

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

DAVID W. HALL,

Petitioner/Defendant,

vs.

UNITED STATES OF AMERICA,

Respondent/Plaintiff. :

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:

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Case No. 3:09cv396

3:08cr62

JUDGE WALTER HERBERT RICE

DECISION AND ENTRY ADOPTING REPORT AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE (DOC. #43) IN THEIR ENTIRETY; PETITIONER/DEFENDANT'S OBJECTIONS TO SAID JUDICIAL FILING (DOC. #44) OVERRULED; JUDGMENT TO BE ENTERED IN FAVOR OF RESPONDENT/PLAINTIFF AND AGAINST PETITIONER/DEFENDANT, DENYING PETITIONER/DEFENDANT'S MOTION UNDER 28 U.S.C. SECTION 2255 WITH PREJUDICE; CERTIFICATE OF APPEALABILITY AND LEAVE TO APPEAL *IN FORMA PAUPERIS* DENIED; TERMINATION ENTRY

Pursuant to the reasoning and citations of authority set forth by the United States Magistrate Judge, in his Report and Recommendations filed October 20, 2009 (Doc. #43), and, further, based upon a thorough *de novo* review of this Court's file and the applicable law, this Court adopts said Report and Recommendations in their entirety. The Petitioner/Defendant's Objections to said judicial filing (Doc. #44) are overruled. In short, while the Sentencing Guidelines are now advisory, the new status of the Guidelines does not impact the mandatory

minimum sentence prescribed by statute.

Accordingly, judgment will be ordered entered in favor of the Respondent/Plaintiff and against the Petitioner/Defendant herein, dismissing the Petitioner/Defendant's Motion under 28 U.S.C. Section 2255, with prejudice.

Given that reasonable jurists would not disagree with this Court's conclusion herein and, further, that any appeal would be objectively frivolous, this Court denies Defendant a requested Certificate of Appealability and leave to appeal *in forma pauperis*.

The captioned 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.

/s/ Walter Herbert Rice

March 5, 2010

WALTER HERBERT RICE
UNITED STATES DISTRICT JUDGE

Copies to:

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