

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDACASE NO. 14-21352-CIV-COHN/WHITE  
(CASE NO. 13-20921-CR-COHN)

IRA KEMOY GRANT,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.  

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**ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING CASE**

**THIS CAUSE** is before the Court upon the Report and Recommendation [DE 4] (“Report”) of Magistrate Judge Patrick A. White concerning Movant Ira Kemoy Grant’s Motion to Vacate Sentence Under 28 U.S.C. § 2255 [DE 1] (“Motion”). Movant has not filed objections to the Report by the deadline of May, 2014. Nonetheless, the Court has reviewed the Report and the Motion *de novo* and is otherwise advised in the premises.

After Movant pleaded guilty to illegal reentry of a deported alien, this Court entered judgment against him and imposed a sentence of 46 months’ imprisonment. See United States v. Grant, Case No. 13-cr-20921-JIC, DE 23 (S.D. Fla. Apr. 14, 2014). Movant’s counsel filed a Notice of Appeal the same day. See id., DE 25. A day later, Movant filed his *pro se* Motion, claiming that counsel provided ineffective assistance.

In the Report, Magistrate Judge White explained that Movant’s Notice of Appeal “divested this Court of jurisdiction to entertain a collateral attack upon the validity of [his] conviction and sentence.” DE 4 at 1 (citations omitted). Judge White therefore recommended that the Motion be dismissed “without prejudice to refile if it concerns a matter appropriate to be raised after the appeal.” Id. (citations omitted); see id. at 2.

After a careful review, this Court agrees with Judge White's reasoning, conclusion, and recommendation. The Court will therefore dismiss the Motion without prejudice to Movant refiling it, if appropriate, after his pending appeal is concluded. The Court also denies a certificate of appealability because Movant has not shown that "jurists of reason would find it debatable whether the petition states a valid claim of denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000); see 28 U.S.C. § 2253(c)(2).

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

1. The Magistrate Judge's Report and Recommendation [DE 4] is **ADOPTED**;
2. The Motion to Vacate Sentence Under 28 U.S.C. § 2255 [DE 1] is **DISMISSED WITHOUT PREJUDICE**;
3. Pursuant to Rule 11(a) of the Rules Governing Section 2255 Proceedings, Movant is **DENIED** a certificate of appealability. The Court notes that under Rule 22(b)(1) of the Federal Rules of Appellate Procedure, Movant may seek a certificate of appealability from the Eleventh Circuit; and
4. The Clerk of Court shall **CLOSE** this case and **DENY AS MOOT** all other pending motions.

**DONE AND ORDERED** in Chambers at Fort Lauderdale, Broward County, Florida, this 30th day of May, 2014.

  
JAMES I. COHN  
United States District Judge

Copies provided to:

Magistrate Judge Patrick A. White

Counsel of record

Ira Kemoy Grant, *pro se*

02023-104

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