

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

v.

DANILLE MORRIS,

Defendant/Petitioner.

Case No. 16-20022-03-JAR

MEMORANDUM AND ORDER

On July 19, 2018, Petitioner Danille Morris filed a pro se motion under 28 U.S.C. § 2255 setting forth four claims of ineffective assistance of counsel.¹ Per the Court's order, the government responded to Petitioner's motion on September 14, 2018.² Previously, however, on July 17, 2018, this Court appointed the Federal Public Defender ("FPD") to "represent any defendant from the District of Kansas who may have a post-conviction Sixth Amendment claim based on the recording of in-person attorney-client meetings or attorney-client phone calls by any holding facility housing federal detainees with this District."³ This matter is now before the Court on the motion of the FPD to amend Petitioner's pro se motion to assert such a claim under that authority (Doc. 144). The government has not responded to the motion to amend.

Federal Rule of Civil Procedure 15(a) governs requests to amend motions filed under

¹Docs. 137, 138.

²Doc. 141.

³Standing Order 18-3 (July 17, 2018).

§ 2255 before the district court has entered judgment.⁴ Because the government filed its response before the FPD filed the motion to amend, Petitioner may only amend her § 2255 motion “with the opposing party’s written consent or the court’s leave.”⁵ Leave of court should be “freely give[n]” when “justice so requires.”⁶

Motions brought pursuant to § 2255 are subject to a one-year statute of limitations.⁷ In this case, after she pleaded guilty to armed bank robbery and firearms charges, Petitioner’s 200-month sentence was affirmed by the Tenth Circuit Court of Appeals on November 9, 2017.⁸ The mandate was issued December 1, 2017; Petitioner did not file a petition for writ of certiorari. “In the context of the one-year limitations period for filing a § 2255 motion, a criminal conviction becomes final when the Supreme Court affirms it on direct review, denies certiorari, or (in the absence of a certiorari petition) the time for filing a certiorari petition expires.”⁹ Because the Supreme Court grants ninety days from the date of entry of the judgment or order sought to be reviewed in which to file a petition for writ of certiorari, Petitioner was required to file her § 2255 motion within one year of her deadline for filing a petition for certiorari, or by March 1, 2019.¹⁰ Thus, Petitioner’s pro se § 2255 motion filed July 19, 2018, is timely. Because the motion to amend filed September 14, 2018 was also filed within the one-year deadline, no

⁴*United States v. Trent*, 884 F.3d 985, 992 (10th Cir. 2018) (“A pre-judgment request to add a claim to a § 2255 motion is not a second or successive motion; it is a motion to amend and should be considered under Federal Rule of Civil Procedure 15.”).

⁵Fed. R. Civ. P. 15(a)(2).

⁶*Id.*

⁷28 U.S.C. § 2255(f).

⁸*United States v. Morris*, 713 F. App’x 777 (10th Cir. 2017).

⁹*United States v. Prows*, 448 F.3d 1223, 1227 (10th Cir. 2006).

¹⁰*See* Supreme Court Rules 13.1, 13.3.

relation-back analysis is necessary.¹¹ The Court finds that Petitioner’s motion is justified and thus grants leave to amend to assert an additional Sixth Amendment claim.

IT IS THEREFORE ORDERED BY THE COURT that Petitioner Danille Morris’ Motion to Amend Motion Filed Under 28 U.S.C. § 2255 to add an additional Sixth Amendment claim (Doc. 144) is **granted**; Petitioner shall amend her § 2255 motion within fourteen (14) days of the date of this Order.

IT IS SO ORDERED.

Dated: October 16, 2018

S/ Julie A. Robinson
JULIE A. ROBINSON
CHIEF UNITED STATES DISTRICT JUDGE

¹¹See Fed. R. Civ. P. 15(c)(1)(B) (stating amendment to pleading filed outside the limitations period relates back to the date of the original pleading when the amendment “asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading.”).