

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-22081-CIV-SEITZ/WHITE
CASE NO. 08-21854-CIV-SEITZ/WHITE

JAMES F. SMITH,

Petitioner,

v.

UNITES STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND CLOSING CASE

THIS CAUSE is before the Court on the Report of Magistrate Judge [DE-28 in case no. 08-21854 and DE-28 in case no. 11-22081]. In that Report, Magistrate Judge White recommends that Petitioner's Motion attacking criminal case no. 88-97-CR-Seitz be dismissed as successive and that the Petitioner's Motion attacking criminal case no. 89-157-CR-Seitz be dismissed as time-barred. Petitioner has filed no objections to the Report. Having reviewed the Magistrate Judge's Report *de novo* and the record, the Court affirms and adopts the Magistrate Judge's Report.

Further, the Court will deny issuance of a certificate of appealability for Smith's Motions pursuant to Rule 11 of the Rules Governing Section 2255 Cases. The Court, having established grounds for entering a "final order adverse to the applicant" on his motions, "must issue or deny a certificate of appealability." In order to obtain a certificate of appealability, Smith must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This standard is satisfied "by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Jones v. Secretary*, 607 F.3d 1346, 1349 (11th Cir. 2010)(quotation omitted). Here, Smith has not made this showing.

Thus, having carefully reviewed, *de novo*, Magistrate Judge White's thorough Report, the record, and given that Plaintiff has not objected, it is hereby

ORDERED that:

(1) The above-mentioned Report of Magistrate Judge [DE-28 in case no. 08-21854 and DE-28 in case no. 11-22081] is AFFIRMED and ADOPTED, and incorporated by reference into this Court's Order;

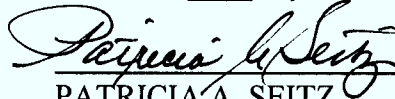
(2) Petitioner's Motion to Reopen [DE-1 in case no. 11-22081] and Petitioner's Amended Motion to Vacate [DE-13 in case no. 11-22081] are DENIED;

(3) All pending motions not otherwise ruled upon in this Order are DENIED AS MOOT;

(4) Pursuant to Rule 11 of the Rules Governing Section 2255 Cases, certification of appealability is DENIED; and

(5) These cases are CLOSED.

DONE AND ORDERED at Miami, Florida, this ⁷10 day of January, 2012.



PATRICIA A. SEITZ
UNITED STATES DISTRICT JUDGE

cc: Magistrate Judge White
Counsel of Record/*Pro se* parties