

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARCUS RUSSELL,

Defendant.

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CRIMINAL ACTION NO.
1:16-CR-427-AT-JKL-15

ORDER

Before the Court is the Magistrate Judge's Report and Recommendation (R&R) [Doc. 1884] regarding Defendant Marcus Russell's Motion to Vacate under 28 U.S.C. § 2241 [Doc. 1881]. As the Magistrate Judge notes in the R&R, although the Clerk docketed the instant motion in Defendant's closed criminal proceedings, Mr. Russell previously submitted an identical document that the Clerk docketed as a habeas petition under § 2241 in a separate civil case, *Russell v. United States*, Civil Action No. 1:25-CV-1763-AT. The Magistrate Judge issued an R&R in that case recommending the Court dismiss the petition for lack of jurisdiction, on the basis that Mr. Russell did not demonstrate that the habeas remedy under 28 U.S.C. § 2255 is inadequate or ineffective to test the legality of his detention pursuant to § 2255(e). (*See* Doc. 2 in Case No. 1:25-CV-1763-AT).

The Magistrate Judge further declined to construe the petition as a § 2255 petition for several reasons, including that it was untimely, Defendant's plea agreement contained a collateral waiver, and his guilty plea waived his challenge to probable cause for his arrest. (*Id.* at 6 n.3). In the R&R now before the Court, the Magistrate Judge stated that his reasoning and conclusion remain the same with the respect to the identical motion filed in this case. [Doc. 1884 at 2].

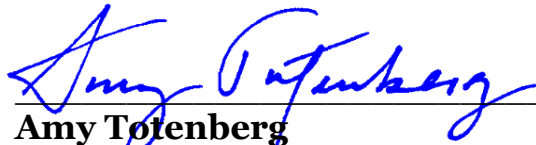
A district judge has broad discretion to accept, reject, or modify a magistrate judge's proposed findings and recommendations. *United States v. Raddatz*, 447 U.S. 667, 680 (1980). If no objections are made to an R&R, the Court reviews it for clear error. *See Macort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006).

Defendant has filed no objections in response to the Magistrate Judge's Report and Recommendation in this action. Therefore, in accordance with 28 U.S.C. § 636(b)(1) and Rule 72 of the Federal Rules of Civil Procedure, the Court has reviewed the Magistrate Judge's Recommendation for clear error and finds none. Accordingly, the Court **ADOPTS** the Report and Recommendation as the opinion of this Court. [Doc. 1884]. Defendant's Motion to Vacate [Doc. 1881] is **DENIED**.

The Court acknowledges that Defendant filed belated objections to the R&R filed in the civil § 2241 case after the case was closed. (*See* Doc. 6 in Case No. 1:25-CV-1763-AT). Therefore, notwithstanding the Court's denial of his

motion in this action, Mr. Russell should rest assured that the Court will consider his belated objections and issue a further order in the § 2241 case (*Russell v. United States*, Civil Action No. 1:25-CV-1763-AT) upon de novo review of the R&R there.

IT IS SO ORDERED this 5th day of June, 2025.



Amy Totenberg
United States District Judge