

United States District Court
for the
Southern District of Florida

Scott W. Barnes, Movant,)	
)	
v.)	Civil Action No. 16-62416-Civ-Scola
)	
United States of America,)	
Respondent.)	

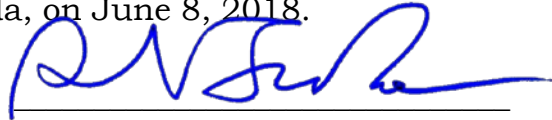
Order Adopting Magistrate Judge’s Report And Recommendation

This case was referred to United States Magistrate Judge Patrick A. White, consistent with Administrative Order 2003-19 of this Court, for a ruling on all pre-trial, nondispositive matters and for a report and recommendation on any dispositive matters. On March 28, 2018, Judge White issued a report, recommending that the Court deny the amended motion to vacate on the merits. (R. & R., ECF No. 35.) The Petitioner filed objections to the report. (Objs., ECF No. 36, 38.) Having reviewed de novo those portions of Judge White’s report to which Barnes properly objected and having reviewed the remaining parts for clear error, the Court adopts the report and recommendation in its entirety.

In his motion, Barnes claims that he was denied effective assistance of counsel on forty-four (44) grounds. In the report, Judge White thoroughly analyzed each ground, and correctly found that all lack merit. In his objections, Barnes objects to Judge White’s findings and conclusions with respect to nearly every ground; however, most of the objections are improper because they simply expand upon arguments already made and considered by Judge White. “It is improper for an objecting party to . . . submit [] papers to a district court which are nothing more than a rehashing of the same arguments and positions taken in the original papers submitted to the Magistrate Judge. Clearly, parties are not to be afforded a ‘second bite at the apple’ when they file objections to a R & R.” *Marlite, Inc. v. Eckenrod*, 2012 WL 3614212, at *2 (S.D. Fla. Aug. 21, 2012) (Moreno, J.) (quoting *Camardo v. Gen. Motors Hourly-Rate Emps. Pension Plan*, 806 F. Supp. 380, 382 (W.D.N.Y. 1992)). In addition, many of the objections are new arguments not initially raised in the motion that the Court therefore declines to consider. *See Williams v. McNeil*, 557 F.3d 1287, 1292 (11th Cir. 2009) (the District Court has discretion to decline to consider arguments raised for the first time in objections to a magistrate’s report and recommendation).

The Court has considered Judge White's report, Barnes's objections, the record, and the relevant legal authorities. The Court finds Judge White's report and recommendation cogent and compelling. The Court **affirms and adopts** Judge White's report and recommendation (**ECF No. 35**). The Court **denies** the amended motion to vacate sentence (**ECF No. 8**). A certificate of appealability is **denied**, and the Court directs the Clerk to **close** this case. Any pending motions are denied as moot.

Done and ordered, at Miami, Florida, on June 8, 2018.



Robert N. Scola, Jr.

United States District Judge