

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

RAMIRO RODRIGUEZ-JAIMES §
VS. § CIVIL ACTION NO. 1:14cv269
UNITED STATES OF AMERICA §

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

Ramiro Rodriguez-Jaimes, an inmate confined at the Federal Correctional Institution at Loretto, Pennsylvania, proceeding *pro se*, filed the above-styled motion to vacate, set aside or correct sentence. The Court referred the matter to the Honorable Zack Hawthorn, United States Magistrate Judge, for consideration pursuant to applicable orders of this court.

Movant was convicted of carrying a firearm in relation to a drug tracking crime and conspiring to possess with the intent to distribute 500 grams or more of cocaine and 50 grams of more of cocaine base. In connection with sentencing, movant was determined to be a career offender within the meaning of Section 4B1.1 of the United States Sentencing Guidelines. The Magistrate Judge has submitted a Report and Recommendation of United States Magistrate Judge recommending that this motion to vacate be denied. The magistrate judge concluded the grounds for review asserted in the original motion to vacate were barred by the applicable statute of limitations and that the ground for review asserted in a supplemental motion to vacate were without merit.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. Movant filed objections to the Report and Recommendation.

The Court has conducted a *de novo* review of the objections in light of the applicable law and the record in this matter. After careful consideration, the Court is of the opinion the objections are without merit. The Magistrate Judge correctly concluded that the period of limitations applicable to the grounds for review asserted in movant's original motion to vacate expired at least four years

prior to the date on which the original motion to vacate was filed. In addition, while movant contends he is entitled to equitable tolling, he has not demonstrated that he: (1) diligently pursued his rights and (2) extraordinary circumstances kept him from asserting his ground for review in a timely manner. Finally, with respect to the ground for review asserted in the supplemental motion to vacate, the magistrate judge correctly stated that *Johnson v. United States*, 135 S.Ct. 2551 (2015), the case relied on by movant, does not apply to the definition of “crime of violence” set forth in Section 4B1.2(a)(2) of the Guidelines. *Beckles v. United States*, 137 S.Ct. 886, 897 (2017).

ORDER

Accordingly, the objections are **OVERRULED**. The proposed 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 dismissing this motion to vacate, set aside or correct sentence.

In addition, the movant is not entitled to the issuance of a certificate of appealability. An appeal from a judgment denying federal habeas relief may not proceed unless a judge issues a certificate of appealability. *See* U.S.C. § 2253. The standard for granting a certificate of appealability requires a movant to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84; *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). In making a substantial showing, the movant need not establish that he should prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *Slack*, 529 U.S. at 483-84; *Avila v. Quarterman*, 560 F.3d 299, 304 (5th Cir. 2009). Any doubt regarding whether to grant a certificate of appealability should be resolved in favor of the movant. *See Miller v. Johnson*, 200 F.3d 274, 280- 81 (5th Cir. 2000).

In this case, the movant has not shown that the issue of whether his motion to vacate is successive is subject to debate among jurists of reason. In addition, the questions presented in the motion to vacate are not worthy of encouragement to proceed further. As a result, a certificate of

appealability shall not be issued.

SIGNED this the **19** day of **July, 2017**.

A handwritten signature in black ink, appearing to read "Thad Heartfield", written over a horizontal line.

Thad Heartfield
United States District Judge