

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Criminal Action No. 5:89-5-JMH
)	(Civil Action No. 07-364-JMH)
v.)	(Civil Action No. 07-7003-JMH)
)	
JUAN MIGUEL GONZALES-)	
CASTELLANOS)	MEMORANDUM OPINION AND ORDER
)	
Defendant.)	

** ** ** ** **

This matter is before the Court on the Proposed Findings of Fact and Recommendations of Magistrate Judge James B. Todd [Record No.328]. Said action was referred to the magistrate for the purpose of reviewing the merit of Gonzalez-Castellanos' Motion to Vacate, Set Aside, or Correct his sentence pursuant to 28 U.S.C. § 2255 [Record No. 320, 321], in which he seeks to raise claims recognized in *Bailey v. United States*, 516 U.S. 137 (1995). The United States of America has made a Motion to Dismiss Gonzalez-Castellanos' motion on the grounds that it is now barred by the applicable one year statute of limitations, found in 28 U.S.C. § 2255 [Record No. 324]. Gonzalez-Castellanos filed no objections, and the Magistrate Judge filed Proposed Findings of Fact and Recommendations on June 18, 2009 [Record No. 328].

Petitioner has not filed objections to the Report and Recommendation, and the deadline for filing objections has passed. 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 petitioner 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 Proposed Findings of Fact and Recommendations [Record No. 328] shall be, and the same hereby is, **ACCEPTED** and **ADOPTED**;

(2) that the United States' Motion to Dismiss [Record No. 324] shall be, and the same hereby is, **GRANTED**; and

(3) that Gonzalez-Castellanos' Motion to Vacate, Set Aside, or Correct his sentence pursuant to 28 U.S.C. § 2255 [Record No. 320, 321] shall be, and the same hereby is, **DENIED**.

This is the 4th day of December, 2009.



Signed By:

Joseph M. Hood *JMH*

Senior U.S. District Judge