

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

BECKLEY DIVISION

STEVEN BENKO,

Petitioner,

v.

CIVIL ACTION NO. 5:15-cv-14802
(Criminal No. 5:14-cr-00144)

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

On November 6, 2015, the Petitioner filed a motion under 28 U.S.C. § 2255 to vacate, set aside or correct sentence (Document 37). By *Standing Order* (Document 38) entered on November 9, 2015, the matter was referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636.

On September 6, 2018, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 54) wherein it is recommended that this Court deny the Petitioner's § 2555 motion and dismiss this matter from the docket. As the result of deadline extensions, objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by January 21, 2019.

Neither party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*. 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 Petitioner'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).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the Petitioner's motion under 28 U.S.C. § 2255 to vacate, set aside or correct sentence (Document 37) be **DENIED**, and that this matter be **DISMISSED** from the Court's docket.

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

ENTER: January 24, 2019



IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA