

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,

v.

Case No. 8:13-cv-134-T-35AEP
8:12-cr-36-T-35AEP

KURT KEVIN MYERS

ORDER

This cause comes before the Court on Honorable Anthony E. Porcelli's Report and Recommendation (Doc. 28) to dismiss Myers's motion to vacate sentence under 28 U.S.C. § 2255. (Doc. 1) Upon consideration of the motion to vacate and the Recommendation, and in accordance with the *Rules Governing Section 2255 Cases in the United States District Courts*, it is **ORDERED**:

Myers's motion to vacate his sentence under 28 U.S.C. § 2255 challenges the validity of his conviction for conspiracy to possess with the intent to distribute cocaine while on board a vessel, for which conviction he serves 120 months. Each of Myers's claims was denied in earlier orders except his claim that defense counsel failed to appeal. (Docs. 6 and 9) Because the United States represented that former defense counsel disputed the claim that Myers directed counsel to appeal, this matter was referred to the Magistrate Judge to conduct an evidentiary hearing. (Doc. 19)

Before the date scheduled for the evidentiary hearing, Myers's appointed counsel advised the Magistrate Judge that Myers wanted to dismiss the pending motion to vacate.

(Doc. 26) Because the motion to dismiss was signed by only appointed counsel and not also by Myers, the Magistrate Judge conducted a colloquy to ensure that Myers agreed with the motion to dismiss. In his Report and Recommendation the Magistrate Judge states as follows: "After cautioning and examining the Defendant under oath concerning his request, I determined that Myers decision to request that his Section 2255 Motion be dismissed was knowledgeable and voluntary and with a full understanding that once dismissed he will be foreclosed from pursuing any matters in the Section 2255 Motion."

(Doc. 28 at 1) The Magistrate Judge recommended granting the motion to dismiss and dismissing the motion to vacate. Neither party has objected to the recommendation.

Accordingly, the Report and Recommendation by the Honorable Anthony E. Porcelli (Doc. 28) is **ADOPTED AND INCORPORATED HEREIN**. Myers' motion to dismiss (Doc. 26) is **GRANTED**. The motion to vacate under Section 2255 (Doc. 1) is **DISMISSED**. The **CLERK** is directed to **CLOSE** this case.

DONE AND ORDERED in Tampa, Florida, this 28th day of June, 2016.



MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE