

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

UNITED STATES OF AMERICA

Case No. 3:10-cr-039

Plaintiff,

Judge Thomas M. Rose

-v-

Magistrate Judge Michael R. Merz

CHUKWUEMEKA O. EZIOLISA,

Defendant.

ENTRY AND ORDER OVERRULING EZIOLISA'S OBJECTIONS TO THE SUPPLEMENTAL REPORT AND RECOMMENDATIONS REGARDING HIS RULE 60(b)(1) MOTION (Doc. # 70); OVERRULING EZIOLISA'S OBJECTIONS TO THE SUPPLEMENTAL REPORT AND RECOMMENDATIONS REGARDING HIS § 2255 MOTION (Doc. #71); VACATING THIS COURT'S PRIOR ORDER ADOPTING THE REPORT AND RECOMMENDATIONS REGARDING EZIOLISA'S § 2255 MOTION (Doc. # 62); ADOPTING THE SUPPLEMENTAL REPORT AND RECOMMENDATIONS REGARDING EZIOLISA'S RULE 60(b)(1) MOTION (Doc. #66) AND THE SUPPLEMENTAL REPORT AND RECOMMENDATIONS REGARDING EZIOLISA'S § 2255 MOTION (Doc. #69) IN THEIR ENTIRETY; DENYING EZIOLISA'S RULE 60(b)(1) MOTION WITH PREJUDICE; DENYING A CERTIFICATE OF APPEALABILITY REGARDING THIS FINDING; CERTIFYING THAT AN APPEAL OF THIS FINDING WOULD BE OBJECTIVELY FRIVOLOUS; DISMISSING EZIOLISA'S § 2255 MOTION WITH PREJUDICE, DENYING A CERTIFICATE OF APPEALABILITY REGARDING THIS FINDING; AND CERTIFYING THAT ANY APPEAL OF THIS FINDING WOULD BE OBJECTIVELY FRIVOLOUS

This matter comes before the Court pursuant to pro se Defendant Chukwuemeka O. Eziolisa's ("Eziolisa's") objections to two (2) Supplemental Report and Recommendations filed by Magistrate Judge Michael R. Merz. The first Supplemental Report and Recommendations regarding Eziolisa's Rule 60 (b)(1) Motion (doc. #66) was filed on September 4, 2013, and the other Supplemental Report and Recommendations regarding Eziolisa's § 2255 Motion (doc.

#69) was filed on September 5, 2013.

In a Report and Recommendations (doc. #60) and a Supplemental Report and Recommendations (doc. #66), Magistrate Judge Merz recommends that Ezioliza's Rule 60(b)(1) Motion be denied with prejudice, Eziolisa be denied a certificate of appealability and this Court should certify that any appeal would be objectively frivolous. Eziolisa objected to both although his objection to the Report and Recommendations is rendered moot by the filing of the Supplemental Report and Recommendations.

In another Report and Recommendations (doc. #58) and Supplemental Report and Recommendations (doc. #69), Magistrate Judge Merz recommends that Eziolisa's § 2255 Motion be dismissed with prejudice, that Eziolisa be denied a certificate of appealability and that this Court certify that any appeal of this issue would be objectively frivolous. Magistrate Judge Merz also recommends that this Court's Order adopting his initial Report and Recommendations on Eziolisa's § 2255 Motion be vacated because Eziolisa was not properly sent a copy of this Report and Recommendations. Eziolisa objected to both the Report and Recommendations and the Supplemental Report and Recommendations. One of his objections, regarding of the Report and Recommendations, has been addressed and the remaining objections to the Report and Recommendations are rendered moot by the filing of the Supplemental Report and Recommendations.

As required by 28 U.S.C. §636(b) and Federal Rules of Civil Procedure Rule 72(b), the District Judge has made a de novo review of the record in this case. Upon said review, the Court finds that Eziolisa's Objections to the Magistrate Judge's Supplemental Report and Recommendations regarding Eziolisa's Rule 60(b)(1) Motion (doc. #70) are not well-taken, and

they are hereby OVERRULED. The Court also finds that Eziolisa's Objections to the Magistrate Judge's Supplemental Report and Recommendations regarding his § 2255 Motion are not well-taken and they are overruled.

This Court's Order adopting the Report and Recommendations regarding Eziolisa's § 2255 Motion (doc. #62) is vacated. However, the Magistrate Judge's Supplemental Report and Recommendations regarding Eziolisa's Rule 60(b)(1) Motion And the Magistrate Judge's Supplemental Report and Recommendations regarding Eziolisa's § 2255 Motion are adopted in their entirety. Eziolisa's Rule 60(b)(1) Motion is denied with prejudice, Eziolisa is denied a certificate of appealability regarding this finding and this Court certifies that any appeal of this finding would be objectively frivolous. Also, Eziolisa's § 2255 Motion is dismissed with prejudice, Eziolisa is denied a certificate of appealability regarding this finding and this Court certifies that any appeal of this finding would be objectively frivolous.

DONE and ORDERED in Dayton, Ohio, this Fifteenth Day of October, 2013.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Chukwuemeka O. Eziolisa at his last address of record