

United States District Court
for the
Southern District of Florida

Larry Burns, Petitioner,)
v.) Civil Action No. 17-23850-Civ-Scola
Julie Jones, 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 24, 2017, Judge White issued a report, recommending that the Court dismiss the petition for writ of habeas corpus as successive. (Report of Magistrate, ECF No. 6.) The Petitioner has filed objections to the report, arguing that his petition is a Rule 60(b) motion that should not be treated as a second or successive petition for writ of habeas corpus because he is attacking a final judgment on the basis of fraud perpetrated by an officer of the court. (Obj.'s, ECF No. 9.) However, the alleged fraud was perpetrated during the state court proceeding that resulted in Burns's conviction, not during Burns's previous habeas corpus proceeding. (See Mot. for Relief, ECF No. 1.) Therefore, Burns's purported Rule 60(b) motion actually attacks his state court conviction, and Judge White properly construed Burns's Rule 60(b) motion as a second or successive petition for writ of habeas corpus.

The Court has considered Judge White's report, the Petitioner'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. 6**). The Court **denies** the Motion for Relief from Judgment Pursuant to Rule 60(b)(3) Fed.R.Civ.P. (**ECF No. 1**). The Court does not issue a certificate of appealability. Finally, the Court directs the Clerk to **close** this case. Any pending motions are denied as moot.

Done and ordered, at Miami, Florida, on November 16, 2017.

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Robert N. Scola, Jr.
United States District Judge