

91CV01524-LSD-0

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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on 5/30/97
MARIA CASARETTA

HOM SUI CHING,

Petitioner,

CV 97-1524 (RJD)

-against-

UNITED STATES OF AMERICA,

ORDER

Respondent.

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DEARIE, District Judge.

After pleading guilty to conspiring to possess with intent to distribute cocaine, petitioner was sentenced by this Court, on February 8, 1991, to a term of imprisonment of 188 months. He now seeks a reduction of that sentence pursuant to 28 U.S.C. § 2255, principally alleging that his sentencing counsel was constitutionally ineffective. Petitioner claims that counsel objected to the Pre-Sentence Report without his authorization, and that those objections caused a violation of his plea agreement, subjecting him to the heightened sentence he received. He also claims that a 1992 amendment to the Sentencing Guidelines should be applied retroactively to exclude a particular drug transaction from the relevant conduct calculations.

On April 24, 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act of 1996 (the "AEDPA"). The AEDPA, among other things, amended 28 U.S.C. § 2255 to provide a one-year limitations period for filing federal habeas corpus petitions. The one-year period runs from the latest to occur of certain events, the only relevant one of which, in this case, is

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"the date on which the judgment of conviction becomes final." In cases where, as here, the judgment of conviction became final before the AEDPA was enacted, the Second Circuit has held that a habeas petition may be filed outside the one-year period, but within a "reasonable time" after April 24, 1996. Peterson v. Demskie, 107 F.3d 92, 93 (2d Cir. 1997) (interpreting identical provision of 28 U.S.C. § 2254) ("we see no need to accord a full year after the effective date of the AEDPA").

Petitioner filed the instant petition on March 25, 1997, in excess of eleven months after the effective date of the AEDPA, and six years after his judgment of conviction became final. Petitioner provides no explanation for this extended period of delay, and the Court finds that this proceeding was not commenced within a "reasonable time" after April 24, 1996. In addition, petitioner's claims appear to be without merit: the record indicates that he was fully involved in, if not the source of, the decision to challenge the Pre-Sentence Report. Additionally, the 1992 Sentence Guidelines amendment he cites (Amendment 439) is not retroactive. See U.S.S.G. § 1B1.10(a), (c). For the reasons stated above, the petition is dismissed. The Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: Brooklyn, New York
May 29, 1997


RAYMOND J. DEARIE
United States District Judge