

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 3-:08-cr-063

Case No. 3-:06-cv-302

JAK A. MORGAN ,

District Judge Thomas M. Rose

Defendant.

Magistrate Judge Michael R. Merz

**ENTRY AND ORDER OVERRULING MORGAN'S OBJECTIONS (Doc. #35) TO THE
MAGISTRATE'S REPORT AND RECOMMENDATIONS REGARDING MORGAN'S
MOTION TO VACATE, SET ASIDE OR CORRECT HIS SENTENCE; ADOPTING
THE MAGISTRATE'S REPORT AND RECOMMENDATIONS (Doc. #33) IN ITS
ENTIRETY AND TERMINATING THIS CIVIL CASE**

This matter is now before the Court pursuant to Objections (doc. #35 in criminal case) filed by Jak A. Morgan ("Morgan") to the Report and Recommendations issued on October 8, 2009, by Magistrate Judge Michael R. Merz (doc. #33 in criminal case). The District Judge has reviewed the findings of Magistrate Judge Merz. The District Judge has also made a de novo review of the record in this case pursuant to 28 U.S.C. § 636(b) and Fed.R.Civ.P. 72(b). Upon consideration of the foregoing, the Court finds that the Objections are not well-taken and they are hereby OVERRULED.

The Magistrate Judge's Report and Recommendations is ADOPTED in its entirety. Morgan's Motion To Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. §2255 is dismissed. Morgan asserts that a failure to correct an alleged falsity in a Presentence Investigation Report ("PSIR") was ineffective assistance of counsel. However, because the

record fails to establish that the fact asserted by Morgan to be false in the PSIR is actually false, failure to raise the claim is not ineffective assistance of counsel.

A certificate of appealability will not issue and Morgan is denied leave to appeal *in forma pauperis* because reasonable jurists would not disagree with this conclusion regarding Morgan's Motion. The captioned civil cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

DONE and ORDERED in Dayton, Ohio, this Eighteenth day of December, 2009.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Jak A. Morgan
Counsel of Record