

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 DEREK M. HALVERSON,

10 Petitioner,

11 v.

12 UNITED STATES OF AMERICA,

13 Respondent.  
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CASE NO. C16-1179-JCC

ORDER DENYING PETITIONER'S  
28 U.S.C. § 2255 MOTION

15 This matter comes before the Court on Petitioner Derek M. Halverson's motion to vacate,  
16 set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (Dkt. Nos. 1, 1-1). Having  
17 thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument  
18 unnecessary and hereby DENIES the motion for the reasons explained herein.

19 On October 22, 2014, Petitioner pled guilty to receipt and possession of visual depictions  
20 of minors engaged in sexually explicit conduct. (CR14-0164-JCC, Dkt. Nos. 26, 30.) On March  
21 13, 2015, the Court sentenced Petitioner to serve 120 months of imprisonment, followed by a  
22 10-year term of supervised release. (CR14-0164-JCC, Dkt. No. 41.) Petitioner did not appeal his  
23 sentence or conviction. On July 28, 2016, Petitioner filed this § 2255 habeas petition, alleging he  
24 received ineffective assistance of counsel. (Dkt. Nos. 1, 1-1.)

25 The Antiterrorism and Effective Death Penalty Act has a one-year statute of limitations.  
26 28 U.S.C. §2255(f). In most cases, the statute of limitations begins to run when the judgment of

1 conviction becomes final. 28 U.S.C. § 2255(f)(1). Because Petitioner did not appeal his  
2 conviction, his judgment of conviction became final “upon the expiration of the time during  
3 which [he] could have sought review by direct appeal.” *United States v. Schwartz*, 274 F.3d  
4 1220, 1223 (9th Cir. 2001). Here, judgment was entered on March 13, 2015, and became final on  
5 March 27, 2015. *See* Fed. R. App. P. 4(b) (14 days to file an appeal). However, Petitioner did not  
6 file his § 2255 motion until July 28, 2016, 4 months after the one-year statute of limitations had  
7 tolled. (Dkt. No. 1.) Therefore, Petitioner’s motion is time barred unless he can demonstrate  
8 sufficient cause for his procedural default.

9 To demonstrate “cause” for a procedural default, a defendant generally must show that  
10 “some objective factor external to the defense” impeded his adherence to the procedural rule.  
11 *Murray v. Carrier*, 477 U.S. 478, 488 (1986). Cause for failure to raise an issue exists “where a  
12 constitutional claim is so novel that its legal basis is not reasonably available to counsel.” *Reed v.*  
13 *Ross*, 486 U.S. 1, 16 (1984). Petitioner argues that his claims are not time barred because of  
14 “newly discovered evidence being presented to the Court that shows that the conviction is void.”  
15 (Dkt. No. 1 at 2.) However, Petitioner does not state what evidence might be new, and does not  
16 offer any arguments as to how these unidentified facts might provide a basis to reverse his  
17 conviction.<sup>1</sup> Therefore, for the foregoing reasons, Petitioner’s § 2255 motion (Dkt. No. 1) is  
18 DENIED and his claims are DISMISSED with prejudice because they are time barred.

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25 <sup>1</sup> To the extent Petitioner’s “new evidence” is his argument that the Government had no jurisdiction to bring charges  
26 against him as a “Sovereign American Citizen,” (*see* Dkt. No. 1-1 at 3; Dkt. No. 11 at 2), this argument fails because  
this Court and the United States Attorney’s Office had the power to preside over the case and charge Petitioner with  
federal offenses, respectively. *See* U.S. CONST. art. III, §§ 1, 2; 28 U.S.C. § 547.

1 DATED this 22nd day of March 2017.  
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7 John C. Coughenour  
8 UNITED STATES DISTRICT JUDGE  
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