

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

CALVIN DOUGLAS DYESS,

Petitioner,

v.

Civil Action No: 2:12-03624

Criminal Action No: 2:99-00012-01

UNITED STATES OF AMERICA,

Respondent.

**MEMORANDUM OPINION AND ORDER**

Pending before the court is petitioner's motion to vacate, set aside, or correct a sentence by a person in federal custody pursuant to 28 U.S.C. § 2255. (Doc. No. 1242). By Standing Order, this matter was referred to United States Magistrate Judge Dwayne L. Tinsley for submission of findings and recommendations regarding disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). (Doc. No. 1310). Magistrate Judge Tinsley submitted to the court his Proposed Findings and Recommendation on June 19, 2015, in which he recommended that the district court dismiss petitioner's motion and remove this matter from the court's docket. (Doc. No. 1313).

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted fourteen days, plus three mailing days, in which to file any objections to Magistrate Judge Tinsley's Findings and Recommendation. The failure to file such

objections constitutes a waiver of the right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989). Petitioner moved the court for an extension of time to file objections and the court granted his request for an extension, ordering him to submit any objections by August 7, 2015.

Petitioner failed to file any objections to the Magistrate Judge's Findings and Recommendation within the prescribed period. Having reviewed the Findings and Recommendation filed by Magistrate Judge Tinsley, the court adopts the findings and recommendation contained therein.


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." Id. § 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 court hereby **DISMISSES** petitioner's motion to vacate, set aside, or correct a sentence by a person in federal custody, (Doc. No. 1242), and **DIRECTS** the Clerk to remove this case from the court's docket.

The Clerk is further directed to forward a copy of this Memorandum Opinion and Order to petitioner, pro se.

It is SO ORDERED this 18th day of August, 2015.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge