

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

ISAAH SCOTT BOONES §
v. § CIVIL ACTION NO. 6:13cv974
DIRECTOR, TDCJ-CID §

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

The Petitioner Isaiah Boones, proceeding *pro se*, filed this application for the writ of habeas corpus challenging 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.

Boones was convicted of aggravated assault with a deadly weapon on June 10, 2004, receiving a sentence of 80 years in prison. He previously sought federal habeas corpus relief from this same conviction, which was denied on June 27, 2007. The Fifth Circuit affirmed the denial of this petition on April 15, 2008, by denying Boones' request for a certificate of appealability. Boones v. Director, TDCJ, civil action no. 6:07cv54.

In his present petition, Boones contends that the evidence was insufficient to show that the weapon, a knife, was a "deadly weapon" and that counsel rendered ineffective assistance on appeal by failing to raise this claim. He acknowledges that he did not raise this claim in his prior petition.

On January 9, 2014, the Magistrate Judge issued a Report recommending that the petition be dismissed. The Magistrate Judge observed that Boones failed to show he had received permission from the Fifth Circuit Court of Appeals to file a successive petition, as required by 28 U.S.C. §2244(b)(3), and the on-line records of the Fifth Circuit Court of Appeals do not show that Boones

has sought, much less received, such permission. The Magistrate Judge stated that until Boones receives permission to file a successive petition, the district court lacks jurisdiction to consider his claims. Crone v. Cockrell, 324 F.3d 833, 836 (5th Cir. 2003). Thus, the Magistrate Judge recommended that the petition be dismissed without prejudice, with refiling conditioned upon Boones' receipt of permission from the Fifth Circuit to file a successive petition.

Boones received a copy of this Report on January 15, 2014, but filed no objections thereto; 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 proposed 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 reviewed the pleadings and records in this cause as well as the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. See United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 6) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus is hereby DISMISSED without prejudice, with the condition that he may not refile his petition until such time as he receives permission from the Fifth Circuit Court of Appeals to file a second or successive petition. It is further

ORDERED that the Petitioner Isaiah Boones is hereby DENIED a certificate of appealability *sua sponte*. The denial of this certificate of appealability relates only to an appeal of the decision in this case and shall have no effect upon Boones' right to seek permission from the Fifth Circuit to

file a second or successive petition, or his right to fully pursue his claims once such permission is obtained. Finally, it is

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

So ORDERED and SIGNED this 19th day of March, 2014.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**