

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO.: 20-CV-22828-SEITZ/REID  
(11-CR-20652-SEITZ)

JOSE MURPHY,

Movant,

vs.

UNITED STATES OF AMERICA,

Respondent.

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**ORDER ADOPTING REPORT, DISMISSING MOTION TO VACATE  
AND CLOSING CASE**

THIS CAUSE is before the Court on the Report of the Magistrate Judge [DE 8] recommending that the Movant's Motion to Vacate pursuant to 28 U.S.C. § 2255 [DE 1] be dismissed. The Report makes the recommendation because the Movant failed to comply with the Order that directed him to file a second amended Motion to Vacate. Movant has not objected to the Report and the time for doing so has elapsed. Having conducted a *de novo* review of the record, the Court finds that the Report correctly recommends that the Movant's Motion be dismissed pursuant to Fed. R. Civ. P. 41(b) for failing to comply with the Court's orders.

Movant Jose Murphy is currently serving a 12-month prison sentence for the revocation of his supervised release in Case No. 11-20652-CR-SEITZ. In the underlying criminal case, Murphy pled guilty to one count of carjacking in violation of 18 U.S.C. 2119 and was sentenced to 110 months' imprisonment and three (3) years of supervised release. [See DE 23, 25, 36, Case No. 11-20652-CR-SEITZ].

On June 2, 2020, Murphy filed a Motion to Vacate his sentence in the underlying criminal case, and on July 10, 2020, filed an Amended Motion to Vacate [DE 1, 3]. The Magistrate Judge determined that Murphy's Amended Motion to Vacate was insufficiently pled because he failed to provide supporting facts for his claims. The Magistrate Judge ordered the Movant to submit a second amended motion on or before August 17, 2020 and cautioned that failure to comply with that Order would result in dismissal of the action [DE 6 at 7]. The Movant failed to file a second amended Motion to Vacate as ordered. Thus, the Report recommends that the


Amended Motion to Vacate be dismissed pursuant to Federal Rule of Civil Procedure 41(b) for failing to comply with the Court's order and to properly litigate the case [DE 8 at 3].

Having conducted a *de novo* review of the Magistrate Judge's Report and the record as a whole, it is clear that the Movant failed to file a second amended Motion to Vacate by August 17, 2020, as ordered. Furthermore, as of the date of this Order, Movant has still not filed a Second Amended Motion to Vacate correcting the deficiencies noted in the Magistrate Judge's July 15, 2020 Order. Nor has Movant filed any objections to the Report's recommendation that his Motion to Vacate be dismissed pursuant to Fed. R. Civ. P. 41(b). Therefore, it is

ORDERED THAT

- (1) The Report of the Magistrate Judge [DE 8] is **AFFIRMED AND ADOPTED**, and incorporated by reference into this Court's Order;
- (2) Movant's Amended Motion to Vacate [DE 3] is **DISMISSED**, pursuant to Fed. R. Civ. P. 41(b).
- (3) This case is **CLOSED**.

DONE AND ORDERED in Miami, Florida, this 20th day of October, 2020.

  
PATRICIA A. SEITZ  
UNITED STATES DISTRICT JUDGE

cc: Magistrate Judge Reid  
All Counsel of Record