

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 11-22874-CIV-SEITZ/WHITE

ROBERT FIGUEREDO,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

**ORDER ADOPTING REPORT, DENYING CERTIFICATE OF APPEALABILITY, AND
CLOSING CASE**

THIS CAUSE is before the Court on the Report of Magistrate Judge [DE-5] of Magistrate Judge White. In that Report, Magistrate Judge White recommends that Movant's Motion to Vacate Sentence, pursuant to 28 U.S.C. § 2255 be dismissed without prejudice. Movant's Motion seeks a reduction in his sentence based on the Fair Sentencing Act of 2010. The Report recommends dismissal because the Act is not retroactive, *see United States v. Gomes*, 621 F.3d 1343, 1346 (11th Cir. 2010), and recommends that the dismissal be without prejudice so that Movant may renew his Motion should Congress determine that the Act applies retroactively. Movant has filed no objections to the Report. Having carefully reviewed, *de novo*, Magistrate Judge White's thorough Report, the record, and given that Movant has not objected, the Report is affirmed and adopted.

Additionally, the Court will deny issuance of a certificate of appealability. In order to obtain a certificate of appealability, Movant 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, Movant has not made this showing. Accordingly, it is hereby

ORDERED that:

(1) The above-mentioned Report of Magistrate Judge [DE-5] is AFFIRMED and ADOPTED, and incorporated by reference into this Court’s Order;


(2) Movant’s Motion to Vacate, pursuant to 28 U.S.C. § 2255, [DE-1] is DISMISSED without prejudice;

(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) This case is CLOSED.

DONE AND ORDERED at Miami, Florida, this 21st day of September, 2011.



PATRICIA A. SEITZ
UNITED STATES DISTRICT JUDGE

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