

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

EVAN DARNELL WAGNER,

Petitioner,

v.

CIVIL ACTION NO. 2:13-cv-03509
(Criminal No. 2:11-cr-00126)

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

Pending before the Court is Petitioner's Motion to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody pursuant to 28 U.S.C. § 2255, (ECF 35), as amended by Petitioner's arguments in his memorandum of law in support, (ECF 49) (together, the "§ 2255 Motion"). By Standing Order entered on September 2, 2010, and filed in this case on February 26, 2013, this action was referred to Magistrate Judge Mary E. Stanley for submission of proposed findings and a recommendation for disposition ("PF&R"). On April 8, 2013, the Clerk transferred the referral of this matter from Magistrate Judge Stanley to Magistrate Judge Dwane L. Tinsley. Magistrate Judge Tinsley filed his PF&R on December 17, 2015, in which he recommends that this Court deny the § 2255 Motion and dismiss this matter from the Court's docket. (ECF 50.)

The Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of de novo review and the Plaintiff's right to appeal this

Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). In addition, this Court need not conduct a de novo review when a party "makes general and conclusory objections that do not direct the Court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982).


Objections to the PF&R in this case were due by January 4, 2016. To date, no objections have been filed.

Accordingly the Court **ADOPTS** the PF&R, (ECF 50), **DENIES** the § 2255 Motion, (ECF 35 and 49), **DISMISSES** this action, and **DIRECTS** the Clerk to remove this case from the Court's docket.

IT IS SO ORDERED.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: January 14, 2016



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE