

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

JOSE ROLANDO MORALES §
VS. § CIVIL ACTION NO. 1:16cv356
UNITED STATES OF AMERICA §

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

Petitioner Jose Rolando Morales, proceeding *pro se*, filed the above-styled petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. The court previously referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable orders of this court.

The Magistrate Judge has submitted a Report and Recommendation of United States Magistrate Judge concerning this case. 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, along with the record and pleadings. Petitioner filed objections to the Report and Recommendation. The court must therefore conduct a *de novo* review of the objections.

A federal criminal conviction may be challenged in a habeas petition filed pursuant to 28 U.S.C. § 2241 only if the challenge is based on a retroactively applicable Supreme Court decision that establishes the petitioner was convicted of a nonexistent offense. *Reyes-Requena v. United States*, 243 F.3d 893, 904 (5th Cir. 2001). Petitioner does not rely on a retroactively applicable Supreme Court decision. Moreover, he challenges the sentence imposed as a result of the conviction, rather than the conviction itself. As a result, his challenge may not be asserted in a petition filed pursuant to Section 2241. *Ali v. Carvajal*, 654 F. App'x 172, 172-73 (5th Cir. 2016) (citing *Padilla v. United States*, 416 F.3d 424, 426-27 (5th Cir. 2005)).

ORDER

Accordingly, petitioner's objections 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 accordance with the recommendation of the Magistrate Judge.

So Ordered and Signed

Jan 13, 2017



Ron Clark, United States District Judge