

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Ft. Lauderdale Division

Case Nos. 09-CIV-61740-COHN/SELTZER
07-CR-60149-COHN

RICKY JACKSON,

Petitioner/Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

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FINAL ORDER OF DISMISSAL

THIS CAUSE is before the Court upon the Report and Recommendation [DE 11] of Magistrate Judge Patrick A. White. The Court notes that the Movant, Ricky Jackson, has not filed any objections to the Report and Recommendation by the deadline of January 20, 2011.

Movant Jackson was convicted and sentenced for possession of a firearm and ammunition by a convicted felon. Jackson was sentenced to 180 months pursuant to a statutory minimum sentence. As to the present motion to vacate, even though no timely objections were filed, the Court has conducted a *de novo* review of the report and recommendation, and is otherwise fully advised in the premises.

With regard to Claims 1 to 3, this Court agrees with the conclusion of the Magistrate Judge that the motion should be denied. Report at p. 1-2 (description of claims liberally construed by Magistrate Judge). Under Strickland v. Washington, 466 U.S. 668 (1984), Movant has the burden of showing both that his counsel's efforts fell below constitutional standards and that he suffered prejudice. Even if the statements of Movant Jackson were suppressed because of the alleged ineffective assistance at

counsel at the suppression hearing, the United States Court of Appeals for the Eleventh Circuit already considered on appeal in this case that any court error in admitting those statements were harmless given the other overwhelming evidence of guilt. Report at p. 9. Movant Jackson has thus failed to show prejudice under Strickland.

Turning to Jackson's final claim, that his enhanced sentence under the Armed Career Criminal Act was in error in light of Johnson v. United States, 130 S.Ct. 1265 (2010), the Court agrees with the Magistrate Judge that even putting aside his felony battery conviction, Jackson still has prior convictions for aggravated battery, manslaughter with a deadly weapon, and aggravated assault with a firearm. His motion to vacate should therefore be denied as to all claims.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The Magistrate Judge's Report and Recommendation [DE 15] is hereby **ADOPTED**;
2. The Motion to Vacate Sentence [DE 1] is hereby **DENIED**;
3. All pending motions are denied as moot;
4. The Clerk may close this case.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 25th day of January, 2011.


JAMES I. COHN
United States District Judge

copies to:

Ricky Jackson, pro se
(via CM/ECF U.S. mail to address of record)