

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

BRYAN ROSS SPEARS,

Petitioner,

vs.

Case No.: 3:13-cv-21-J-34JBT
3:11-cr-224-J-34JBT

UNITED STATES OF AMERICA,

Respondent.

ORDER

This cause is before the Court on Petitioner Bryan Ross Spears' Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 (Doc. 1, Motion to Vacate).¹ On April 23, 2015, the Court entered an order granting Spears an evidentiary hearing on Ground Four, in which he claimed that counsel either failed to file a notice of appeal as requested, or that counsel failed to adequately consult with him about the right to appeal. (Doc. 17, Order). The Court referred the matter to the Honorable Joel B. Toomey, United States Magistrate Judge, who conducted an evidentiary hearing on July 27, 2015. Before the Court is the Magistrate Judge's Report and Recommendation (Doc. 25, R & R), in which the Magistrate Judge recommends that the Court grant Spears relief on Ground Four by permitting him to pursue an out-of-time appeal. The parties had fourteen days to file objections to the Report and Recommendation, and none have been filed.

¹ Citations to the record of Jackson's criminal case file, United States of America vs. Bryan Ross Spears, 3:11-cr-224-J-34JBT, are denoted as "Crim. Doc. ____." Citations to Spears's civil § 2255 case file, 3:13-cv-21-J-34JBT, are denoted as "Doc. ____."

The Court may “accept, reject, modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b). If no specific objections to findings of facts are filed, the district court is not required to conduct a de novo review of those findings. See Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir. 1993); see also 28 U.S.C. § 636(b)(1). However, the Court must review legal conclusions de novo. See Cooper-Houston v. Southern Ry. Co., 37 F.3d 603, 604 (11th Cir. 1994); United States v. Rice, No. 2:07-mc-8-FtM-29SPC, 2007 WL 1428615 at *1 (M.D. Fla. May 14, 2007). Under 28 U.S.C. § 636(c), only a district judge has authority to issue the final judgment on a § 2255 motion. Brown v. United States, 748 F.3d 1045, 1072 (11th Cir. 2014).

Upon independent review of the file and for the reasons stated in the Magistrate Judge’s Report, the Court will accept and adopt the legal and factual conclusions recommended by the Magistrate Judge. Accordingly, it is hereby

ORDERED:

1. The Magistrate Judge’s Report and Recommendation (Doc. 25) is **ADOPTED** as the opinion of the Court.
2. Relief on Ground Four of Spears’s Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 (Doc. 1) is due to be **GRANTED**.
3. Pursuant to the procedure set forth in United States v. Phillips, 225 F.3d 1198, 1201 (11th Cir. 2000), the Court will:
 - a. Enter an order in the related criminal case vacating the original judgment;

b. Order Spears and his counsel to appear before the Court on **January 25, 2016, at 3:00 p.m., Courtroom 10B**, at which time the Court will:

- i. reimpose the previously announced sentence of a term of 120 months of imprisonment;
- ii. advise Spears of the rights associated with an appeal from a criminal sentence;
- iii. advise Spears that he shall have 14 days from the re-imposition of sentence to file a notice of appeal; and
- iv. inquire whether Spears will be in need of court-appointed counsel to represent him in his belated appeal.

4. Pursuant to Mclver v. United States, 307 F.3d 1327, 1331 n.2 (11th Cir. 2002), the remaining claims in Spear's Motion to Vacate are **DISMISSED WITHOUT PREJUDICE**.

5. The Clerk of the Court is directed to enter judgment in favor of Spears to the extent that he may file a belated appeal in the related criminal case and otherwise dismissing his Motion to Vacate without prejudice. The Clerk of the Court is further directed to terminate all pending motions as moot and close the file.

DONE AND ORDERED at Jacksonville, Florida this 1st day of December, 2015.


MARCIA MORALES HOWARD
United States District Judge

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Copies:

Honorable Joel B. Toomey
United States Magistrate Judge

Petitioner Bryan Ross Spears
Counsel of record