

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

FILED
U.S. DISTRICT COURT
SAVANNAH DIV.
2017 JAN 17 PM 3:18

ROY GENE LIVINGSTON,)
)
 Petitioner,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)
)
 _____)

CLERK
S.D. OF GA.

CASE NOS. CV416-129
CR494-030

O R D E R

Before the Court is the Magistrate Judge's Report and Recommendation (Doc. 7), to which objections have been filed (Doc. 9). After a careful de novo review of the record, the Court concludes that Petitioner's objections are without merit. Accordingly, the Report and Recommendation is **ADOPTED** as the Court's opinion in this case. As a result, Respondent's Motion to Dismiss (Doc. 3) is **GRANTED** and Petitioner's 28 U.S.C. § 2255 Petition is **DISMISSED**. In addition, Petitioner is not entitled to a Certificate of Appealability, rendering moot any request for in forma pauperis status on appeal. The Clerk of Court is **DIRECTED** to close this case.

In his objections, Petitioner argues that Georgia's burglary statute "may no longer qualify as an [Armed Career Criminal Act] predicate" following the Supreme Court's

decision in Mathis v. United States, 579 U.S. ___, 136 S. Ct. 2243 (2016). However, Petitioner's argument is clearly foreclosed by the Eleventh Circuit Court of Appeals' decision in United States v. Gundy, 842 F.3d 1156 (2016). In Gundy, the Eleventh Circuit analyzed the Supreme Court's reasoning in Mathis and concluded that "Georgia burglary convictions qualify as violent felonies under the [Armed Career Criminal Act's] enumerated crimes clause." 842 F.3d at 1169. Accordingly, Petitioner's objection lacks merit.

SO ORDERED this 17th day of January 2017.



WILLIAM T. MOORE, JR.
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA