

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA	:	
	:	
v.	:	Case No. 1:11-cr-110-jgm
	:	
PAUL HENDLER,	:	
	:	
Defendant.	:	
	:	

RULING ADOPTING REPORT AND RECOMMENDATION

The Magistrate Judge's thorough and well-reasoned Report and Recommendation was filed June 13, 2017. (Doc. 96.) Upon review and absent objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED.¹ See 28 U.S.C. § 636(b)(1). Paul Hendler's motion filed under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence and his motion for a hearing are DENIED.

Specifically, Hendler's claim of ineffective assistance of counsel with regard to restitution and to forfeiture are denied because such claims are not cognizable under § 2255. As the Magistrate Judge cogently explained, § 2255 allows petitioners to challenge only the custodial elements of a sentence and neither restitution nor forfeiture amount to custody in this case. See Doc. 96 at 28-30, 41-42.

Further, a certificate of appealability under 28 U.S.C. § 2253(c) and Fed. R. App. P. 22(b) is also DENIED because Hendler has failed to make a substantial showing for denial of a federal right, and because his grounds for relief do not present issues that are debatable among jurists of reason, which could have been resolved differently, or which deserve further proceedings. Slack v. McDaniel, 529 U.S. 473, 484 (2000).

¹The Court notes the IRS determined Hendler defrauded Green Mountain Digital of \$14,485. See Doc. 96 at 5.

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 18th day of July, 2017.

/s/ J. Garvan Murtha
Hon. J. Garvan Murtha
United States District Judge