

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SERGUEI BOTCHENKO, :
 :
 Petitioner, :
 :
 V. : CASE NO. 3:04CV532 (RNC)
 :
 IMMIGRATION AND NATURALIZATION :
 SERVICE, :
 :
 Respondent. :

ORDER AND RULING

Serguei Botchenko, a citizen of Russia, faces a final order of removal based on his felony convictions for larceny and forgery. Proceeding pro se and in forma pauperis, he brings this habeas petition pursuant to 28 U.S.C. § 2241. He seeks relief from removal on a number of grounds, including his asylee status (which was granted before he was convicted), his inability to work due to permanent disabilities, and his fear of being returned to Russia. He also challenges the validity of the convictions underlying the removal order, claiming that, although he was innocent of the charges, he pleaded guilty on the advice of his public defender, who failed to inform him that the convictions would lead to his removal to Russia. Last week, petitioner's removal was stayed to provide the court with an opportunity to consider the issues presented by the case. For the reasons that follow, the stay is lifted and the petition is dismissed.

Petitioner cannot avoid removal unless his felony convictions are

invalidated. His habeas petition does not provide a vehicle for attacking the convictions, however, because it was filed too late. To obtain habeas relief in this court with regard to his convictions, petitioner had to file his petition within one year from the date the convictions became final or the factual basis for attacking them became known. His convictions became final in August 2002, and the final order of removal based on those convictions was issued on February 5, 2003. Petitioner did not file this habeas petition until March 31, 2004, after the one year period expired.

Petitioner could still file a petition for habeas relief in state court. To get the convictions set aside there, he would have to show both that his counsel's performance fell below an objective standard of reasonableness, and that, were it not for his counsel's failure to provide effective assistance, he would not have pleaded guilty. On the record before this court, which includes the affidavit underlying petitioner's arrest, and the transcript of his guilty plea proceeding, it is doubtful that petitioner could make either showing.

Accordingly, the stay is lifted and the petition is dismissed.

So ordered this 13th day of July 2004.

Robert N. Chatigny
United States District Judge