

**UNITED STATES DISTRICT COURT**

## EASTERN DISTRICT OF TEXAS

LANCE C. MIGLIACCIO

§

Petitioner,

§

*versus*

§

CIVIL ACTION NO. 1:11-CV-210

MARK MARTIN,

§

## Respondent.

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**MEMORANDUM ORDER PARTIALLY ADOPTING  
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Petitioner, Lance C. Migliaccio, an inmate currently confined at FCC Beaumont, proceeding *pro se*, filed this petition for writ of habeas corpus contesting the legality of his conviction.

The Court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court.<sup>1</sup> The Magistrate Judge recommends the petition for writ of habeas corpus be dismissed.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, and pleadings. No objections to the Report and Recommendation have been filed by either party to date. Petitioner did, however, file a motion to dismiss. Petitioner has an absolute right to voluntarily dismiss his claims, without a court order, before the opposing party serves an answer. *See* FED. R. CIV. P. 41(a)(1). No answer has been filed by the respondent in this case. Based on the foregoing, the

1 This action was originally referred to the Honorable Earl S. Hines, United States Magistrate Judge, on May  
2, 2011. On August 9, 2011, this case was reassigned to the Honorable Zack Hawthorn.

Report and Recommendation of United States Magistrate Judge is partially adopted to the extent it recommends dismissal of the petition.

## ORDER

Accordingly, the findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **PARTIALLY ADOPTED**, to the extent it recommends dismissal of the petition. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

SIGNED at Sherman, Texas, this 11th day of October, 2011.



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MARCIA A. CRONE

UNITED STATES DISTRICT JUDGE