

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

Brian William Schumaker, #59309-019,)	
)	
Petitioner,)	C.A. No. 1:17-1473-HMH-SVH
)	
vs.)	OPINION & ORDER
)	
Hector Joyner, Warden, FCI Estill,)	
)	
Respondent.)	

This matter is before the court with the Report and Recommendation of United States Magistrate Judge Shiva V. Hodges made in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 of the District of South Carolina.¹ Brian William Schumaker (“Schumaker”) seeks habeas corpus relief pursuant to 28 U.S.C. § 2241. In her Report and Recommendation, Magistrate Judge Hodges recommends dismissing the § 2241 petition without prejudice and without requiring the respondent to file a return because Schumaker has failed to demonstrate that a § 2255 motion is inadequate or ineffective to test the legality of his detention. Specifically, Magistrate Judge Hodges found that Schumaker’s claim of actual innocence is without merit.

Schumaker filed objections to the Report and Recommendation. Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a

¹ The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1) (2006).

waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Report and Recommendation of the magistrate judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

Upon review, the court finds that Schumaker's objections are non-specific, unrelated to the dispositive portions of the magistrate judge's Report and Recommendation, or merely restate his claims. In his objections, Schumaker reargues his claim of actual innocence that he raised in his initial petition. Further, as the magistrate judge stated in the Report, Schumaker's argument that he is actually innocent of his convictions under 18 U.S.C. §§ 2422(b) and 2241(c) because there was no victim is contrary to applicable Eleventh Circuit case law.² See United States v. Weiss, No. 12-13498, 2013 WL 692699, at *1 (11th Cir. Feb. 26, 2013) (unpublished) ("The language of [18 U.S.C. §] 2422(b) does not require the existence of an actual minor, but merely requires the defendant to believe that a minor was involved."); United States v. Slaughter, 708 F.3d 1208, 1215 (11th Cir. 2013) ("[I]t is equally clear that a defendant's mere 'belief that a minor was involved is sufficient to sustain an attempt conviction under 18 U.S.C. § 2422(b), even if the defendant's offense conduct did not involve an actual minor."); United States v. Farley, 607 F.3d 1294, 1325 (11th Cir. 2010) (finding that convictions under § 2241(c) do not require the existence of an actual minor victim). Moreover, there is no basis for Schumaker's argument that the statutes are void for vagueness. Therefore, after a thorough review of the

²Schumaker was sentenced in the United States District Court for the Northern District of Georgia. Thus, Eleventh Circuit case law is applicable to this case.

magistrate judge's Report and the record in this case, the court adopts the magistrate judge's Report and Recommendation.

It is therefore

ORDERED that Schumaker's § 2241 petition is dismissed without prejudice and without requiring the respondent to file a return.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
July 19, 2017

NOTICE OF RIGHT TO APPEAL

The Petitioner is hereby notified that he has the right to appeal this order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.