

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

FILED
U.S. DISTRICT COURT
AUGUSTA DIV.
2017 SEP 18 P 3:34

DUBLIN DIVISION

CLERK 
SO. DIST. OF GA.

DARRELL CORRELL HALL,)
)
Petitioner,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
Respondent.)

CV 317-051
(Formerly CR 316-001)

ORDER

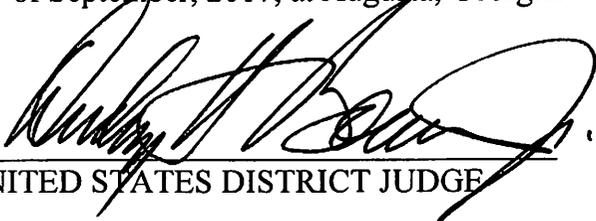
After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge’s Report and Recommendation, to which no objections have been filed. The Magistrate Judge recommended dismissing the case without prejudice because Petitioner has a direct appeal pending, and no extraordinary circumstances warrant immediate review of Petitioner’s current claims. (See doc. no. 4.) In lieu of objections, Petitioner sent a letter to the Clerk of Court explaining he agreed with the Magistrate Judge’s recommendation for dismissal, but he wants a new attorney assigned to his direct appeal.¹ (See doc. no. 6.) As Petitioner’s direct appeal is already pending in the Eleventh Circuit Court of Appeals, any request related to those proceedings must be directed to the appellate court. Accordingly, the Court **ADOPTS** the Report and Recommendation of the Magistrate Judge as its opinion and **DISMISSES** without prejudice Petitioner’s motion filed pursuant to 28 U.S.C. § 2255.

¹The Clerk docketed the letter as a Motion to Dismiss. (Doc. no. 6.) The Court **DIRECTS** the Clerk to **TERMINATE** the “motion” from the motions report.

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). For the reasons set forth in the Report and Recommendation, and in consideration of the standards enunciated in Slack v. McDaniel, 529 U.S. 473, 482-84 (2000), Petitioner has failed to make the requisite showing. Accordingly, the Court **DENIES** a COA in this case.² Moreover, because there are no non-frivolous issues to raise on appeal, an appeal would not be taken in good faith. Accordingly, Petitioner is not entitled to appeal *in forma pauperis*. See 28 U.S.C. § 1915(a)(3).

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

SO ORDERED this 18th day of September, 2017, at Augusta, Georgia.


UNITED STATES DISTRICT JUDGE

²“If the court denies a certificate, a party may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22.” Rule 11(a) to the Rules Governing Section 2255 Proceedings.