

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

ROGER D. BURRESS,

Movant

v.

CIVIL ACTION NO. 2:10-0034
(Criminal No. 2:03-00024-01)

UNITED STATES OF AMERICA,

Respondent

MEMORANDUM OPINION AND ORDER

Pending is the motion and supplemental motion of Roger D. Burress, pursuant to 28 U.S.C. § 2255, filed January 13, 2010. This action was previously referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to the court of her proposed findings and recommendations for disposition pursuant to 28 U.S.C. § 636.

On January 29, 2003, movant was charged in a two-count indictment with possessing different firearms on two separate occasions after he had previously been convicted of certain felony offenses in violation of 18 U.S.C. § 922(g). On July 14, 2003, movant entered a plea of guilty to Count Two. On January 20, 2005, movant was sentenced to a 210 month term of imprisonment after he was found to have previously committed

three violent felonies, which warranted treating him as an Armed Career Criminal pursuant to 18 U.S.C. § 924(e)(1). The court additionally imposed a five-year term of supervised release and certain monetary penalties. On April 18, 2006, the court of appeals affirmed the Judgment. Movant neither sought a rehearing in the court of appeals nor petitioned the United States Supreme Court for a writ of certiorari. He now seeks relief pursuant to section 2255.

On February 2, 2010, the magistrate judge entered her proposed findings and recommendations. She recommends that movant's motion and supplemental motion be denied inasmuch as his conviction became final on or about July 17, 2006, and his request for relief is untimely pursuant to the one-year limitation period found in section 2255.


On February 18, 2010, movant objected by counsel. The objections are essentially based upon equitable considerations and a predicted change in the Guidelines and Sixth Amendment jurisprudence, neither of which are responsive to the magistrate judge's limitations analysis.

Based upon a de novo review, and having found the objections meritless, the court adopts and incorporates herein the magistrate judge's proposed findings and recommendation. It

is ORDERED that movant's section 2255 motion and supplemental motion be, and they hereby are, denied.

The Clerk is directed to forward copies of this written opinion and order to the movant, all counsel of record, and the United States Magistrate Judge.

DATED: June 17, 2010



John T. Copenhaver, Jr.
United States District Judge