

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

MONICA LORRAINE AMAKER,

Movant,

v.

CIVIL ACTION NO. 1:16-05512
(CRIMINAL ACTION NO. 2:05-00149)

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

By Standing Order, this matter was referred to United States Magistrate Judge Omar J. Aboulhosn for submission of proposed findings and recommendations ("PF&R") for disposition pursuant to 28 U.S.C. § 636(b)(1)(B). (Doc. No. 255.)

Magistrate Judge Aboulhosn submitted to the court his PF&R on February 15, 2017, in which he recommended that the court deny Movant's "Request for Permission to File a Successive § 2255 Pursuant to Johnson v. United States, 135 S. Ct. 2551 (2015) and Welch v. United States, No. 15-6418, S. Ct. April 18, 2016" (Civil Action No. 1:16-05512, Doc. No. 254 and Criminal Action No. 2:05-00149, Doc. No. 107); and remove this matter from the Court's docket unless Movant can demonstrate within the period of time allotted for objecting to this PF&R that the Motion was filed within the proper time period or circumstances

exist which would permit equitable tolling of the limitation period.

In accordance with 28 U.S.C. § 636(b), the parties were allotted seventeen days in which to file any objections to the Magistrate Judge's PF&R. The failure of any party to file such objections within the time allotted constitutes a waiver of such party's right to a de novo review by this court. See Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989). Neither party filed any objections to the Magistrate Judge's PF&R within the required time period.

Accordingly, the court adopts Magistrate Judge Aboulhosn's PF&R as follows:

- 1) Movant's "Request for Permission to File a Successive § 2255 Pursuant to Johnson v. United States, 135 S. Ct. 2551 (2015) and Welch v. United States, No. 15-6418, S. Ct. April 18, 2016" (Civil Action No. 1:16-05512, Doc. No. 254 and Criminal Action No. 2:05-00149, Doc. No. 107) is **DENIED**; and
- 2) The Clerk is directed to remove this matter from the docket of the court.

Additionally, the court has considered whether to grant a certificate of appealability. See 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial

showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336–38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683–84 (4th Cir. 2001). The court concludes that the governing standard is not satisfied in this instance. Accordingly, the court **DENIES** a certificate of appealability.

The Clerk is further directed to forward a copy of this Memorandum Opinion and Order to counsel of record and to Movant.

It is **SO ORDERED** this 20th day of March, 2017.

ENTER:



David A. Faber

Senior United States District Judge