

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

FREDDIE MONROE PICKETT §
v. § CIVIL ACTION NO. 6:10cv282
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Freddie Pickett, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his conviction. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Pickett complains of a conviction for aggravated assault which he received in Johnson County. He received deferred adjudication probation for this offense on February 23, 1995, but his probation was revoked and he was sentenced to five years in prison on December 17, 1999. He was released on parole in 2002 but this release was revoked in 2004, and Pickett discharged his sentence on December 27, 2005.

The Respondent was ordered to answer Pickett’s petition and filed a motion to dismiss, arguing that the Court lacks jurisdiction because Pickett is not in custody under the conviction and sentence which he is challenging. Pickett did not file a response to the motion.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the petition be dismissed for want of jurisdiction, inasmuch as Pickett was not “in custody” under this conviction for habeas corpus purposes. *See Hendrix v. Lynaugh*, 888 F.2d 336, 337 (5th Cir. 1989).

A copy of the Magistrate Judge's Report was sent to Pickett at his last known address, return receipt requested, but no objections have been received; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has carefully reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. It is further

ORDERED that the Petitioner Freddie Pickett is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby DENIED.

SIGNED this 1st day of December, 2010.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE