

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

No. 6:22-cv-00445

Edward Todd Jacobs,

Movant,

v.

United States of America,

Respondent.

ORDER

Movant Edward Todd Jacobs, proceeding pro se, filed this motion to vacate or correct sentence under 28 U.S.C. § 2255, complaining that his sentence does not comport with his sentencing agreement. The case has been referred to United States Magistrate Judge K. Nicole Mitchell. Doc. 2.

Respondent filed a motion to dismiss this proceeding on the grounds that movant had previously sought relief under § 2255 and had not secured permission from the Fifth Circuit Court of Appeals to file a successive petition. Doc. 7. Movant did not file a response to this motion. On December 1, 2023, the magistrate judge issued a report recommending that the motion to dismiss be granted and the motion to vacate or correct sentence be dismissed without prejudice for want of jurisdiction. Doc. 8.

A copy of this order was sent to movant's last known address, but no objections have been received. The Fifth Circuit has explained that where a letter is properly placed in the United States mail, a presumption exists that the letter reached its destination in the usual time and was actually received by the person to whom it was addressed. *Faciane v. Sun Life Assurance Co. of Canada*, 931 F.3d 412, 420–21 & n.9 (5th Cir. 2019).

When there have been no timely objections to a magistrate judge's report and recommendation, the court reviews it only for clear error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1420 (5th Cir. 1996). Having reviewed the magistrate judge's

report, and being satisfied that it contains no clear error, the court accepts its findings and recommendation. The above-styled motion to vacate or correct sentence is dismissed without prejudice for want of jurisdiction.

So ordered by the court on May 9, 2024.



J. CAMPBELL BARKER
United States District Judge