

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-80639-Civ-HURLEY
(06-80153-Cr-HURLEY)
MAGISTRATE JUDGE P. A. WHITE

JAMES ROMAN, :
 :
 Movant, :
 :
 v. :
 :
 UNITED STATES OF AMERICA, :
 :
 Respondent. :

**ORDER ADOPTING
REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE,
ENTERING FINAL JUDGMENT GRANTING
MOTION TO VACATE, AND CLOSING CASE**

THIS CAUSE is before the court upon a motion to vacate, filed pursuant to 28 U.S.C. §2255, and the Report and Recommendations of the Honorable Patrick A. White, United States Magistrate Judge.

Pursuant to Fed.R.Civ.P. 72(b), "[T]he district judge ... shall make a *de novo* determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule." The rule requires that objections be filed within ten days of service of the Report and Recommendations, and that the objecting party arrange for transcription of sufficient portions of the record. Fed.R.Civ.P. 72(b). The district judge may then "accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions." Id. Portions of the Report and Recommendations that are not specifically objected to are subject to the clear error standard. The identical requirements are set forth in 28 U.S.C. §636(b)(1).

After considering the Report of the Magistrate Judge, as well as, any objections filed thereto, and after conducting a *de novo* review of the record as a whole, it is hereby **ORDERED AND ADJUDGED** as follows:

1. The Report and Recommendations of the United States Magistrate Judge) is **ADOPTED** in its entirety and incorporated herein by reference.

2. The motion to vacate is **GRANTED** solely as to claim two, that counsel was ineffective for failing to object to the probation officer's finding that the movant qualified for an enhanced sentence as a career offender.

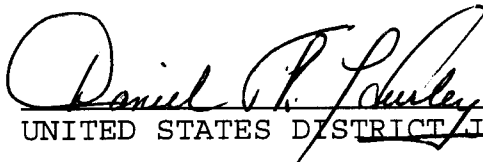
3. The criminal judgment under attack here is vacated, and the probation office is directed to prepare a corrected PSI to be used at a sentencing hearing to be scheduled in the immediate future.

4. The remaining claim raised in this collateral proceeding is denied as moot, and alternatively dismissed based on the movant's waiver.

5. All pending motions not otherwise ruled upon are **DENIED**, as moot.

4. This case is **CLOSED**.

DONE and SIGNED in Chambers at West Palm Beach, Florida on this 2nd day of February, 2011.


UNITED STATES DISTRICT JUDGE

cc: James Roman, Pro Se
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