

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-15347-C

LEIGHTON MARTIN CURTIS,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

ORDER:

Leighton Curtis's motion for a certificate of appealability is DENIED because he has failed to make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2). His motion for leave to proceed *in forma pauperis* on appeal is DENIED AS MOOT.

/s/ William H. Pryor Jr.
UNITED STATES CIRCUIT JUDGE

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Appeal from the United States District Court
for the Southern District of Florida

Before: WILLIAM PRYOR and NEWSOM, Circuit Judges.

BY THE COURT:

Leighton Curtis has filed a motion for reconsideration, pursuant to 11th Cir. R. 27-2, of this Court's March 19, 2019, order denying him a certificate of appealability, and leave to proceed on appeal *in forma pauperis*, for his underlying Fed. R. Civ. P. 60(b) and 59(e) motions. Upon review, Curtis's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

APPENDIX A

1. A copy of the DISTRICT COURTS decision in the 28 U.S.C. § 2255 proceedings where counsels objections to the Magistrate Judge Report and Recommendations were deemed to be legally insufficient by, THE JUDGE.
2. A copy of the civil docket for case #: 0:14-cv-61851-JAL, To show that petitioner tried to object to magistrate Judge Report and Recommendations
3. A copy of the initial 60B motion
4. A copy of the Magistrate Judge Report and Recommendations of 60B.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 14-61851-CIV-LENARD/WHITE

LEIGHTON MARTIN CURTIS,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

**ORDER ADOPTING REPORT OF MAGISTRATE JUDGE (D.E. 36), DENYING
PETITIONER'S § 2255 MOTION (D.E. 1), DENYING CERTIFICATE OF
APPEALABILITY AND CLOSING CASE**

THIS CAUSE is before the Court on the Report and Recommendation of Magistrate Judge Patrick White (the "Report," D.E. 36), issued on May 13, 2015. Judge White recommends that the Court deny Movant's § 2255 Motion (the "Motion," D.E. 1), filed on August 14, 2014.

Movant raises fifteen claims in his § 2255 Motion:

- (1) Counsel was ineffective when he failed to communicate a plea offer from the Government;
- (2) Counsel was ineffective when he failed to file a motion to suppress allegedly illegally-obtained cellphones and a camera from Movant's vehicle by the Broward Sheriff's Office;
- (3) Counsel was ineffective when he failed to raise a purported Giglio violation at trial;
- (4) Counsel was ineffective when he failed to challenge a Brady violation;

to the report and recommendation of the Magistrate Judge on same oral and written grounds submitted below and at the hearing of this case.” (D.E. 39.) Counsel’s objection does not comply with the requirements of 28 U.S.C. § 636 or Local Magistrate Judge Rule 4(b). Section 636 provides: “[A]ny party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 836. Additionally, Local Magistrate Judge Rule 4(b), which governs review of case-dispositive motions and prisoner litigation in this District, states:

Any party may object to a Magistrate Judge’s proposed findings, recommendations or report . . . within fourteen (14) days after being served with a copy thereof. . . . Such party shall file with the Clerk of Court, and serve on all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made, the specific basis for such objections, and supporting legal authority. . . . A District Judge shall make a de novo determination of those portions of the report or specified proposed finding or recommendations to which objection is made

S.D. Fla. Loc. Mag. J. R. 4(b) (emphasis added). In this case, Counsel’s “objection” does not identify any portion of the Report or any specified finding of fact or conclusion of law to which Movant objects. Accordingly, Movant is not entitled to de novo review. See Macort v. Prem, Inc., 208 F. App’x 781, 784 (11th Cir. 2006) (“It is critical that the objection be sufficiently specific and not a general objection to the report,” to entitle a party to de novo review). If the Court were to hold otherwise, then every lawyer or pro se litigant would be entitled to de novo review if they wrote nothing more than “I object

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 14-CIV-61851-LENARD
(11-CR-60065-LENARD)
MAGISTRATE JUDGE P.A. WHITE

LEIGHTON CURTIS,	:	
	:	
Petitioner,	:	<u>REPORT OF</u>
	:	<u>MAGISTRATE JUDGE</u>
v.	:	<u>ON RULE 60(b) MOTION</u>
	:	(DE# 51)
UNITED STATES OF AMERICA,	:	
	:	
Respondent.	:	

The *pro se* petitioner, Leighton Martin Curtis, filed a motion for relief of judgment on September 5, 2017, pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. (Cv DE# 51). The District Court referred the motion to the Undersigned. (Cv DE# 52,53).

Rule 60 provides in sum the following six bases for relief: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; or (6) any other reason justifying relief. Fed. R. Civ. P. 60(b).

The petitioner seeks to set aside the April 11, 2016 denial of his Rule 2255 motion to vacate. See (Cv DE# 41). He alleges that post-conviction counsel was ineffective for failing to raise or fully develop claims 2 through 15 of his Section 2255 motion to vacate at the evidentiary hearing and/or with written memorandum. (DE# 51).

petitioner cannot claim that he was denied effective assistance of counsel in a post-conviction proceeding. Saunders, supra, citing, Coleman v. Thompson, 501 U.S. 722, 752 (1991) (holding that a §2254 petitioner cannot demonstrate cause for procedurally defaulting his claims by relying on post-conviction counsel's error).

Furthermore, his claim is refuted by the record. This court issued an order appointing Michael B. Cohen, Esq. to represent Petitioner in connection with claim one, wherein he alleged "he was denied effective assistance of counsel when his attorney failed to inform him prior to trial of the government's plea offer." (Cv DE# 23:1). The evidentiary hearing was set *only* to address claim one. See (Id.). As a result, counsel was not responsible to brief this court on the other fourteen claims raised by Petitioner. Nor would this court have accepted argument or evidence regarding any issue other than the specific issue identified in the order appointing counsel and setting evidentiary hearing. Petitioner also alleges collateral counsel was ineffective for failing to file written briefs following the evidentiary hearing on claims 2 through 15. Again, this court only appointed counsel to represent Petitioner in connection with claim one. This court addressed the remaining claims based on the arguments put forth in the petition, the government's response, and the record before the court. Counsel was not ineffective for failing to file a written brief on issues not identified in this court's order appointing counsel. Accordingly, the Rule 60(b) motion should be denied on the merits.

Certificate of Appealability

A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c) (2). The petitioner "must

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