

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JOHN SMITH,

Petitioner,

-v-

FEDERAL BUREAU OF PRISONS, *et al.*,

Defendants.

USDS SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>5-21-13</u>
---

No. 11 Civ. 8825 (RJS) (FM)  
ORDER ADOPTING REPORT AND  
RECOMMENDATION

RICHARD J. SULLIVAN, District Judge:

Petitioner John Smith<sup>1</sup> brings this action pursuant to 28 U.S.C. § 2241, challenging the execution of two concurrent sentences that were imposed by the United States District Court for the Eastern District of New York but which he is serving in this district. Specifically, Petitioner asserts that he was entitled to receive credit against his current sentences for time that he previously spent in prison because the conduct underlying all of the offenses of conviction is the same. Petitioner initiated this action by filing his Petition for a Writ of Habeas Corpus (the “Petition”) on December 5, 2011. By Order dated December 19, 2011, this matter was referred to the Honorable Frank Maas, Magistrate Judge. Briefing on the Petition was completed on February 17, 2012 and was submitted under seal in order to protect Petitioner’s identity. On July 3, 2012, Judge Maas issued a Report and Recommendation (the “Report”) recommending that the Petition be denied because the Bureau of Prisons correctly applied the governing statute, 18 U.S.C. § 3585(b), in calculating Petitioner’s sentence. In the Report, Judge Maas advised the parties that failure to file timely objections to the Report would constitute a waiver of those objections. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b). No party has filed objections to

---


<sup>1</sup> Petitioner, who is in the federal Witness Security Program, brings this action pseudonymously.

the Report, and the time to do so has expired. *See Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1993).

When no objections to a report and recommendation are made, the Court may adopt the report if there is no clear error on the face of the record. *Adee Motor Cars, LLC v. Amato*, 388 F. Supp. 2d 250, 253 (S.D.N.Y. 2005); *La Torres v. Walker*, 216 F. Supp. 2d 157, 159 (S.D.N.Y. 2000). After reviewing the record, the Court finds that Judge Maas's well-reasoned Report is not facially erroneous. Accordingly, the Court adopts the Report in its entirety and, for the reasons set forth therein, denies the Petition. The Clerk of Court is respectfully directed to close this case.

SO ORDERED.

Dated: May 20, 2013  
New York, New York

  
\_\_\_\_\_  
RICHARD J. SULLIVAN  
UNITED STATES DISTRICT JUDGE