

United States District Court
for the
Southern District of Florida

Ernesto Estupinan-Gonzalez,)
Petitioner,)
)
v.) Case No. 17-23614-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 October 30, 2017, Judge White issued a report, recommending that Petitioner Ernesto Estupinan-Gonzalez's petition be denied. (Report of Magistrate, ECF No. 7.) Estupinan-Gonzalez has filed objections (Pet'r's Objs. ECF No. 8). Having reviewed de novo those portions of Judge White's report to which Estupinan-Gonzalez properly objected¹ and having reviewed the remaining parts for clear error, the Court adopts the report and recommendation in its entirety.

In his petition, Estupinan-Gonzalez claims that he was denied effective assistance of counsel with respect to counsel's failure to: (1) request a downward sentencing departure based on *United States v. Smith*, 27 F.3d 649 (D.C. Cir. 1994); (2) raise certain factual issues; and (3) advise him that he had a right to pursue an appeal of his case. Estupinan-Gonzalez also argues that the North Carolina facility in which he is confined is violating the Second Chance Act and his right to bail. As determined by Judge White, Estupinan-Gonzalez fails to establish either deficient performance or prejudice to support his claim that he was denied effective assistance of counsel. Further, as also found by Judge White, Estupinan-Gonzalez's claim regarding the Second Chance Act, which the Court construes as a motion brought under 28 U.S.C. §§ 2241–43, must be raised in the United States District Court in the District of North Carolina—the district in which Estupinan-Gonzalez is presently confined.

¹ The Court has disregarded those portions of Estupinan-Gonzalez's "objections" which are comprised solely of obscenities and ad hominem attacks against the judges and lawyers of this Court.

In sum, the Court has considered Judge White's report, Estupinan-Gonzalez's objections, the record, and the relevant legal authorities. The Court finds Judge White's report cogent and compelling. The Court thus **affirms and adopts** Judge White's report and recommendation (**ECF No. 7**). The Court **dismisses** the petition for writ of habeas corpus (ECF No. 1). The Court does not issue a certificate of appealability. Finally, the Court directs the Clerk to **close** this case.

Done and Ordered at Miami, Florida, on November 27, 2017.



Robert N. Scola, Jr.
United States District Judge