
UNITED STATES DISTRICT COURT**EASTERN DISTRICT OF TEXAS**

CHARLES RENE ZENON, §
Petitioner, §
versus § CIVIL ACTION NO. 1:12-CV-63
C. RIVERA, WARDEN, §
Respondent. §

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

Petitioner, Charles Rene Zenon, a federal prisoner currently confined at FCI Beaumont Low, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The Court referred this matter to the Honorable Keith Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. 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. Petitioner filed objections to the Magistrate Judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the Court finds petitioner's objections are without merit. To meet the first, or actual innocence prong of the *Reyes-Querena* test, petitioner must prove that, based on a retroactively applicable Supreme Court decision, he was convicted for conduct that did

not constitute a crime. *See Jeffers v. Chandler*, 253 F.3d 827, 830-31 (5th Cir. 2001), *cert. denied*, 534 U.S. 1001, 122 S.Ct. 476, 151 L.Ed.2d 390 (2001); *see also Reyes-Quena v. United States*, 243 F.3d 893, 904 (5th Cir. 2001). Petitioner does not rely on a retroactively applicable Supreme Court decision but rather the Fair Sentencing Act of 2010 as it amended 21 U.S.C. § 841(b). As the Magistrate Judge correctly concluded, this is insufficient to meet the *Reyes-Quena* test. Furthermore, the Fair Sentencing Act of 2010 does not apply retroactively, and this argument has been foreclosed by the Fifth Circuit. *See United States v. Bennett*, 664 F.3d 997, 1014 (5th Cir. 2011); *United States v. Tickles*, 661 F.3d 212 (5th Cir. 2011); *United States v. Doggins*, 633 F.3d 379, 384 (5th Cir. 2011).

ORDER

Accordingly, the objections of the petitioner are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

SIGNED at Beaumont, Texas, this 30th day of April, 2012.



Marcia A. CRONE
UNITED STATES DISTRICT JUDGE