

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

ANDREW LEVERT,	}	
	}	
Petitioner,	}	
	}	
v.	}	Case No.: 2:18-cv-0608-MHH-TMP
	}	
FELICIA PONCE,	}	
	}	
Respondent.	}	

MEMORANDUM OPINION

On February 16, 2018, Mr. Levert filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 in the United States District Court for the Central District of California. (Doc. 1, p. 1). Mr. Levert’s petition challenges the federal sentence imposed by another judge in this district in case number 01-cr-LSC-TMP. (Doc. 1, pp. 1, 2). Consequently, on April 16, 2018, the federal court in California transferred Mr. Levert’s petition to this court. (Doc. 4).

On May 9, 2018, the magistrate judge assigned to this case ordered Mr. Levert to explain why the Court should not summarily dismiss this habeas action. (Doc. 8). Mr. Levert responded by filing a motion to stay. (Doc. 10).

On July 13, 2018, the magistrate judge filed a report in which he recommended treating Mr. Levert’s § 2241 petition as one filed under 28 U.S.C. § 2255, dismissing the petition without prejudice for lack of jurisdiction under 28

U.S.C. § 2244(b)(3)(A), and denying Mr. Levert’s motion to stay. (Doc. 11, pp. 3, 5, 6). The magistrate judge gave Mr. Levert notice of his right to object to the recommendations. (Doc. 11, pp. 6-7). To date, Mr. Levert has not objected to the magistrate judge’s report and recommendation.

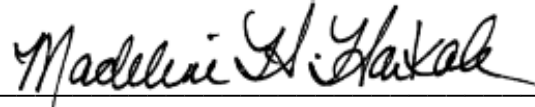
A district court “may accept, reject, or modify, in whole or part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). A district court reviews legal conclusions in a report *de novo* and reviews for plain error factual findings to which no objection is made. *Garvey v. Vaughn*, 993 F.2d 776, 779 n. 9 (11th Cir. 1993); *see also LoConte v. Dugger*, 847 F.2d 745, 749 (11th Cir. 1988); *Macort v. Prem, Inc.*, 208 Fed. Appx. 781, 784 (11th Cir. 2006).

Based on its review of the record in this case, the Court finds no misstatements of law in the report and no plain error in the magistrate judge’s interpretation of Mr. Levert’s habeas petition.¹ Therefore, the Court adopts the magistrate judge’s report and accepts his recommendation.

The Court will issue a separate final order consistent with this memorandum opinion.

¹ The Court notes that after the magistrate judge filed his report, the Eleventh Circuit Court of Appeals denied the petition for *en banc* rehearing in *Beeman v. United States*, a case that the magistrate judge discussed in his report. 899 F.3d 1218 (11th Cir. 2018). Mr. Beeman has filed a petition for a writ of certiorari in the United States Supreme Court. The Eleventh Circuit Court of Appeals docketed the writ petition on October 18, 2018. 871 F.3d 1215 (11th Cir. 2018).

DONE this 13th day of November, 2018.

A handwritten signature in black ink, reading "Madeline H. Haikala". The signature is written in a cursive style with a horizontal line extending to the right across the end of the name.

MADLINE HUGHES HAIKALA
UNITED STATES DISTRICT JUDGE