

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

TIBURCIO DUARTE-BENITEZ,)
)
Petitioner,)
)
v.)
)
JOHN T. RATHMAN, et al.,)
)
Respondents.)

Case No. 1:13-cv-01123-KOB-HGD

MEMORANDUM OPINION

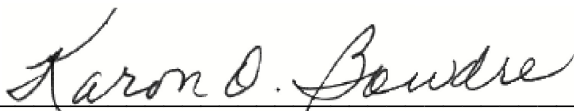
On June 20, 2013, the magistrate judge entered his report and recommendation, giving the parties fourteen days to file objections. (Doc. 3). On July 10, 2013, the court granted the Petitioner’s motion (doc. 4) and extended his time to file his objections until July 22, 2013. Even with the requested extension, the Petitioner filed no objections.

The court has carefully considered the entire record in this case, including the magistrate judge’s report and recommendation. The court hereby ADOPTS the report of the magistrate judge and ACCEPTS his recommendations. To the extent that the petition could be construed as a § 2241 petition, the court hereby DENIES it. However, the court agrees that it should construe the petition for writ of habeas

corpus as a Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255. Although as a § 2255 petition, it may be barred, the sentencing judge has jurisdiction over the matter; therefore, this court will transfer this action to the United States District Court for the Northern District of Georgia for further proceedings.

The court will enter a separate Order in conformity with this Memorandum Opinion.

DONE and ORDERED this 6th day of November, 2013.



KARON OWEN BOWDRE
UNITED STATES DISTRICT JUDGE