

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
(at London)

UNITED STATES OF AMERICA,)	
)	
Plaintiff/Respondent,)	Criminal Action No. 6: 06-82-DCR
)	Civil Action No. 6: 08-7045-DCR
V.)	
)	
BOBBY JOE CURRY,)	MEMORANDUM OPINION
)	AND ORDER
Defendant/Movant.)	

*** **

This matter is before the Court for consideration of Movant/Defendant Bobby Joe Curry’s *pro se* motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. [Record No. 446] Consistent with local practice, this matter was referred to United States Magistrate Judge Robert E. Wier for consideration pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge filed his Recommended Disposition on November 16, 2010. [Record No. 502] Based on his review of the record and the applicable law governing the motion, the Magistrate Judge recommended that Curry’s motion be denied. He further recommended that Curry’s most recent motion to amend be denied and that the Court should not issue a certificate of appealability as to any issue raised by Curry. Neither the Movant/Defendant nor the Respondent/Plaintiff have filed timely objections to the Magistrate Judge’s Recommended Disposition.

Although this Court must make a *de novo* determination of those portions of the Magistrate Judge’s recommendations to which objection is made, 28 U.S.C. § 636(b)(1)(c), “[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, when neither party objects to those findings.” *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Moreover, a party who fails to file objections to a Magistrate Judge’s proposed findings of fact and recommendation waives the right to appeal. *See Wright v. Holbrook*, 794 F.2d 1152, 1154-55 (6th Cir. 1986). Nevertheless, having examined the record and having made a *de novo* determination, the Court is in full agreement with the Magistrate Judge’s Recommended Disposition.

With respect to whether a certificate of appealability should issue, the Magistrate Judge correctly noted that the grounds presented by Curry fail to present a close constitutional issue that reasonable jurists would debate. Here, Curry’s trial counsel properly filed an *Anders* brief and sent that brief to Curry with proper notice of the opportunity to file a pro se response. He did not act ineffectively in preserving Curry’s appeal rights. Further, Curry’s trial counsel properly advised him during plea negotiations and those negotiations ultimately resulted in a sentence well below the applicable United States Sentencing Guideline Range. Curry affirmed under oath that he knowingly and voluntarily agreed to the deal reached with the government. And he has not shown that he was prejudiced by any alleged uncounseled questioning. Finally, no reasonable jurist would debate that Curry should be allowed to amend his petition because such would be futile, based on untimely, generalized allegations about unrelated criminal charges involving a former state court judge. Accordingly, it is hereby

ORDERED as follows:

1. The Magistrate Judge’s Recommended Disposition [Record No. 502] is **ADOPTED** and **INCORPORATED** by reference;

2. The Movant/Defendant's motion [Record No.446] is **DENIED** and his claims are **DISMISSED** with prejudice;

3. The Movant/Defendant's motion to amend [Record No. 478] is **DENIED**;

4. A Certificate of Appealability shall not issue because the Movant/Defendant has not made a substantial showing of the denial of any substantive constitutional right;

5. Judgment will be entered contemporaneously with this Memorandum Opinion and Order in favor of the Respondent/Plaintiff.

This 8th day of December, 2010.



Signed By:

Danny C. Reeves DCR

United States District Judge