

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

WRIGHT BOWEN,

Petitioner,

v.

// CIVIL ACTION NO. 1:16CV201  
CRIMINAL ACTION NO. 1:13CR55-16  
(Judge Keeley)

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 4], DENYING  
MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE PURSUANT TO  
§ 2255 [DKT. NO. 1], AND DISMISSING THIS CASE WITHOUT PREJUDICE

On October 21, 2016, the pro se petitioner, Wright Bowen ("Bowen"), filed a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence ("Petition") (Dkt. No. 1). In the Petition, Bowen argues that he is entitled to a four-level sentence reduction based on retroactive application of amendments to United States Sentencing Guideline § 3B1.2, which pertains to mitigating roles (Dkt. Nos. 1 at 5; 1-1 at 1). Pursuant to 28 U.S.C. § 636 and LR PL P 2, the Court referred the Petition to the Honorable James E. Seibert, United States Magistrate Judge, for initial review.

On October 26, 2016, Magistrate Judge Seibert filed a Report and Recommendation ("R&R") recommending that the Court deny the Petition and dismiss it without prejudice (Dkt. No. 4 at 4). He concluded that Bowen's Petition is "grossly untimely," and that Bowen can only seek the retroactive benefit of a guideline amendment through a motion pursuant to 18 U.S.C. § 3582. Id. at 2-

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3. The R&R also informed Bowen of his right to file any objections to the recommendations within 14 days following his receipt of the R&R. Id. at 4-5. Bowen received the R&R on October 31, 2016 (Dkt. No. 5), but did not file objections. Rather, he filed a response agreeing with Magistrate Judge Seibert's analysis and acknowledging that he must seek relief pursuant to § 3582 (Dkt. No. 6 at 1).<sup>1</sup>

When reviewing a magistrate judge's R&R made pursuant to 28 U.S.C. § 636, the Court must review de novo only the portions of the R&R to which an objection is timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations to which the prisoner does not object." Dellacirprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Indeed, failure to file specific objections waives appellate review of both factual and legal questions. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). Because Bowen has not filed any objections, and has otherwise agreed with Magistrate Judge Seibert's recommendation, the Court's review of the R&R is for clear error.

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<sup>1</sup> In addition to this response, Bowen filed a motion pursuant to § 3582, which the Clerk docketed in his criminal case (Crim. No. 1:13cr55-16, Dkt. No. 861).

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Upon review of the R&R and the record, the Court adopts the opinion of the Magistrate Judge for the reasons discussed in the R&R (Dkt. No. 4). Therefore, the Court:

1. **ADOPTS** the R&R (Dkt. No. 4);
2. **DENIES** the Petition (Dkt. No. 1); and
3. **DISMISSES** this case **WITHOUT PREJUDICE** and **ORDERS** that it be **STRICKEN** from the active docket of this Court.

It is so **ORDERED**.

The Court **DIRECTS** the Clerk to enter a separate judgment order and to transmit copies of both orders to counsel of record and the pro se petitioner by certified mail, return receipt requested.

DATED: April 6, 2017.

/s/ Irene M. Keeley  
IRENE M. KEELEY  
UNITED STATES DISTRICT JUDGE