

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

RICHARD RIVERA §
VS. § CIVIL ACTION NO. 5:16-CV-192
DEREK EDGE, WARDEN §

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

Petitioner, Richard Rivera, a federal prisoner confined at FCI Texarkana, 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 Caroline Craven, United States Magistrate Judge, at Texarkana, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends the petition be denied.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, and pleadings. Petitioner filed objections to the Report and Recommendation of United States Magistrate Judge.¹ This requires a *de novo* review of the objections in relation to the pleadings and applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the Court finds petitioner's objections lacking in merit. Petitioner does not meet the test set forth in *Reyes-Requena v. United States*, 243 F.3d 893 (5th Cir. 2001). Petitioner's challenge to his sentence is not the type of claim that warrants relief under § 2241 as it challenges the punishment imposed rather than the conviction itself. *Kinder v. Purdy*, 222 F.3d 209, 213-14 (5th Cir. 2000). Furthermore, petitioner's grounds for review are not based on a retroactively applicable Supreme Court decision and do not demonstrate petitioner was convicted


¹Petitioner filed a Notice of Appeal which has been liberally construed as Objections to the Report and Recommendation (docket entry no. 16).

of a nonexistence offense. Petitioner has failed to establish § 2255 is insufficient to challenge his detention.

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 this case in accordance with the Magistrate Judge's recommendations.

So ORDERED and SIGNED this 12th day of February, 2018.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE