

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

DAVID ANTOINE LUSTER,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

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Civil Action No.
5:03-CR-52 (HL)
28 U.S.C. § 2255

ORDER

Before the Court is the report and recommendation (Doc. 85) entered on April 13, 2010 of United States Magistrate Judge G. Mallon Faircloth, in which the Magistrate Judge recommends that Petitioner's Motion for Relief pursuant to Federal Rule of Civil Procedure rule 60(b)(5) (Doc. 82) be denied as moot, as frivolous, and for failure to state a claim.

The Petitioner has filed a response to the recommendation (Doc. 89) as permitted by 28 U.S.C. § 636(b)(1). The response, however, was filed over three months late. Nevertheless, the Court has reviewed the objection and made a *de novo* review of the portions of the recommendation to which Plaintiff objects.

After careful consideration, the Court accepts and adopts the findings, conclusions, and recommendations of the Magistrate Judge. Petitioner's Motion for Relief from Judgement (Doc. 82) is denied.

SO ORDERED, this the 29th day of September, 2010.

s/ Hugh Lawson
HUGH LAWSON, SENIOR JUDGE

lmc