

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN J. MCCARTHY,	:	
Petitioner	:	
vs.	:	CIVIL NO. 1:CV-10-2216
WARDEN, USP LEWISBURG,	:	
Respondent	:	

O R D E R

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

We are considering the Report and Recommendation of Magistrate Judge Smyser, recommending we dismiss petitioner John J. McCarthy's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, coram nobis, or audita querela. McCarthy objects to the report arguing that the magistrate judge erred when applying the applicable case law. Since objections were filed, the Court must "make a *de novo* determination of those portions of the report or specified proposed finding or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(c).

Petitioner's sole objection is that the magistrate judge failed to address his alternative petitions for a writ coram nobis and audita querela. Contrary to his assertions, however, the magistrate judge did address and then rejected these two petitions, holding that "petitioner may not seek relief through either a petition for a writ of coram nobis or audita querela on the basis of his inability to satisfy the requirements for filing a second or successive § 2255 motion." (doc. 6 at 9.) Since we agree with the magistrate judge's determination, we will overrule petitioner's objection and adopt the report.

ACCORDINGLY, this 7th day of January, 2011, upon consideration of the report and recommendation of the magistrate judge (doc. 6), filed November 15, 2010, to which objections were filed, and upon independent review of the record, it is ordered that the petition in this matter is dismissed.

The Clerk of Court shall close this file.

/s/William W. Caldwell
William W. Caldwell
United States District Judge