

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

BARRY MINNFEE §
v. § CIVIL ACTION NO. 6:15cv566
UNITED STATES OF AMERICA §

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

The Movant Barry Minnfee, proceeding *pro se*, filed this motion to vacate or correct sentence under 28 U.S.C. §2255 complaining about a conviction from the U.S. District Court for the Southern District of Texas. This Court ordered that the case 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, the magistrate judge issued a report stating that a §2255 motion must be filed with the sentencing court, and such a motion filed with another court may be dismissed for want of jurisdiction. The magistrate judge also observed that Minnfee is well known as a frivolous and malicious litigant who has filed over 130 lawsuits and petitions in the federal district courts within the State of Texas. Minnfee has repeatedly incurred sanctions as a result of his litigious activity, some of which have been satisfied and some of which have not. The magistrate judge therefore recommended that Minnfee's petition be dismissed for want of jurisdiction and as barred by those sanctions which as yet are unsatisfied.

A copy of this report was sent to Minnfee 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 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 in this cause and 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. 3) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the above-styled civil action is **DISMISSED** for want of jurisdiction and as barred by the unsatisfied sanctions previously imposed upon Minnfee. Such dismissal is with prejudice as to the refiling of this motion to vacate in the Eastern District of Texas, but without prejudice to the refiling of this motion to vacate in a court of proper jurisdiction once all sanctions have been satisfied. It is further

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

SIGNED this 6th day of November, 2015.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE