

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

<p>AGUSTIN SAUCEDO-MURILLO, Petitioner, vs. UNITED STATES OF AMERICA, Respondent.</p>	<p>ORDER AND MEMORANDUM DECISION Criminal Case No. 2:06-CR-615-002 TC Civil Case No. 2:11 CV 195 TC</p>
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Mr. Agustin Saucedo-Murillo has filed a pro se petition for habeas relief under 28 U.S.C. § 2255.

On January 16, 2007, Mr. Saucedo-Murillo pled guilty to conspiracy to possess marijuana with intent to distribute. He was sentenced on June 28, 2007, and the Judgment was entered on June 29, 2007. Mr. Saucedo-Murillo did not file an appeal.

Mr. Saucedo-Murillo's petition must be denied for two reasons:

First, Mr. Saucedo-Murillo entered into a plea agreement (Dkt. 26, Criminal Case 2:06 CR 615 TC) and in paragraph 9(d) he agreed to waive his right to challenge his sentence in any collateral review including, but not limited to, a motion brought under 28 U.S.C. § 2255.

Second, Mr. Saucedo-Murillo's petition is time-barred. The one-year limitation period began to run on July 16, 2007, (the date on which the judgment of conviction became final). Under Federal Rule of Appellate Procedure 4(b), Mr. Saucedo-Murillo had ten days from June 29, 2007, (excluding weekends and holidays), or—until July 16, 2007—to appeal his conviction.

He did not, however, appeal, and the opportunity for certiorari review expired. As a result, the one year time period for Mr. Saucedo-Murillo's § 2255 petition began to run on July 16, 2007. Therefore, for his petition to be timely, Mr. Saucedo-Murillo's § 2255 petition had to be filed no later than July 16, 2008. Mr. Saucedo-Murillo's petition was filed February 22, 2011, more than two and one-half years after his conviction became final. Consequently, his §2255 petition is time-barred.

ORDER

For the foregoing reasons, the § 2255 petition is DENIED.

DATED this 1st day of March, 2011.

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 Court Judge