

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA,
Plaintiff

v.

CRAIG BETHEA,
Defendant

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File No. 1:07-cr-3-jgm-1

ORDER

The Magistrate Judge's Report and Recommendation ("R&R") was filed July 13, 2011. (Doc. 110.) The R&R was not mailed to Craig Bethea until after the August 1, 2011 deadline for filing objections, and his Objection was filed August 25, 2011. (Doc. 111.)

After de novo review and over objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. See 28 U.S.C. § 636(b)(1). Craig Bethea's motion to vacate, set aside, or correct his sentence (Doc. 105) is DENIED.

Pursuant to Fed. R. App. P. 22(b), the Court DENIES petitioner a certificate of appealability ("COA") because the petitioner failed to make a substantial showing of a denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). The Court rejects the petition on its merits because the defendant has failed to demonstrate that reasonable jurists would find the Court's "assessment of the constitutional claims debatable or wrong." See Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595, 1603-04 (2000).

Further, because the petition is also dismissed on procedural grounds, the petitioner cannot be issued a COA due to his failure to demonstrate that "jurists of

reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” Id..

It is further certified that any appeal taken in forma pauperis from this Order would not be taken in good faith because such an appeal would be frivolous. See 28 U.S.C. § 1915(a).

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 15th day of September, 2011.

/s/ J. Garvan Murtha

Honorable J. Garvan Murtha
United States District Judge