

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

DONALD PAUL WILSON,	:	
	:	5:11-CV-176 (CAR)
Petitioner,	:	
	:	HABEAS CORPUS
vs.	:	28 U.S.C. 2254
	:	
GENE POPE,	:	
	:	
Respondent.	:	

***ORDER ON THE RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE***

Before the Court is the United States Magistrate Judge's Recommendation [Doc. 59] to deny Petitioner's 28 U.S.C. § 2254 petition seeking habeas corpus relief [Docs. 1 and 5]. Petitioner, proceeding *pro se*, has filed an Objection to the Recommendation [Doc. 61]. Having fully considered the record in this case and making a *de novo* determination of the portions of the Recommendation to which Petitioner objects, the Court finds the Objection to be without merit. Thus, the United States Magistrate Judge's Recommendation [Doc. 59] to deny Petitioner's habeas corpus petition is hereby **ADOPTED** and **MADE THE ORDER OF THE**

COURT, and Petitioner's petition [Docs. 1 and 5] is hereby DENIED. Having denied Petitioner's habeas corpus petition, the Court finds Respondent's Motion to Dismiss [Doc. 43] and Petitioner's Motion for Relief Pending Decision [Doc. 54] to be **MOOT**.

As an initial matter, this Court finds that Petitioner's Notice of Appeal filed with the Eleventh Circuit Court of Appeals [Doc. 58] does not divest the Court's jurisdiction to enter this Order. Generally, "the filing of a notice of appeal divests the district court of jurisdiction over a case." Weaver v. Florida Power & Light Co., 172 F.3d 771, 773 (11th Cir. 1999). However, this general rule "does not apply to collateral matters not affecting the questions presented on appeal." Id. Petitioner's appeal to the Eleventh Circuit concerns an alleged "inordinate delay" by this Court in ruling on his petition, a wholly separate and distinct issue from the instant ruling on the merits of the petition itself. See id. Thus, this Court retains jurisdiction to enter this Order.

In his Objection, Petitioner simply restates the arguments he made in his original petition which, despite Petitioner's contentions otherwise, have been fully addressed by the Magistrate Judge in his Recommendation. As thoroughly

explained by the Magistrate Judge, the state court's disposal of Petitioner's challenges to the validity of his conviction because they failed to attack the voluntary nature of his guilty plea or the advice he received from counsel, is consistent with clearly established federal law. Moreover, regarding Petitioner's ineffective assistance of counsel claims, the record supports the state court's determination that counsel's legal conclusions and recommendation to accept the plea agreement were competent and reasonable, and Petitioner's guilty plea was knowing and voluntary. This Court agrees with the Magistrate Judge's reasoning and conclusions as set forth in the Recommendation.

Accordingly, the Recommendation to Deny Relief [Doc. 59] is **ADOPTED** and **MADE THE ORDER OF THIS COURT**, and Petitioner's 28 U.S.C. § 2254 petition seeking habeas corpus relief [Docs. 1 and 5] is **DENIED**. Because it does not appear that Petitioner has made a substantial showing of the denial of a constitutional right, a certificate of appealability is **DENIED**. Having denied the habeas corpus petition, the Court finds that Respondent's Motion to Dismiss [Doc. 43] and Petitioner's Motion for Relief Pending Decision [Doc. 54] are **MOOT**.

SO ORDERED, this 15th day of March, 2012.

S/ C. Ashley Royal
C. ASHLEY ROYAL
UNITED STATES DISTRICT JUDGE

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