

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

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|---|---|-------------------------------|
| JOHN G. WESTINE, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | No. 04-3261-CV-S-RED-H |
| |) | |
| |) | |
| MARTY C. ANDERSON, Warden |) | |
| United States Medical Center for |) | |
| Federal Prisoners, |) | |
| |) | |
| Respondent. |) | |

ORDER AND JUDGMENT

Pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri, the petition herein for a writ of habeas corpus was referred to the United States Magistrate Judge for preliminary review under the provisions of 28 U.S.C. § 636(b).

The United States Magistrate Judge has completed his preliminary review of the petition and has submitted to the undersigned a report and recommendation that the petition be dismissed without prejudice.

Petitioner has filed exceptions to the report and recommendation of the magistrate judge (Doc. 92), in which he asks the Court to take “judicial notice of certain facts.” The facts relate to the definition of proceeds under the money laundering statute.

Petitioner continues in his attempt to have the decision *U. S. v. Santos* 128 S.Ct.2020 (2008) apply to this case. While that case did involve the definition of the term proceeds in the money laundering statute, the Supreme Court did not hold its ruling to be retroactive. Because they did not

do so, it is not to be applied to petitioner's case, which was affirmed by the Sixth Circuit Court of Appeals in 1994.

Petitioner's claim that he is actually innocent again involves the definition of proceeds. Even if the Court recognized a claim of actual innocence, petitioner's argument would not meet that extraordinarily high standard. Petitioner's exceptions must therefore be overruled. It is

ORDERED, ADJUDGED and DECREED that the petitioner's pro se requests for relief be denied.

/s/ Richard E. Dorr

RICHARD E. DORR

United States District Judge

Date: March 23, 2010