

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

JAMES HAROLD GRIFFITH,	)	
	)	
Petitioner,	)	
	)	
v.	)	CASE NO. 3:11-CV-1084-WKW
	)	[WO]
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

**ORDER**

On February 9, 2015, the Magistrate Judge filed a Recommendation (Doc. # 14) that James Harold Griffith’s 28 U.S.C. § 2255 motion be denied with prejudice. Mr. Griffith timely filed objections to the Recommendation. (Doc. # 17.) Based upon an independent and *de novo* review of those portions of the Recommendation to which objection is made, 28 U.S.C. § 636(b)(1), the court finds that the objections are due to be overruled and the Recommendation adopted.

As put by Mr. Griffith, his “entire” § 2255 petition “centers around” what he contends amounts to “an incorrect drug quantity determination that erroneously holds him accountable for more than 270-grams of ‘unusable’ toxic liquid waste, and incorrectly double counts traces of the same drug in each container of toxic waste that was used in one multi stage process that only started with 2.4 grams of pseudo

ephedrine.” (Doc. # 17, at 1–2.) Mr. Griffith objects to the Magistrate Judge’s findings that he is not entitled to an evidentiary hearing on his claims and that he did not demonstrate actual prejudice by his trial and appellate counsel’s failure to investigate, argue, and defend the position that the quantity of methamphetamine mixture underlying his conviction and sentence contained unusable liquids. The arguments raised in Mr. Griffith’s objections mirror the arguments he made to the Magistrate Judge, and the Recommendation adequately addresses and properly rejects those arguments.

For example, Mr. Griffith fails to demonstrate any legal or factual error in the Magistrate Judge’s conclusion that his case is distinguishable from *United States v. Rolande-Gabriel*, 938 F.2d 1231, 1238 (11th Cir. 1991) (holding “that the term ‘mixture’ in U.S.S.G. § 2D1.1 does not include unusable mixtures”) and *United States v. Newsome*, 998 F.2d 1571, 1573 (11th Cir. 1993) (applying the rationale of *Rolande-Gabriel* and holding that the district court “erred in treating as methamphetamine the gross weight of unusable sludge mixtures which contained only trace amounts of methamphetamine”). Additionally, as to the performance of trial counsel, no legal error has been shown in the Magistrate Judge’s conclusions that Mr. Griffith failed to establish (1) that the mixtures containing detectable amounts of

methamphetamine or pseudoephedrine included unusable waste, (2) that “analysis by an independent expert would have resulted in the expert testifying that the seized liquid contained any unusable waste” or that “any unusable waste . . . , if excluded from any calculation, would have affected his sentence,” (3) that cross-examination of a government forensic chemist “would have yielded testimony that the seized liquid contained unusable waste that, if excluded from the drug amount attributed to him, would actually have affected his sentence,” (4) that “had the court’s instructions [to the jury] contained the language urged by Griffith, the jury’s verdict regarding Count 1 would have been different,” or (5) that he suffered actual prejudice when his trial counsel failed to object to the presentence report’s drug-quantity calculations. (Recommendation, at 14–18.) Finally, Mr. Griffith fails to show that the Magistrate Judge erred in finding that the errors assigned to his appellate counsel resulted in actual prejudice to Mr. Griffith. (*See* Recommendation, at 18–20.)

Bottom line, based upon an independent and *de novo* review of those portions of the Recommendation to which objection is made, 28 U.S.C. § 636(b)(1), the court finds that Mr. Griffith’s objections fail to undermine the Recommendation of the Magistrate Judge and that the Recommendation is due to be adopted.

Accordingly, it is ORDERED as follows:

1. Mr. Griffith's objections (Doc. # 17) are OVERRULED.
2. The Magistrate Judge's Recommendation (Doc. # 14) is ADOPTED.
3. Mr. Griffith's 28 U.S.C. § 2255 motion is DENIED with prejudice.

A separate final judgment will be entered.

DONE this 19th day of March, 2015.

/s/ W. Keith Watkins  
CHIEF UNITED STATES DISTRICT JUDGE