of June 2022.

S/AIDA M. DELGADO-COLÓN
United States District Judge