

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

DEAN ALLEN TUCKER §  
v. § CIVIL ACTION NO. 6:14cv638  
UNITED STATES OF AMERICA § Crim. No. 6:12cr89

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

The Movant Dean Allen Tucker, proceeding *pro se*, filed this motion to vacate or correct his sentence under 28 U.S.C. §2255, complaining of the validity 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.

After review of the pleadings and an evidentiary hearing, the magistrate judge issued a report recommending that Tucker be allowed an opportunity to appeal his conviction through the reinstating of the judgment of conviction in his criminal case. The magistrate judge also recommended that the motion to vacate or correct sentence be dismissed without prejudice.

No objections were filed to the magistrate judge's report; accordingly, the parties are 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 examined the pleadings in this cause and the report of the magistrate judge and has concluded that this report 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 (ECF TXED 6:14-cv-638, 19) is **ADOPTED** as the opinion of the District Court. It is further

**ORDERED** that the above-styled motion to vacate or correct sentence is **DISMISSED WITHOUT PREJUDICE**. It is further

**ORDERED** that the Final Judgment entered in United States v. Tucker, Crim. No. 6:12cr89 (docket no. 36), is **VACATED** and the Clerk shall re-enter the Final Judgment. United States v. West, 240 F.3d 456, 459 (5th Cir. 2001); Bowey v. United States, Civil Action No. 6:10cv13, Crim. No. 6:08cr80 (E.D.Tex.). It is further

**ORDERED** that Deborah Race is appointed to represent the Movant Dean Allen Tucker on appeal. Finally, it is

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

**It is SO ORDERED.**

**SIGNED this 8th day of September, 2015.**

  
MICHAEL H. SCHNEIDER  
UNITED STATES DISTRICT JUDGE