Appendix-A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-7268

WILLIAM BENJAMIN BROWN,

Petitioner - Appellant,

v.

WARDEN MANSUKHANI,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Beaufort. Mary G. Lewis, District Judge. (9:16-cv-03079-MGL)

Submitted: February 22, 2018 Decided: February 26, 2018

Before TRAXLER and DUNCAN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

William Benjamin Brown, Appellant Pro Se. Robert Frank Daley, Jr., Jimmie Ewing, Assistant United States Attorneys, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

William Benjamin Brown, a federal prisoner, appeals the district court's order accepting the recommendation of the magistrate judge and denying relief on his 28 U.S.C. § 2241 (2012) petition. We have reviewed the record and find no reversible error. Accordingly, although we grant leave to proceed in forma pauperis, we affirm for the reasons stated by the district court. *Brown v. Mansukhani*, No. 9:16-cv-03079-MGL (D.S.C. Aug. 30, 2017). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

Appendix-B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

WILLIAM BENJAMIN BROWN,	§	
	§	
Petitioner,	§	
	§	
vs.	§	Civil Action No. 9:16-03079-MGL-BM
	§	
WARDEN MANSUKHANI,	§	
	§	
Respondent.	§	
	§	

ORDER ADOPTING THE REPORT AND RECOMMENDATION
AND DISMISSING THE PETITION WITHOUT PREJUDICE

This action arises under 28 U.S.C. § 2241. Petitioner is proceeding pro se. This matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting the Petition be dismissed without prejudice. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1). The Court need not conduct a de novo review, however, "when a party makes general and conclusory objections that

do not direct the court to a specific error in the [Magistrate Judge's] proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982); *see* Fed. R. Civ. P. 72(b).

The Magistrate Judge filed the Report on July 27, 2017. ECF No. 45. On August 8, 2017, the Clerk of Court entered Petitioner's objections to the Report (Petitioner's Memorandum). ECF No. 47. The Court has carefully considered the objections but holds them to be without merit. Therefore, it will enter judgment accordingly.

"A document filed *pro se* is 'to be liberally construed.'" *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). Courts are not, however, required to "conjure up questions never squarely presented to them" or seek out arguments for a party. *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985).

Even when construed liberally and in the light most favorable to Petitioner, Petitioner's Memorandum fails to set forth any specific objections to the Report. Any meaningful counter to the well-reasoned conclusions in the Report is absent. "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985).

Rather than setting forth specific objections to the Report, the majority of Petitioner's Memorandum rehashes arguments already analyzed and rejected by the Magistrate Judge, and the Court rejects such arguments for the same reasons articulated in the Report. Petitioner also appears to argue in his Memorandum that Respondent neglected to address issues raised by this

Court in its April 26, 2017, Order. Like the rest of Petitioner's Memorandum, however, this argument fails to direct the Court to a specific error in the Report. Moreover, this Court's April 26, 2017, Order is directed to the Magistrate Judge, not Respondent. ECF No. 17.

Petitioner further requests in his Memorandum for the Court to review his previous filings in this case. In an overabundance of caution, the Court has conducted a de novo review of the entire record. After having done so, the Court remains convinced dismissing the Petition without prejudice is proper.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court adopts the Report and incorporates it herein. Therefore, it is the judgment of the Court the Petition is **DISMISSED WITHOUT PREJUDICE**. Any pending motions are, thus, **RENDERED MOOT**.

To the extent Petitioner requests a certificate of appealability from this Court, that certificate is **DENIED**.

IT IS SO ORDERED.

Signed this 30th day of August 2017 in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES
DISTRICT JUDGE

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NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within sixty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

FILED: May 21, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-7268
(9:16-cv-03079-MGL)

WILLIAM BENJAMIN BROWN

Petitioner - Appellant

v.

WARDEN MANSUKHANI

Respondent - Appellee

ORDER

The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Traxler, Judge Duncan and Senior Judge Hamilton.

For the Court

/s/ Patricia S. Connor, Clerk

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

William Benjamin Brown, Petitioner, vs. Warden Mansukhani, Respondent.	C/A No. 9:16-3079-MGL-BM **REPORT AND RECOMMENDATION**

The pro se Petitioner, William Benjamin Brown, brings this application for writ of habeas corpus (Petition) pursuant to 28 U.S.C. § 2241. Petitioner is an inmate at FCI-Estill.

After a review of Petitioner's filings, the undersigned issued a Report and Recommendation on April 10, 2017, that this action should be dismissed, without prejudice, and without service of process. See Court Docket No. 13. Subsequently, on April 26, 2017, the Honorable Mary G. Lewis, United States District Judge, issued an Order remanding this matter to the undersigned in light of the position the government took in Surratt v. United States, 797 F.3d 240 (4th Cir. 2015)(vacated)(case then rendered moot by Order filed by the Fourth Circuit on April 21, 2017) and Surratt v. United States, No. 3-12-cv-513, 2014 WL 2013328 (W.D.N.C. May 16, 2014), concerning § 2241 petitions. See Court Docket No. 17. Thereafter, on June 16, 2017, the Respondent filed a Motion to Dismiss. As the Petitioner is proceeding pro se, a Roseboro order was entered by the Court on June 19, 2017, advising Petitioner of the importance of a dispositive motion

and of the necessity for him to file an adequate response. Petitioner was specifically advised that if he failed to respond adequately, the Respondent's motion may be granted, thereby ending his case.

On June 27, 2017, after Petitioner filed a notice stating that he had not received the Respondent's motion to dismiss, the Respondent filed a second certificate of service reflecting that the Motion to Dismiss had been remailed to the Petitioner. On June 28, 2017, Petitioner filed a memorandum in opposition to Respondent's motion to dismiss, requesting that the Motion be stricken for failure to initially serve it. On June 29, 2017, the undersigned directed the Respondent to reserve his motion and file a certificate of service with the Court, which Respondent filed on July 6, 2017. Petitioner filed another motion to strike on July 7, 2017, and then filed a response in opposition to the motion to dismiss on July 14, 2017.[1] The Respondent filed a Reply on July 26, 2017.

This matter is now before the Court for disposition.[2]

Background

On March 3, 2011, Petitioner was indicted in a superseding three-count indictment charging him with Failure to Register as a Sex Offender in violation of 18 U.S.C. § 2250(a), and for being a Felon in Possession of Firearms and Ammunition in violation of 18 U.S.C. §§ 922(g)(1) and 924. United States v. Brown, No. 6:11-cr-00001-BAE-GRS-1 (S.D.Ga). On July 6, 2011, he entered into a written plea agreement, which contained a waiver, stipulating that he would plead guilty to Counts One and Three of the Indictment with the Government agreeing to dismiss Count Two.

[1]In Petitioner's response to the motion to dismiss, he also requests the Court to consider his earlier filings and the arguments contained therein.

[2]This case was automatically referred to the undersigned United States Magistrate Judge for all pretrial proceedings pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rule 19.02(B)(2)(c), D.S.C. The Respondent has filed a motion to dismiss. As this is a dispositive motion, this Report and Recommendation is entered for review by the Court.

Petitioner thereafter pled guilty and was sentenced in December 2011 to 180 months imprisonment. The Eleventh Circuit Court of Appeals denied Petitioner's appeal, finding that Petitioner's "plea agreement is valid, and he has waived his right to appeal his conviction and sentence - therefore, we need not consider his Eighth Amendment claim." See Brown v. United States, No. CV613-038, CR 6:11-001, 2013 WL 3831649, at *1-*2 (S.D.Ga. July 23, 2013), adopted by, 2013 WL 3967352 (S.D.Ga. Aug. 1, 2013).

On April 10, 2013, Petitioner filed a § 2255 motion in the United States District Court for the District of Georgia in which he asserted that: (1) he was not a convicted felon, despite a string of felonies including multiple rapes and breaking and entering, since the laws of Michigan restored his status after serving a period of incarceration for a prior felony; (2) the government breeched the plea agreement by failing to present certain evidence at sentencing; (3) he never had three prior convictions under the Armed Career Criminal Act; (4) the government failed to respond properly to a discovery motion; and (5) he received ineffective assistance of counsel in several ways, including a failure of advice as to the plea. Id. at *2 n. 3. The district court held that "the Court is satisfied that [Petitioner] 'understood the full significance of the waiver'"; found that while Petitioner couched many of his claims as jurisdictional, they were not, and that Petitioner "[m]erely misconstruing his criminal history is a non-jurisdictional defect that was waived by [Petitioner's] guilty plea"; and declined to address certain parts of Petitioner's claim of ineffective assistance of counsel. Brown, 2013 WL 3831649, at *2-*3. The Eleventh Circuit denied Petitioner's motion for a Certificate of Appealability and denied his motion to reconsider on March 14, 2014. See Brown v. Mansukhani, No. 9:14-cv-1355-MGL-BM, 2015 WL 2452768, at *3 (D.S.C. May 22, 2015), aff'd 621 F. App'x 200 (4th Cir. 2015).

In April 2014, Petitioner filed a § 2241 petition in this court in which he raised claims that: (1) he was actually innocent of Count One of the Indictment because the Southern District of Georgia lacked subject matter jurisdiction over his suit; (2) the Government breached his written Plea Agreement by seeking an armed career enhancement based on his prior convictions; (3) the indictment did not have the elements of § 924(e) and the Government did not provide the proper Shepard[3] documents to prove the prior convictions; (4) the Government committed a discovery violation by failing to disclose evidence favorable to him upon his request; and (5) counsel was ineffective for allegedly never reviewing the plea agreement with him and supposedly not investigating the correctness of the certified copies of his prior convictions from Michigan. Brown v. Mansukhani, No. 9:14-cv-1355-MGL-BM. The undersigned recommended that Respondent's motion for summary judgment in that case be granted and the petition be dismissed based on a lack of jurisdiction, as Petitioner had not set forth any set of facts which could be construed to meet the criteria for relief announced in In re Jones, 226 F.3d 328, 333–34 (4th Cir. 2000). Specifically, it was noted that Petitioner had not shown any substantive change in the law since his sentence, and that his unsupported statements that he was actually innocent of the crimes for which he was convicted and sentenced were factually inadequate and without merit. The Honorable Mary G. Lewis, United States District Judge, adopted the report and recommendation and dismissed the petition, and the Fourth Circuit affirmed. Brown v. Mansukhani, 2015 WL 2452768, at *1, aff'd, 621 Fed.Appx. 200 (4th Cir. 2015), cert. denied, 136 S.Ct. 1389 (2016).

In his current § 2241 Petition, Petitioner again contends that he is actually innocent and that the Southern District of Georgia lacked jurisdiction over his criminal cases.

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[3]Shepard v. United States, 544 U.S. 13 (2005).

Discussion

"It is well established that defendants convicted in federal court are obliged to seek habeas relief from their convictions and sentences through § 2255," not through a Petition filed pursuant to § 2241. Rice v. Rivera, 617 F.3d 802, 807 (4th Cir. 2010) (citing In re Vial, 115 F.3d 1192, 1194 (4th Cir. 1997)). Hence, Petitioner cannot challenge his federal conviction and sentence under § 2241 unless he can satisfy the § 2255 savings clause, which provides:

> An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

28 U.S.C. § 2255(e); see also Reyes–Requena v. United States, 243 F.3d 893, 901 (5th Cir. 2001); Ennis v. Olsen, 238 F.3d 411 (4th Cir. 2000). Notably, "[t]he remedy afforded by § 2255 is not rendered inadequate or ineffective merely because an individual has been unable to obtain relief under that provision, or because an individual is procedurally barred from filing a § 2255 motion." In re Vial, 115 F.3d at 1194 n. 5. In Petitioner's case, he has previously sought to bring basically these same claims in previous §§ 2241 and 2255 petitions and/or through his direct appeal, and although these previous petitions were not granted, Petitioner has not shown that he was unable to pursue his claims through his § 2255 petition. Rather, he is simply dissatisfied with the result of that proceeding because it did not produce his desired outcome.

As for Petitioner's present § 2241 Petition, the Fourth Circuit has set forth a three-part test to determine whether a petition challenging the lawfulness of a conviction or sentence can be brought under § 2241:

> Section 2255 is inadequate and ineffective to test the legality of a conviction when: (1) at the time of the conviction, settled law of this circuit or the Supreme Court established the legality of the conviction; (2) subsequent to the prisoner's direct appeal and first § 2255 motion, the substantive law changed such that the conduct of which the prisoner was convicted is deemed not to be criminal; and (3) the prisoner cannot satisfy the gatekeeping provisions of § 2255 because the new rule is not one of constitutional law.

In re Jones, 226 F.3d at 333–334. This test was formulated expressly to provide a remedy for the "fundamental defect presented by a situation in which an individual is incarcerated for conduct that is not criminal but, through no fault of his own, he has no source of redress." Id. at 333 n. 3. However, Petitioner has failed to meet this standard in his current Petition.

First, Petitioner has not shown that a change in the substantive law occurring subsequent to his direct appeal and prior § 2255 petition has rendered the conduct for which he was convicted no longer criminal and that would permit him to seek relief pursuant to § 2241. Petitioner argues that his failure to register as a sex offender conviction is no longer deemed to be criminal based on a change in substantive law announced by the Sixth Circuit Court of Appeals in Does #1-5 v. Snyder, 834 F.3d 696 (6th Cir. 2016), in which registered sex offenders brought an action challenging the constitutionality of the Michigan Sex Offenders Registration Act (Michigan SORA). However, Snyder has not provided a substantive change in the law with respect to Petitioner's conviction, as his conviction is pursuant to the federal Sex Offender Registration and Notification Act (SORNA), 42 U.S.C. §§ 16901-16962 and 18 U.S.C. § 2250, not pursuant to the Michigan SORA law addressed in Snyder.[4] SORNA, enacted in July 2006, was made retroactively applicable

[4]Moreover, if Petitioner believes that Snyder entitles him to sentencing relief, he must seek permission from the Eleventh Circuit to file a successive § 2255 motion in the Southern District of Georgia. See 28 U.S.C. § 2244 [requiring a Petitioner to obtain permission from the Court of Appeals before filing a successive § 2255 motion]; 28 U.S.C. § 2255(h).

"to all sex offenders." See 28 C.F.R. § 72.3;[5] see also United States v. Kebodeaux, 133 S. Ct. 2496, 2500 (2013).

SORNA provides that a sex offender "shall register, and keep the registration current, in each jurisdiction where the offender resides..."; 42 U.S.C. § 16913(a); and SORNA's applicability to "pre-Act" offenders has been upheld by numerous courts. See, e.g., United States v. Lott, 750 F.3d 214, 216-220 (2d Cir. 2014); United States v. Cooper, 750 F.3d 263, 271–72 (3d Cir. 2014); United States v. Sampsell, 541 F. App'x 258, 259–60 (4th Cir. 2013); United States v. Goodwin, 717 F.3d 511, 516–17 (7th Cir. 2013); United States v. Elk Shoulder, 738 F.3d 948, 951-952 (9th Cir. 2013); United States v. Parks, 698 F.3d 1, 7–8 (1st Cir. 2012); United States v. Stock, 685 F.3d 621, 625 (6th Cir. 2012); United States v. Whaley, 577 F.3d 254, 262–64 (5th Cir. 2009); United States v. Ambert, 561 F.3d 1202, 1212–14 (11th Cir. 2009); United States v. Davis, 352 F. App'x 270, at *2 (10th Cir. 2009); but see United States v. Ross, 848 F.3d 1129 (D.C.Cir. 2017)[vacating defendant's conviction and finding that Act did not apply to pre-SORNA offenders at the time of the charged conduct because of the Attorney General's Administrative Procedures Act violations]. Numerous courts have also held that SORNA is a civil scheme that is not subject to the Ex Post Facto clause. See United

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[5]SORNA did not clarify whether its registration requirements applied to sex offenders with sex offense convictions that were prior to SORNA's enactment, but "gave the Attorney General the authority to specify the applicability of the requirements of this subchapter to sex offenders convicted before the enactment of this chapter ... and to prescribe rules for the registration of any such sex offenders." United States v. Manning, 786 F.3d 684, 685 (8th Cir. 2015); see 42 U.S.C. § 16913. "Pursuant to this delegation, the Attorney General in 2007 issued an interim rule ["Interim Rule"] providing that SORNA applies to pre-enactment convictions." Carr v. United States, 560 U.S. 438, 466 (2010). The Attorney General subsequently enacted regulations, known as the SMART Guidelines, in 2008. See 73 Fed.Reg. 38,030 (July 2, 2008). Thereafter, the Attorney General promulgated a Final Rule which became effective on January 28, 2011. See 75 Fed. Reg. 81,849 (Dec. 29, 2010)["By this rule, the Department of Justice is finalizing an interim rule specifying that the requirements of [SORNA] apply to all sex offenders, including sex offenders convicted of the offense for which registration is required before the enactment of that Act."].

States v. Talada, 631 F.Supp.2d 797, 806 (S.D.W.Va. 2009)[reviewing the Supreme Court's analysis of Alaska's Sex Offender Registration Act in Smith v. Doe, 538 U.S. 84 (2003), and comparing to SORNA, the federal equivalent]; see also Elk Shoulder, 738 F.3d at 953-54 [indicating the nonpunitive, and thus constitutional, nature of SORNA]; United States v. Shannon, 511 F. App'x 487, 492 (6th Cir. 2013)[rejecting an ex post facto challenge to SORNA]; United States v. Felts, 674 F.3d 599, 605–06 (6th Cir. 2012)[noting that the argument that the retroactive application of SORNA violated the Ex Post Facto Clause had been consistently rejected]; United States v. Young, 585 F.3d 199, 204 (5th Cir. 2009)[holding that "SORNA is a civil regulation and, thus, does not run afoul of the Constitution's ex post facto prohibitions"]; United States v. Lawrence, 548 F.3d 1329, 1333 (10th Cir. 2008)["SORNA is both civil in its stated intent and nonpunitive in its purpose, similar to the scheme in Smith, and therefore does not violate the Ex Post Facto Clause."].

Additionally, Petitioner has not stated a facially viable claim of "actual innocence" by presenting new, reliable evidence not presented in a prior proceeding. Petitioner does not dispute that he was convicted of sex offense(s); rather, he argues that he is actually innocent of a violation of § 922(g) because he contends that his civil rights were restored under Michigan law after he served his state sentences such that he was not required to register as a sex offender. In Froede v. Holland Ladder & Mfg. Co., 207 Mich.App. 127 (Mich. 1994), the state court held that a convicted felon's right to vote in Michigan is restored at the expiration of his sentence, while in Hampton v. United States, 191 F.3d 695, 702 (6th Cir.1999), the Sixth Circuit relied on cases interpreting an old version of Mich. Comp. Laws § 600.1307a(1)(e) in holding that "Michigan restores a felon's right to sit on a jury upon completion of his sentence." However, in response to Froede and Hampton, the Michigan legislature amended Mich. Comp. Laws § 600.1307a to provide, in relevant part, that "[t]o qualify

as a juror a person shall ... [n]ot have been convicted of a felony." Mich. Comp. Laws § 600.1307a(1)(e). This amendment became effective on October 1, 2003, and thus at the time of Petitioner's release from state custody in 2008 and his felon in possession charge on January 26, 2011, his civil rights had not been fully restored because he could not serve on a jury. See Mich. Comp. Laws § 600.1307a(1)(e) ["To qualify as a juror, a person shall ... [n]ot have been convicted of a felony."]. Because Petitioner could not serve on a jury, his civil rights had not been restored within the meaning of 18 U.S.C. § 921(a)(20).

Further, the Sixth Circuit has held that "the Froede rule" does not serve as a bar to felon-in-possession prosecutions under 18 U.S.C. § 922(g)(1) unless, separate and apart from the expiration of the defendant's sentence, a defendant who has been convicted of a specified felony[6] has made "application for the concealed weapons licensing board for the county in which he resides," as required under Michigan law, for "restoration of the right to possess firearms under Michigan law." See United States v. Ormsby, 252 F.3d 844, 850 (6th Cir. 2001); Mich. Comp. Laws §§ 28.424 and 750.224f. To the extent that Petitioner's prior offenses are for rape and/or breaking and entering of an occupied dwelling (see ECF No. 1-1 at 16-17), such offenses are specified felonies pursuant to Michigan Comp. Laws. See 750.224f(10)(e)["'specified felony' means a felony in which 1 or more of the following circumstances exist....[t]he felony is burglary of an occupied dwelling, or breaking and entering an occupied dwelling..."]; United States v. Williams, 134 F.Supp.2d 851, 853 (E.D.Mich. 2001)[first degree rape is a specified offense]; cf Lanham v. United States, No. 98-6167, 2001 WL 180973 at * 2 (6th Cir. Feb. 21, 2001)[Discussing that even "attempted commission of

[6]A "specified felony" is defined to include a felony which has as an element the use, attempted use, or threatened use of physical force against the person or property of another. See Mich. Comp. Laws § 750.224f(10)(a).

unlawful carnal knowledge of a female over sixteen" may qualify as a violent felony under Michigan law].

In a declaration filed on March 16, 2017, Petitioner argues that pursuant to United States v. Tait, 202 F.3d 1320 (11th Cir. 2000), Michigan law provides for all key civil rights to be restored to all convicted felons following release from custody and completion of probation. However, in Tait, the Eleventh Circuit noted that even if civil rights are restored, a petitioner does not automatically qualify for the exemption in § 921(a)(2), because this provision:

> contains an "unless" clause: the restoration of civil rights exempts a convicted felon from the prohibition against possessing a firearm "*unless* such ... restoration of civil rights expressly provides that the person may not ... possess ... firearms." 18 U.S.C. § 921(a)(20).

Tait, 202 F.3d at 1322. "[T]he law of the State of conviction, not federal law, determines the restoration of civil rights." Caron v. United States, 524 U.S. 308, 316 (1998). Hence, to the extent that Petitioner had a past conviction of a specified felony (as discussed above), he has not alleged that he had applied for and received the restoration of those rights[7] prior to the criminal behavior of which he now stands convicted, and thus has failed to demonstrate "actual innocence" of the 18 U.S.C. § 922(g)(1) charge. See, e.g., U.S. v. Samonek, Criminal No. 09–20225,Civil No. 12–14703, 2014 WL 2931829 (E.D.Mich. June 30, 2014).

Moreover, even if Petitioner does not have a specified felony as a past conviction, Michigan law generally restores a felon's right to possess firearms three years after the felon completes his term of imprisonment, conditions of probation, and finishes paying his fines. Mich. Comp. Laws Ann. § 750.224f(1). However, three years had not passed from the time Petitioner

[7]Individuals who have been convicted of specified felonies must submit an application to the concealed weapons licensing board in order to posses a firearm. Id. §§ 750.244f(2)(b), 28.424.

completed his state court term(s) of imprisonment (Petitioner states he completed his sentence on March 17, 2008 - see ECF No. 1 at 3) and the superceding indictment on the federal charges in question (on March 3, 2011, as discussed above), such that he cannot show that his right to possess firearms had been restored. By its very implication, Mich. Comp. Laws § 750.224f stands for the proposition that "even after a person's civil rights have been restored, Michigan law restricts a convicted person's right to possess firearms for a period of time after the sentence imposed for a particular crime has been served." United States v. Cooper, No. 08-20464, 2012 WL 12706, at *4 (E.D. Mich. Jan. 4, 2012), quoting Melton v. Hemingway, 40 F. App'x. 44, 45 (6th Cir. 2002).

The proceedings in Surratt, 797 F.3d 240, also do not support Petitioner bringing this action under § 2241. First, the panel decision in Surratt was vacated by the Fourth Circuit's granting of an *en banc rehearing* in that case. See Kilgore v. Meeks, No. 16-2052, 2017 WL 770575, at *3 (D.S.C. Feb. 28, 2017)[Finding that since the Fourth Circuit's grant of *rehearing en banc* vacated the panel's decision in United States v. Surratt, In re Jones remains the controlling law of the Fourth Circuit]; Parnell v. Meeks, No. 15-2817, 2015 WL 9694515at * n. (D.S.C. Dec. 9, 2015)[declining to consider the decision in Surratt, since the granting of rehearing in that case overruled the prior panel's opinion], *adopted by*, 2016 WL 128148 (D.S.C. Jan. 11, 2016); cf Barbour v. International Union, 640 F.3d 599, 604-605 (4th Cir. 2011)[referencing panel opinion being vacated when a majority of active circuit judges voted to rehear this case *en banc*], *abrogated on other grounds by*, 28 U.S.C. 1446(b)(2)(B); United States v. Moye, 454 F.3d 390, 394 (4th Cir. 2006); United States v. Cline, No. 02-1358, 2014 WL 11516334, at * 1 (D.S.C. Aug. 11, 2014)[finding Petitioner's reliance on a case which had been granted *rehearing en banc* did not provide him relief since the granting of rehearing vacated that previous panel judgement and opinion]; Viault v. United States,

609 F.Supp.2d 518, 526 n. 5 (E.D.N.C. 2009)[discussing case losing its precedential value pursuant to Fourth Circuit Local Rule 35(c) when vacated by the subsequent granting of *rehearing en banc* by the Fourth Circuit].

Additionally, the undersigned also notes that the Government's position in Surratt that Mr. Surratt could bring his petition under § 2241 does not affect Petitioner's ability to pursue his claim under § 2241. Specifically, the Fourth Circuit *en banc* held that the district court *must* still dismiss an unauthorized habeas motion for lack of jurisdiction, regardless of the Government's position. United States v. Surratt, 797 F.3d 240, 247 (4th Cir. 2015), reh'g en banc granted (Dec. 2, 2015)["'If a federal prisoner brings a § 2241 petition that does not fall within the scope of [the] "savings clause," then the district court *must* dismiss the "unauthorized habeas motion ... for lack of jurisdiction,' Rice v. Rivera, 617 F.3d 802, 807 (4th Cir.2010), even if the Government supports the prisoner's position."] (emphasis added).

Conclusion

Accordingly, it is recommended that the Petition in this action be **dismissed, without prejudice.**[8]

[8]Since Petitioner cannot pursue these claims under § 2241, the undersigned does not find that it would be appropriate to transfer the Petition in this case. If Petitioner seeks to bring another § 2255 to pursue his claims, he will first need to file for permission to so from the appropriate circuit court. In re Vial, 115 F.3d 1192, 1194 (4th Cir. 1997)["Under the AEDPA, an individual may not file a second or successive § 2254 petition for a writ of habeas corpus or [a 28 U.S.C.] § 2255 motion to vacate sentence without first receiving permission to do so from the appropriate circuit court of appeals."]; see also Felker v. Turpin, 518 U.S. 651 (1996).

The parties are referred to the Notice Page attached hereto.

Bristow Marchant
United States Magistrate Judge

July 27, 2017
Charleston, South Carolina

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
Post Office Box 835
Charleston, South Carolina 29402

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

Amendment 4

The right of the people to be secure in the persons, houses, papers, and effects, against unreasonable Searches and Seizures, Shall not be violated, and no Warrants Shall issue, but upon probable cause, Supported by Oath or affirmation, and particularly describing the place to be Searched, and the persons or things to be Seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in Cases arising in the land or Naval Forces, or in the Militia, when in actual Service in time of War or public danger; nor Shall any person be Subject for the same offense to be twice in Jeopardy of Life or limb; nor Shall be Compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty or property, without Due Process of Law; nor Shall private property be taken for public use, without just Compensation.

4-12-17

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

William Benjamin Brown,	)	C/A No. 9:16-3079-MGL-BM
Petitioner,	)	
vs.	)	
	)	**REPORT AND RECOMMENDATION**
Warden Mansukhani,	)	
Respondent.	)	

The pro se Petitioner, William Benjamin Brown, brings this application for writ of habeas corpus (Petition) pursuant to 28 U.S.C. § 2241. Petitioner is an inmate at FCI-Estill.

Under established local procedure in this judicial district, a careful review has been made of the pro se petition filed in this case pursuant to the procedural provisions of the Rules Governing Section 2254 Proceedings in the United States District Court,[1] 28 U.S.C. § 2254; the Anti–Terrorism and Effective Death Penalty Act (AEDPA) of 1996; and in light of the following precedents: Denton v. Hernandez, 504 U.S. 25 (1992); Neitzke v. Williams, 490 U.S. 319, 324–25 (1989); Haines v. Kerner, 404 U .S. 519 (1972); Nasim v. Warden, Md. House of Corr., 64 F.3d 951 (4th Cir.1995); and Todd v. Baskerville, 712 F.2d 70 (4th Cir.1983). Pro se petitions are held to a less stringent standard than those drafted by attorneys, and a court is charged with liberally construing a petition filed by a pro se litigant to allow the development of a potentially meritorious case. See Hughes v. Rowe, 449 U.S. 5, 9 (1980); Cruz v. Beto, 405 U.S. 319 (1972); Fine v. City of New York, 529 F.2d 70, 74 (2d Cir. 1975).

[1]See Rule 1(b) of Rules Governing Section 2254 Cases in the United States District Courts [the district court may apply any or all of these rules to a habeas corpus petition not filed pursuant to 28 U.S.C. § 2254].

However, even when considered under this less stringent standard, for the reasons set forth hereinbelow the petition submitted in the instant case is subject to summary dismissal. The requirement of liberal construction does not mean that this Court can ignore a clear failure in the pleading to allege facts which set forth a claim currently cognizable in a federal district court. See Weller v. Dep't of Soc. Serve., 901 F.2d 387 (4th Cir. 1990).

Background

On March 3, 2011, Petitioner was indicted in a superseding three-count indictment charging him with Failure to Register as a Sex Offender in violation of 18 U.S.C. § 2250(a), and for being a Felon in Possession of Firearms and Ammunition in violation of 18 U.S.C. §§ 922(g)(1) and 924. United States v. Brown, No. 6:11-cr-00001-BAE-GRS-1 (S.D.Ga). On July 6, 2011, he entered into a written plea agreement, which contained a waiver, stipulating that he would plead guilty to Counts One and Three of the Indictment with the Government agreeing to dismiss Count Two. Petitioner thereafter pled guilty and was sentenced in December 2011 to 180 months imprisonment. The Eleventh Circuit Court of Appeals denied Petitioner's appeal, finding that Petitioner's "plea agreement is valid, and he has waived his right to appeal his conviction and sentence - therefore, we need not consider his Eighth Amendment claim." See Brown v. United States, No. CV613-038, CR 6:11-001, 2013 WL 3831649, at *1-*2 (S.D.Ga. July 23, 2013), adopted by, 2013 WL 3967352 (S.D.Ga. Aug. 1, 2013).

On April 10, 2013, Petitioner filed a § 2255 motion in the United States District Court for the District of Georgia in which he asserted that: (1) he was not a convicted felon, despite a string of felonies including multiple rapes and breaking and entering, since the laws of Michigan restored his status after serving a period of incarceration for a prior felony; (2) the government breeched the

plea agreement by failing to present certain evidence at sentencing; (3) he never had three prior convictions under the Armed Career Criminal Act; (4) the government failed to respond properly to a discovery motion; and (5) he received ineffective assistance of counsel in several ways, including a failure of advice as to the plea. Id. at *2 n. 3. The district court held that "the Court is satisfied that [Petitioner] 'understood the full significance of the waiver'"; found that while Petitioner couched many of his claims as jurisdictional, they were not, and that Petitioner "[m]erely misconstruing his criminal history is a non-jurisdictional defect that was waived by [Petitioner's] guilty plea"; and declined to address certain parts of Petitioner's claim of ineffective assistance of counsel. Brown, 2013 WL 3831649, at *2-*3. The Eleventh Circuit denied Petitioner's motion for a Certificate of Appealability and denied his motion to reconsider on March 14, 2014. See Brown v. Mansukhani, No. 9:14-cv-1355-MGL-BM, 2015 WL 2452768, at *3 (D.S.C. May 22, 2015), aff'd 621 F. App'x 200 (4th Cir. 2015).

In April 2014, Petitioner filed a § 2241 petition in this court in which he raised claims that: (1) he was actually innocent of Count One of the Indictment because the Southern District of Georgia lacked subject matter jurisdiction over his suit; (2) the Government breached his written Plea Agreement by seeking an armed career enhancement based on his prior convictions; (3) the indictment did not have the elements of § 924(e) and the Government did not provide the proper Shepard[2] documents to prove the prior convictions; (4) the Government committed a discovery violation by failing to disclose evidence favorable to him upon his request; and (5) counsel was ineffective for allegedly never reviewing the plea agreement with him and supposedly not investigating the correctness of the certified copies of his prior convictions from Michigan. Brown

[2]Shepard v. United States, 544 U.S. 13 (2005).

v. Mansukhani, No. 9:14-cv-1355-MGL-BM. The undersigned recommended that Respondent's motion for summary judgment in that case be granted and the petition be dismissed based on a lack of jurisdiction, as Petitioner had not set forth any set of facts which could be construed to meet the criteria for relief announced in In re Jones, 226 F.3d 328, 333–34 (4th Cir. 2000). Specifically, it was noted that Petitioner had not shown any substantive change in the law since his sentence, and that his unsupported statements that he was actually innocent of the crimes for which he was convicted and sentenced were factually inadequate and without merit. The Honorable Mary G. Lewis, United States District Judge, adopted the report and recommendation and dismissed the petition, and the Fourth Circuit affirmed. Brown v. Mansukhani, 2015 WL 2452768, at *1.

In his current § 2241 Petition, Petitioner again contends that he is actually innocent and that the Southern District of Georgia lacked jurisdiction over his criminal cases.

Discussion

This action is subject to summary dismissal because "it is well established that defendants convicted in federal court are obliged to seek habeas relief from their convictions and sentences through § 2255," not through a Petition filed pursuant to § 2241. Rice v. Rivera, 617 F.3d 802, 807 (4th Cir. 2010) (citing In re Vial, 115 F.3d 1192, 1194 (4th Cir. 1997)). Petitioner cannot challenge his federal conviction and sentence under § 2241 unless he can satisfy the § 2255 savings clause, which provides:

> An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

28 U.S.C. § 2255(e); see also Reyes–Requena v. United States, 243 F.3d 893, 901 (5th Cir. 2001); Ennis v. Olsen, 238 F.3d 411 (4th Cir. 2000). Notably, "[t]he remedy afforded by § 2255 is not rendered inadequate or ineffective merely because an individual has been unable to obtain relief under that provision, or because an individual is procedurally barred from filing a § 2255 motion." In re Vial, 115 F.3d at 1194 n. 5.

The Fourth Circuit has set forth a three-part test to determine whether a petition challenging the lawfulness of a conviction or sentence can be brought under § 2241:

> Section 2255 is inadequate and ineffective to test the legality of a conviction when: (1) at the time of the conviction, settled law of this circuit or the Supreme Court established the legality of the conviction; (2) subsequent to the prisoner's direct appeal and first § 2255 motion, the substantive law changed such that the conduct of which the prisoner was convicted is deemed not to be criminal; and (3) the prisoner cannot satisfy the gatekeeping provisions of § 2255 because the new rule is not one of constitutional law.

In re Jones, 226 F.3d at 333–334. This test was formulated expressly to provide a remedy for the "fundamental defect presented by a situation in which an individual is incarcerated for conduct that is not criminal but, through no fault of his own, he has no source of redress." Id. at 333 n. 3. However, Petitioner has failed to meet this standard in his current Petition.

First, Petitioner has not shown that a change in the substantive law occurring subsequent to his direct appeal and prior § 2255 petition has rendered the conduct for which he was convicted no longer criminal and that would permit him to seek relief pursuant to § 2241. Petitioner argues that his failure to register as a sex offender conviction is no longer deemed to be criminal based on a change in substantive law announced by the Sixth Circuit Court of Appeals in Does #1-5 v. Snyder, 834 F.3d 696 (6th Cir. 2016), in which registered sex offenders brought an action challenging the constitutionality of the Michigan Sex Offenders Registration Act (Michigan SORA).

However, Snyder has not provided a substantive change in the law with respect to Petitioner's conviction, as his conviction is pursuant to the federal Sex Offender Registration and Notification Act (SORNA), 42 U.S.C. §§ 16901-16962 and 18 U.S.C. § 2250, not pursuant to the Michigan SORA law addressed in Snyder.[3] SORNA, enacted in July 2006, was made retroactively applicable "to all sex offenders." See 28 C.F.R. § 72.3;[4] see also United States v. Kebodeaux, 133 S. Ct. 2496, 2500 (2013).

SORNA provides that a sex offender "shall register, and keep the registration current, in each jurisdiction where the offender resides..."; 42 U.S.C. § 16913(a); and SORNA's applicability to "pre-Act" offenders has been upheld by numerous courts. See, e.g., United States v. Lott, 750 F.3d 214, 216-220 (2d Cir. 2014); United States v. Cooper, 750 F.3d 263, 271–72 (3d Cir. 2014); United States v. Sampsell, 541 F. App'x 258, 259–60 (4th Cir. 2013); United States v. Goodwin, 717 F.3d 511, 516–17 (7th Cir. 2013); United States v. Elk Shoulder, 738 F.3d 948, 951-952 (9th Cir.

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[3]Moreover, if Petitioner believes that Snyder entitles him to sentencing relief, he must seek permission from the Eleventh Circuit to file a successive § 2255 motion in the Southern District of Georgia. See 28 U.S.C. § 2244 [requiring a Petitioner to obtain permission from the Court of Appeals before filing a successive § 2255 motion]; 28 U.S.C. § 2255(h).

[4]SORNA did not clarify whether its registration requirements applied to sex offenders with sex offense convictions that were prior to SORNA's enactment, but "gave the Attorney General the authority to specify the applicability of the requirements of this subchapter to sex offenders convicted before the enactment of this chapter ... and to prescribe rules for the registration of any such sex offenders." United States v. Manning, 786 F.3d 684, 685 (8th Cir. 2015); see 42 U.S.C. § 16913. "Pursuant to this delegation, the Attorney General in 2007 issued an interim rule ["Interim Rule"] providing that SORNA applies to pre-enactment convictions." Carr v. United States, 560 U.S. 438, 466 (2010). The Attorney General subsequently enacted regulations, known as the SMART Guidelines, in 2008. See 73 Fed.Reg. 38,030 (July 2, 2008). Thereafter, the Attorney General promulgated a Final Rule which became effective on January 28, 2011. See 75 Fed. Reg. 81,849 (Dec. 29, 2010)["By this rule, the Department of Justice is finalizing an interim rule specifying that the requirements of [SORNA] apply to all sex offenders, including sex offenders convicted of the offense for which registration is required before the enactment of that Act."].

pb

2013); United States v. Parks, 698 F.3d 1, 7–8 (1st Cir. 2012); United States v. Stock, 685 F.3d 621, 625 (6th Cir. 2012); United States v. Whaley, 577 F.3d 254, 262–64 (5th Cir. 2009); United States v. Ambert, 561 F.3d 1202, 1212–14 (11th Cir. 2009); United States v. Davis, 352 F. App'x 270, at *2 (10th Cir. 2009); but see United States v. Ross, 848 F.3d 1129 (D.C.Cir. 2017)[vacating defendant's conviction and finding that Act did not apply to pre-SORNA offenders at the time of the charged conduct because of the Attorney General's Administrative Procedures Act violations]. Numerous courts have also held that SORNA is a civil scheme that is not subject to the Ex Post Facto clause. See United States v. Talada, 631 F.Supp.2d 797, 806 (S.D.W.Va. 2009)[reviewing the Supreme Court's analysis of Alaska's Sex Offender Registration Act in Smith v. Doe, 538 U.S. 84 (2003), and comparing to SORNA, the federal equivalent]; see also Elk Shoulder, 738 F.3d at 953-54 [indicating the nonpunitive, and thus constitutional, nature of SORNA]; United States v. Shannon, 511 F. App'x 487, 492 (6th Cir. 2013)[rejecting an ex post facto challenge to SORNA]; United States v. Felts, 674 F.3d 599, 605–06 (6th Cir. 2012)[noting that the argument that the retroactive application of SORNA violated the Ex Post Facto Clause had been consistently rejected]; United States v. Young, 585 F.3d 199, 204 (5th Cir. 2009)[holding that "SORNA is a civil regulation and, thus, does not run afoul of the Constitution's ex post facto prohibitions"]; United States v. Lawrence, 548 F.3d 1329, 1333 (10th Cir. 2008)["SORNA is both civil in its stated intent and nonpunitive in its purpose, similar to the scheme in Smith, and therefore does not violate the Ex Post Facto Clause."].

Additionally, Petitioner has not stated a facially viable claim of "actual innocence" by presenting new, reliable evidence not presented in a prior proceeding. Petitioner does not dispute that he was convicted of sex offense(s); rather, he argues that he is actually innocent of a violation

of § 922(g) because he contends that his civil rights were restored under Michigan law after he served his state sentences such that he was not required to register as a sex offender. In Froede v. Holland Ladder & Mfg. Co., 207 Mich.App. 127 (Mich. 1994), the state court held that a convicted felon's right to vote in Michigan is restored at the expiration of his sentence, while in Hampton v. United States, 191 F.3d 695, 702 (6th Cir.1999), the Sixth Circuit relied on cases interpreting an old version of Mich. Comp. Laws § 600.1307a(1)(e) in holding that "Michigan restores a felon's right to sit on a jury upon completion of his sentence." However, in response to Froede and Hampton, the Michigan legislature amended Mich. Comp. Laws § 600.1307a to provide, in relevant part, that "[t]o qualify as a juror a person shall ... [n]ot have been convicted of a felony." Mich. Comp. Laws § 600.1307a(1)(e). This amendment became effective on October 1, 2003, and thus at the time of Petitioner's release from state custody in 2008 and his felon in possession charge on January 26, 2011, his civil rights had not been fully restored because he could not serve on a jury. See Mich. Comp. Laws § 600.1307a(1)(e) ["To qualify as a juror, a person shall ... [n]ot have been convicted of a felony."]. Because Petitioner could not serve on a jury, his civil rights had not been restored within the meaning of 18 U.S.C. § 921(20).

Further, the Sixth Circuit has held that "the Froede rule" does not serve as a bar to felon-in-possession prosecutions under 18 U.S.C. § 922(g)(1) unless, separate and apart from the expiration of the defendant's sentence, a defendant who has been convicted of a specified felony[5] has made "application for the concealed weapons licensing board for the county in which he resides," as required under Michigan law, for "restoration of the right to possess firearms under

[5]A "specified felony" is defined to include a felony which has as an element the use, attempted use, or threatened use of physical force against the person or property of another. See Mich. Comp. Laws § 750.224f(10)(a).

Michigan law." See United States v. Ormsby, 252 F.3d 844, 850 (6th Cir. 2001); Mich. Comp. Laws §§ 28.424 and 750.224f. To the extent that Petitioner's prior offenses are for first degree rape and/or breaking and entering of an occupied dwelling (see ECF No. 1-1 at 16-17), such offenses are specified felonies pursuant to Michigan Comp. Laws. See 750.224f(10)(e)["'specified felony' means a felony in which 1 or more of the following circumstances exist....[t]he felony is burglary of an occupied dwelling, or breaking and entering an occupied dwelling..."]; United States v. Williams, 134 F.Supp.2d 851, 853 (E.D.Mich. 2001)[first degree rape is a specified offense].

In a declaration filed on March 16, 2017, Petitioner argues that pursuant to United States v. Tait, 202 F.3d 1320 (11th Cir. 2000), Michigan law provides for all key civil rights to be restored to all convicted felons following release from custody and completion of probation. However, in Tait, the Eleventh Circuit noted that even if civil rights are restored, a petitioner does not automatically qualify for the exemption in § 921(a)(2), because this provision:

> contains an "unless" clause: the restoration of civil rights exempts a convicted felon from the prohibition against possessing a firearm "*unless* such ... restoration of civil rights expressly provides that the person may not ... possess ... firearms." 18 U.S.C. § 921(a)(20).

Tait, 202 F.3d at 1322. "[T]he law of the State of conviction, not federal law, determines the restoration of civil rights." Caron v. United States, 524 U.S. 308, 316 (1998). Hence, to the extent that Petitioner had a past conviction of a specified felony (as discussed above), he has not alleged that he had applied for and received the restoration of those rights[6] prior to the criminal behavior of which he now stands convicted, and thus has failed to demonstrate "actual innocence" of the 18

[6]Individuals who have been convicted of specified felonies must submit an application to the concealed weapons licensing board in order to posses a firearm. Id. §§ 750.244f(2)(b), 28.424.

U.S.C. § 922(g)(1) charge. See, e.g., U.S. v. Samonek, Criminal No. 09–20225,Civil No. 12–14703, 2014 WL 2931829 (E.D.Mich. June 30, 2014).

Moreover, even if Petitioner does not have a specified felony as a past conviction, Michigan law generally restores a felon's right to possess firearms three years after the felon completes his term of imprisonment, conditions of probation, and finishes paying his fines. Mich. Comp. Laws Ann. § 750.224f(1). However, three years had not passed from the time Petitioner completed his state court term(s) of imprisonment (Petitioner states he completed his sentence on March 17, 2008 - see ECF No. 1 at 3) and the superceding indictment on the federal charges in question (on March 3, 2011, as discussed above), such that he cannot show that his right to possess firearms had been restored. By its very implication, Mich. Comp. Laws § 750.224f stands for the proposition that "even after a person's civil rights have been restored, Michigan law restricts a convicted person's right to possess firearms for a period of time after the sentence imposed for a particular crime has been served." United States v. Cooper, No. 08-20464, 2012 WL 12706, at *4 (E.D. Mich. Jan. 4, 2012), quoting Melton v. Hemingway, 40 F. App'x. 44, 45 (6th Cir. 2002).

RECOMMENDATION

Accordingly, it is recommended that the Petition in this action be dismissed without requiring Respondent to file a return.

Petitioner's attention is directed to the important notice on the next page.

April 10, 2017
Charleston, South Carolina

Bristow Marchant
United States Magistrate Judge

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Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
Post Office Box 835
Charleston, South Carolina 29402

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

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Additional material from this filing is available in the Clerk's Office.