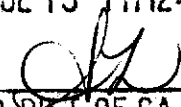


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

FILED
U.S. DISTRICT COURT
AUGUSTA DIV.
2015 JUL 15 PM 12:30
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SO. DIST. OF GA.

STEVEN B. BOYD,)
)
 Petitioner,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)

CV 111-136
(Formerly CR 198-012)

ORDER

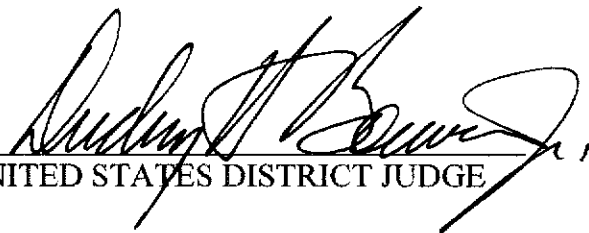
After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge's Report and Recommendation, to which objections have been filed, (doc. no. 39). Accordingly, the Court **ADOPTS** the Report and Recommendation of the Magistrate Judge as its opinion and **DISMISSES** as untimely the instant motion filed pursuant to 28 U.S.C. § 2255.

Further, a federal prisoner must obtain a certificate of appealability ("COA") before appealing the denial of his motion to vacate. This Court "must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Rule 11(a) to the Rules Governing Section 2255 Proceedings. This Court should grant a COA only if the prisoner makes a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); see also Slack v. McDaniel, 529 U.S. 473, 482-84 (2000). Given the complexity of the issues addressed in the Report and Recommendation, and the paucity of Eleventh Circuit precedent addressing those issues under the facts presented in this case, the Court **GRANTS**

Petitioner a COA, which shall be limited to the issue of whether Petitioner may invoke the Sawyer v. Whitley, 505 U.S. 333 (1992), actual innocence exception. Moreover, because there is a non-frivolous issue to raise on appeal, an appeal would be taken in good faith. Thus, Petitioner is entitled to appeal *in forma pauperis*. See 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24.

Upon the foregoing, the Court **CLOSES** this civil action.

SO ORDERED this 15th day of July, 2015, at Augusta, Georgia.


UNITED STATES DISTRICT JUDGE