

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA,)	
)	
vs.)	CASE NO. 2:05-cv-1016-WHA
)	
JIMMY CARTER, JR.)	(WO)

ORDER

This case is before the court on the Recommendation of the Magistrate Judge (Doc. #55) and the Defendant's objection thereto (Doc. #56). The court has conducted an independent evaluation and *de novo* review of the file in this case.

Carter objects to the Recommendation that his motion for relief under Fed.R.Civ.P. 60(d)(1) (Doc. #54) be denied. The Recommendation finds that the "Rule 60(d)(1) motion" is another attempt by Carter to relitigate a claim (Claim 4 in his § 2255 motion) addressed on the merits in the Magistrate Judge's 2008 Recommendation, adopted by the district court, that Carter's § 2255 motion be denied. Thus the instant motion is a successive § 2255 motion.

In his Objections, Carter again claims this court has never addressed the merits of Claim 4 in his § 2255 motion. However, as noted by the Magistrate Judge in his January 2014 Recommendation to deny a Rule 60(b)(6) motion filed by Carter in December 2012 (see Doc. #42), Claim 4 was indeed addressed on the merits by this court in the Recommendation to deny Carter's § 2255 motion as adopted by the district court.

The Magistrate Judge's Recommendation to deny Carter's 2012 Rule 60(b)(6) motion first found the motion was not filed within a reasonable time. However, the Magistrate Judge went on to discuss how Claim 4 was addressed on the merits in the Recommendation to deny Carter's § 2255 motion.

Carter, when filing the instant Rule 60(d)(1) motion, ignored the portion of the Magistrate Judge's Recommendation to deny his Rule 60(b)(6) motion which explains how Claim 4 was addressed on the merits in the § 2255 proceedings.

Therefore, Carter has now three times ignored this court's rulings concerning the merits of Claim 4 in his § 2255 motion: (1) in his 2012 Rule 60(b)(6) motion, when asserting that the claim had not been addressed on the merits in the § 2255 proceedings; (2) in his instant Rule 60(d)(1) motion, when again asserting the claim had not been addressed on the merits in the § 2255 proceedings or in the Rule 60(b)(6) proceedings; and (3) in his instant Objections, when again failing to recognize that the claim has been addressed on the merits.

For the foregoing reasons, it is hereby ORDERED as follows:

1. Defendant's objection is OVERRULED.
2. The court ADOPTS the Recommendation of the Magistrate Judge.
3. Defendant Carter's motion for relief from judgment under Fed.R.Civ.P. 60(d)(1) is DENIED.

DONE this 23rd day of September, 2014.

/s/ W. Harold Albritton
W. HAROLD ALBRITTON
SENIOR UNITED STATES DISTRICT JUDGE