

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 1:19-cv-21524-GAYLES/OTAZO-REYES

STANLEY PRESENDIEU,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

ORDER

THIS CAUSE comes before the Court on Magistrate Judge Alicia M. Otazo-Reyes's Report and Recommendation (the "Report") [ECF No. 27] regarding Movant Stanley Presendieu's Request for Certificate of Appealability (the "Request") [ECF No. 26]. On April 19, 2019, Movant filed his Motion requesting a reconsideration of his sentence of 212 months' imprisonment. *See United States v. Presendieu*, Case No. 15-20032, [ECF No. 279] (S.D. Fla. Oct. 15, 2015). On June 28, 2019, the Court referred this case to Judge Otazo-Reyes, pursuant to 28 U.S.C. § 636(b)(1)(B), for a ruling on all pre-trial, non-dispositive matters and a report and recommendation on all dispositive matters. [ECF No. 5]. On August 23, 2021, Judge Otazo-Reyes issued her Report recommending that the Request be granted and a certificate of appealability be issued as to the following question: whether the movant established a basis for 28 U.S.C. § 2255 relief on his claims that sentencing counsel provided ineffective assistance and that a waiver provision in his plea agreement violated his due process right to the presentation of materially accurate information at sentencing. [ECF No. 27 at 2]. Neither party timely filed objections.

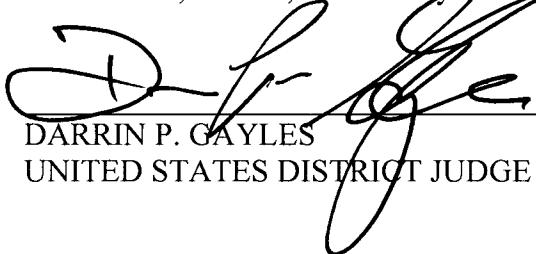
A district court may accept, reject, or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1). Those portions of the report and recommendation to which objections are made are accorded *de novo* review, if those objections "pinpoint the specific findings that the party disagrees with." *United States v. Schultz*, 565 F.3d 1353, 1360 (11th Cir. 2009); *see also* Fed. R. Civ. P. 72(b)(3). Any portions of the report and recommendation to which *no* specific objections are made are reviewed only for clear error. *Liberty Am. Ins. Grp., Inc. v. WestPoint Underwriters, L.L.C.*, 199 F. Supp. 2d 1271, 1276 (M.D. Fla. 2001); *accord Macort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006).

Having reviewed the Report for clear error, the Court agrees with Judge Otazo-Reyes's well-reasoned analysis and conclusion that the Request should be granted.

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

1. Magistrate Judge Alicia M. Otazo-Reyes's Report and Recommendation, [ECF No. 27], is **AFFIRMED AND ADOPTED** and incorporated into this Order by reference.
2. Movant Stanley Presendieu's Request for Certificate of Appealability, [ECF No. 26], is **GRANTED**. A Certificate of Appealability shall issue as to the following question: whether the movant established a basis for 28 U.S.C. § 2255 relief on his claims that sentencing counsel provided ineffective assistance and that a waiver provision in his plea agreement violated his due process right to the presentation of materially accurate information at sentencing.

DONE AND ORDERED in Chambers at Miami, Florida, this 5th day of October, 2021.



DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE