

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-3376

UNITED STATES OF AMERICA

v.

EUGENE PARKER,
Appellant

Appeal from the United States District Court
for the Eastern District of Pennsylvania
(Crim. No. 05-00702-01)
District Judge: Hon. R. Barclay Surrick

Submitted Pursuant to Third Circuit LAR 34.1(a)
Monday, January 24, 2011

Before: McKEE, *Chief Judge*, SMITH, *Circuit Judge*,
and STEARNS,* *District Judge*

(Opinion Filed: March 1, 2011)

OPINION

McKEE, *Chief Judge*.

* Honorable Richard G. Stearns, District Court Judge, United States District Court for the District of Massachusetts, sitting by designation.

Eugene Parker appeals the district court's order denying the habeas petition he filed pursuant to 28 U.S.C. § 2255 as time-barred. For the reasons that follow, we will reverse.

We write primarily for the parties and therefore need not recite the underlying facts or procedural history of this appeal except to note that Parker filed his petition on March 27, 2008, and the district court thereafter dismissed it as untimely. To its very substantial credit, the government now concedes that the petition was not time-barred, and that the Assistant U.S. Attorney erred in arguing that the petition was untimely. *See* Appellee's Br. at 10 ("[u]pon consideration of the matter, the government believes that its position before the district court was in error, and now agrees with Parker's view."). We agree. *See* 28 U.S.C. § 1254, and *Latham v. United States*, 527 F.3d 651 (7th Cir. 2008). As the government so candidly states: "there is no known precedent for the proposition that a criminal defendant who seeks voluntary dismissal of an appeal is foreclosed from filing a petition for certiorari challenging the dismissal." Appellee's Br. at 14.

Accordingly, we will vacate the order of the district court dismissing the Appellant's petition as untimely. In doing so, we note that the government's handling of this appeal is truly exemplary and in the best tradition of prosecutor as an officer of the court and the legal representative of all of the people of the United States, including those convicted of crimes.