

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION at FRANKFORT

UNITED STATES OF AMERICA,)	
)	Criminal Case No.
Plaintiff,)	09-cr-11-JMH-CJS
)	
v.)	Civil Case No.
)	13-cv-7254-JMH-CJS
MICHAEL WAYNE HENDERSON,)	
)	MEMORANDUM OPINION & ORDER
Defendant.)	

This matter is before the Court on the Report and Recommendation entered by Magistrate Judge Candace J. Smith [DE 59]. Said action was referred to the magistrate for the purpose of reviewing the merit of Defendant's Motion to Vacate, Set Aside, or Correct His Sentence pursuant to 28 U.S.C. § 2255 [DE 56]. Upon a preliminary review of the Motion under Rule 4 of the Rules Governing Section 2255 Proceedings for the United States District Court, the magistrate judge recommends that Defendant's Motion be dismissed as it is untimely and barred by the applicable statute of limitations. She further recommends that no Certificate of Appealability issue because no reasonable jurist would contest this Court's conclusion if the Report and Recommendation is adopted by the undersigned.

No objections to the Report and Recommendation have been filed. Generally, "a judge of the court shall make a de novo

determination of those portions of the report or specified proposed findings or recommendations made by the magistrate judge." 28 U.S.C. § 636. However, when the movant fails to file any objections to the Report and Recommendation, as in the case sub judice, "[i]t does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a de novo or any other standard." *Thomas v. Arn*, 474 U.S. 140, 150 (1985).

Consequently, this Court adopts the reasoning set forth in the Report and Recommendation as its own.

Accordingly, **IT IS ORDERED:**

(1) that the Magistrate Judge's Report and Recommendation [DE 59] is **ACCEPTED** and **ADOPTED**;

(2) that Defendant's Motion to Vacate, Set Aside, or Correct His Sentence pursuant to 28 U.S.C. § 2255 [Record No. 56] is **DENIED**; and

(3) that no certificate of appealability will issue.

This the 28th day of May, 2013.



Signed By:

Joseph M. Hood *JMH*

Senior U.S. District Judge