Teague v. USA Doc. 16

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at WINCHESTER

DOYLE L. TEAGUE,	)	
Petitioner,	)	
	)	No. 4:05-CV-48/4:03-CR-46
v.	)	
	)	*Edgar/Carter*
UNITED STATES OF AMERICA,	)	
Respondent.	)	

ORDER

Having conducted a hearing on October 20, 2008 on the matter, Magistrate Judge William B. Mitchell Carter filed a Report and Recommendation ("R&R") recommending Petitioner Doyle L. Teague's 28 U.S.C. § 2255 motion, as it pertains to Petitioner's claim of ineffective assistance of counsel due to a failure to file a direct appeal (Case Nos. 4:05-CV-48, Doc. 1; 4:03-CR-46, Doc. 24), be denied (Case Nos. 4:05-CV-48, Doc. 13; 4:03-CR-46, Doc. 30). Petitioner Teague has filed a Statement of Intention, representing to the Court that he does not object to the R&R (Case Nos. 4:05-CV-48, Doc. 14; 4:03-CR-46, Doc. 31), and the Government has not filed an objection within the ten day period provided, *see* 28 U.S.C. § 636(b)(1). After reviewing the record, the Court agrees with the magistrate judge's R&R. Accordingly, the Court **ACCEPTS** and **ADOPTS** the magistrate judge's R&R (Case Nos. 4:05-CV-48, Doc. 13; 4:03-CR-46, Doc. 30) pursuant to 28 U.S.C. § 636(b)(1) and **ORDERS** as follows:

(1) Petitioner's § 2255 motion be **DENIED** (Case Nos. 4:05-CV-48, Doc. 1; 4:03-CR-46, Doc. 24); and,

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(2) The Clerk of Court shall close this case.

In addition, the Court has reviewed this case pursuant to 28 U.S.C. § 1915(a)(3) and Rule 24 of the Federal Rules of Appellate Procedure and hereby **CERTIFIES** that any appeal from this action would not be taken in good faith and would be totally frivolous. Therefore, any application by Teague for leave to proceed *in forma pauperis* on appeal is **DENIED**. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24.

Further, should Teague file a timely notice of an appeal from this order, such notice will be treated as an application for a certificate of appealability, which is hereby **DENIED** since, as discussed in the R& R [Court Doc. No. 13], Teague's claims are clearly without merit and he cannot present a question of some substance about which reasonable jurists would differ. 28 U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b)

This is a **FINAL ORDER**. The Clerk of the Court shall close the record in this case.

SO ORDERED.

ENTER this the 5th day of January, 2009.

/s/ R. Allan Edgar
R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE