

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

REGINALD LOWE, <div style="text-align: center;">Movant,</div> <div style="text-align: center;">v.</div> UNITED STATES OF AMERICA, <div style="text-align: center;">Respondent.</div> <hr style="width: 40%; margin-left: 0;"/>	: : : : : : : : : : :	Case No. 5:22-cr-6-TES-CHW-3 Proceedings Under 28 U.S.C. § 2255 Before the U.S. Magistrate Judge
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REPORT AND RECOMMENDATION

Pending before the Court is Reginald Lowe’s motion to withdraw his Section 2255 Motion. (Docs. 427, 435). Because Lowe’s Section 2255 motion substantively appeared to request relief pursuant to the recent sentencing guidelines amendment in 18 U.S.C. § 3582(c)(2) (Amendment 821), for which a Section 2255 motion would not be required, the Court ordered him either to withdraw or recast the Section 2255 motion. (Doc. 428). In response to the order, Lowe filed a motion to withdraw (Doc. 435) simultaneously with a motion to reduce sentence (Doc. 436), which was recently denied. (Doc. 438).

Because Lowe chose to withdraw his Section 2255 motion and proceed with seeking relief under Amendment 821, granting his motion to withdraw is proper and dismissing his Section 2255 motion without prejudice preserves his ability to pursue Section 2255 without the requirement to seek leave to file a second of successive petition. *See* 28 U.S.C. § 2255(h). A dismissal of the motion without prejudice will not affect Lowe’s ability to file a timely Section 2255 petition at a later date, as the Court of Appeals issued its mandate affirming Lowe’s sentence on January 17, 2024, and Lowe has several months left to file a motion within the one-year statute of limitations.

Therefore, it is **RECOMMENDED** that Lowe's motion to withdraw (Doc. 435) be **GRANTED** and that his Section 2255 motion (Doc. 427) be **DISMISSED without prejudice**.

OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, **WITHIN FOURTEEN (14) DAYS** after being served with a copy thereof. Any objection is limited in length to **TWENTY (20) PAGES**. *See* M.D. Ga. L.R. 7.4. The District Judge shall make a de novo determination of those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

The parties are further notified that, pursuant to Eleventh Circuit Rule 3-1, "[a] party failing to object to a magistrate judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice."

SO RECOMMENDED, this 3rd day of May, 2024.

s/ Charles H. Weigle
Charles H. Weigle
United States Magistrate Judge