

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

LUE GENE SWARN §
v. § CIVIL ACTION NO. 6:09cv344
(Crim. No. 6:05cr67)
UNITED STATES OF AMERICA §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Movant Lue Gene Swarn, proceeding *pro se*, filed this motion to vacate or correct his sentence under 28 U.S.C. §2255. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Swarn was convicted in a jury trial of conspiracy to possess with intent to distribute 15 kilograms of cocaine, and use of a communications device in furtherance of this conspiracy. He received a sentence of life in prison. Swarn took a direct appeal, but his conviction was affirmed by the Fifth Circuit Court of Appeals. U.S. v. Swarn, 254 Fed.Appx. 376 (5th Cir., November 16, 2007) (not selected for publication in the Federal Reporter) (available on WESTLAW at 2007 WL 4013541), *cert. denied*, 128 S.Ct. 1919 (2008).

In his Section 2255 motion, Swarn contended that his right to due process was violated when he was not allowed to seek a plea agreement and that his sentence was unduly harsh and unreasonable. The Magistrate Judge ordered the Government to answer the petition, and an answer was filed, to which Swarn did not file a response.

After review of the pleadings and records, the Magistrate Judge issued a Report recommending that the motion to vacate or correct sentence be denied. A copy of the Report was sent to Swarn at his last known address, return receipt requested, but no objections have been filed;

accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled motion to vacate or correct sentence be and hereby is DISMISSED with prejudice. It is further

ORDERED that the Petitioner Lue Gene Swarn is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this 7th day of December, 2009.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE