

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. 3:11CV-546-H

CHRIS TUCKER

PETITIONER

v.

M I RIVERA, WARDEN, et al.

RESPONDENTS

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Chris Tucker's *pro se* petition for a writ of habeas corpus under 28 U.S.C. § 2254. Petitioner claims that his trial attorney provided ineffective assistance of counsel by failing to pursue a suppression hearing and, instead, by advising Petitioner to plead guilty.

The Court referred this matter to the Magistrate Judge for a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(A) and (B). The Magistrate Judge performed a thorough review and recommended that the Court deny the petition for failure to satisfy the conditions for granting a writ under § 2254(d) and (e). Part of Petitioner's argument was one of actual innocence of the charges. The Magistrate Judge found no evidence to support a claim of actual innocence. Petitioner has objected to the Magistrate Judge's report; however, those arguments appear to be the same as those previously discussed and analyzed by the Magistrate Judge.

Being otherwise sufficiently advised,

IT IS HEREBY ORDERED that the Report and Recommendation of the Magistrate Judge is ADOPTED and Petitioner's request for a writ of habeas corpus is DENIED.

IT IS FURTHER ORDERED that, because no reasonable jurist could find debatable the

conclusion that there is no merit to Petitioner's claims of actual innocence and ineffective assistance of counsel, Petitioner's certificate of appeal is DENIED.

This is a final and appealable order.

February 26, 2013

Handwritten signature of John G. Heyburn II in black ink, written over a circular seal of the United States District Court for the District of Columbia.

**John G. Heyburn II, Judge
United States District Court**

cc: Chris Tucker, *Pro Se*
Counsel of Record
Magistrate Judge James D. Moyer