

FILED
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JAN 25 P 3:12

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

EUGENE CHEE, JR.,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ORDER AND MEMORANDUM
DECISION

Civil Case No. 2:06-CV-58 TC
Criminal Case No. 2:02-CR-66 TC

On November 26, 2002, Mr. Eugene Chee, Jr. was convicted by a jury for aggravated sexual abuse and abusive sexual contact while within Indian Country. On March 4, 2003, the court sentenced him to 210 months imprisonment with 48 months supervised release upon his release from prison.

On March 10, 2003, Mr. Chee appealed his conviction to the Tenth Circuit Court of Appeals. On January 28, 2004, the appellate court affirmed Mr. Chee's conviction. (The order was docketed in this court on February 23, 2004). (Dkt. #91) Mr. Chee did not file a petition for a writ of certiorari. On January 19, 2006, Mr. Chee filed this motion pursuant to 28 U.S.C. § 2255 to vacate, set aside or correct his sentence.

Mr. Chee's § 2255 motion must be denied because it is time-barred. For purposes of a petition under § 2255, if a prisoner does not file a petition for writ of certiorari with the United States Supreme Court after his direct appeal, the one-year limitation period begins to run when

the time for filing a certiorari petition expires. In this case, the one-year limitation period began to run on May 24, 2004, ninety days after the 10th Circuit Court of Appeals affirmed the conviction. See, United States of America v. Gale F. Burch, 202 F.3d 1274, 1279 (10th Cir. 2000). For his motion to be timely, Mr. Chee's § 2255 motion had to be filed by May 24, 2005. Mr. Chee filed his § 2255 motion on January 19, 2006. Consequently, his §2255 motion is time-barred.

ORDER

For the foregoing reason, the § 2255 Motion is DENIED.

DATED this 25th day of January, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
United States District Judge