

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

JOSE SOLIS-SERNA, #16245-078 §

VS. § CIVIL ACTION NO. 9:10cv100
UNITED STATES OF AMERICA § CRIM NO. 09-CR00002-001

ORDER ADOPTING REPORT AND RECOMMENDATION

Petitioner Jose Solis-Serna, an inmate confined in federal prison, proceeding *pro se*, filed the above-styled and numbered motion to vacate, set aside or correct his federal sentence pursuant to 28 U.S.C. § 2255. The motion was referred to United States Magistrate Judge Judith K. Guthrie, who issued a Report and Recommendation concluding that the motion to dismiss (docket entry #6) by the Respondent United States should be granted and the Petitioner's motion should be denied and dismissed with prejudice. Further, the Magistrate Judge recommended that a certificate of appealability should be denied. Petitioner has filed written objections (docket entry #10).

Having made a *de novo* review of the objections raised by Petitioner to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Petitioner's objections are without merit. Specifically, Petitioner's objections consist of little more than a repetition of the arguments he raised in his response (docket entry #7) to the Respondent's motion to dismiss. He therefore already fully argued there that the waiver of appeal to which he agreed when he accepted the plea agreement in his case did not preclude him from filing his habeas motion on the issue of ineffective assistance of counsel. He also argued that his habeas motion

should receive the benefit of equitable tolling. The Magistrate Judge addressed both of these issues in detail in her Report and Recommendation, finding that Petitioner's waiver of appeal did in fact preclude his claims in his instant habeas motion and that equitable tolling did not apply in this case. Petitioner objections simply restate the same arguments. The Court finds them to be without merit.

It is therefore

ORDERED that Petitioner's objections (docket entry #10) are **OVERRULED** and Respondent United States's motion to dismiss (docket entry #6) be **GRANTED**. It is further **ORDERED** that the Petitioner's motion to vacate, set aside or correct his federal sentence pursuant to 28 U.S.C. § 2255 is **DENIED** and **DISMISSED WITH PREJUDICE**. It is further **ORDERED** that a certificate of appealability is hereby **DENIED**.

So **ORDERED** and **SIGNED** this **27** day of **June, 2011**.



Ron Clark
Ron Clark, United States District Judge