

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff/Respondent,)	Criminal Action No. 6: 05-64-DCR
)	Civil Action No. 6: 10-7107-DCR
V.)	
)	
LARRY RAY MILLER,)	MEMORANDUM OPINION
)	AND ORDER
Movant/Defendant.)	
)	

*** **

This matter is before the Court for consideration of Movant/Defendant Larry Ray Miller’s *pro se* motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. [Record No. 50] Consistent with local practice, this matter was referred to United States Magistrate Judge Hanly A. Ingram for consideration pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge filed his Recommended Disposition on November 17, 2010. [Record No. 55] Based on his review of the record and the applicable law governing the motion, the Magistrate Judge recommended that Miller’s motion be denied. 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 agreement with the Magistrate Judge’s Recommended Disposition. As the Magistrate Judge correctly noted, Miller’s § 2255 motion is time-barred and he has not established that equitable tolling applies to his claims. Accordingly, it is hereby

ORDERED as follows:

1. The Magistrate Judge’s Recommended Disposition [Record No. 55] is **ADOPTED** and **INCORPORATED** by reference;
2. The Movant/Defendant’s motion [Record No.50] is **DENIED** and his claims are **DISMISSED** with prejudice;
3. 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;
4. Judgment will be entered contemporaneously with this Memorandum Opinion and Order in favor of the Respondent/Plaintiff.

This 7th day of December, 2010.



Signed By:

Danny C. Reeves DCR

United States District Judge