APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 19-40845

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ROY CORNELL JOHNSON,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:13-CV-476

ON PETITION FOR REHEARING EN BANC

Before DENNIS, SOUTHWICK, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:

Treating the petition for rehearing en banc as a motion for reconsideration (5TH CIR. R. 35 I.O.P.), the motion for reconsideration is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

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Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:13-CV-476

ORDER:

IT IS ORDERED that Appellant's motion for a certificate of appealability is DENIED.

IT IS FURTHER ORDERED that Appellant's motion to proceed in former pauperis is GRANTED.

KURT D. ENGELHARDT
United States Circuit Judge

Certified as a true copy and issued as the mandate on Aug 17, 2021

Attest: Lyle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

ROY CORNELL JOHNSON, #16817-078	§	
	§	
	§	
VS.	§	CIVIL ACTION NO. 4:13cv476
	§	CRIMINAL ACTION NO. 4:09cr167(1)
	§	
UNITED STATES OF AMERICA	§	

ORDER OF DISMISSAL

The above-entitled and numbered civil action was referred to United States Magistrate Judge Don D. Bush. The Report and Recommendation of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. The court has conducted a de novo review of the objections raised by the movant. The court concludes that the findings and conclusions of the Magistrate Judge are correct, and adopts the same as the findings and conclusions of the court. It is therefore

ORDERED that the motion to vacate, set aside or correct sentence is **DISMISSED** without prejudice. The movant's motion to supplement [de#15] is GRANTED. All other motions by either party not previously ruled on are hereby **DENIED**.

SIGNED this the 29th day of June, 2016.

Richard A. Schell

RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

ROY CORNELL JOHNSON, #16817-078	§	
	§	
	§	
VS.	§	CIVIL ACTION NO. 4:13cv476
	§	CRIMINAL ACTION NO. 4:09cr167(1)
	§	
UNITED STATES OF AMERICA	§	

FINAL JUDGMENT

Having considered the motion to vacate, set aside or correct sentence and rendered its decision by opinion and order of dismissal issued this same date, the court **ORDERS** that the case is **DISMISSED** without prejudice.

SIGNED this the 29th day of June, 2016.

Richard A. Schell

RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

ROY CORNELL JOHNSON, #16817-078	§	
	§	
VS.	§	CIVIL ACTION NO. 4:13cv476
	§	CRIMINAL ACTION NO. 4:09cr167(1)
UNITED STATES OF AMERICA	§	

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Movant, whose last known address was the FCI - Three Rivers in Three Rivers, Texas, filed a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. The motion was referred to the undersigned United States Magistrate Judge for findings of fact, conclusions of law, and recommendations for the disposition of the case pursuant to 28 U.S.C. § 636 and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to the United States Magistrate Judge.

On April 18, 2016, mail that had been sent to Movant was returned and marked, "Return to sender - not deliverable as addressed - unable to forward." The Clerk of the Court has not been notified of Movant's new address. Movant has failed to prosecute this case. Fed. R. Civ. Proc. 41(b); Rule 41, Local Rules for the Eastern District of Texas.

The exercise of the power to dismiss for failure to prosecute is committed to the sound discretion of the Court and appellate review is confined solely in whether the Court's discretion was abused. *Green v. Forney Eng'g Co.*, 589 F.2d 243, 247 (5th Cir. 1979); *Lopez v. Aransas County Indep. Sch. Dist.*, 570 F.2d 541, 544 (5th Cir. 1978). Not only may a district court dismiss for want of prosecution upon motion of a defendant, but it may also, *sua sponte*, dismiss an action whenever necessary to achieve the orderly and expeditious disposition of cases. *Anthony v. Marion County*

Gen. Hosp., 617 F.2d 1164, 1167 (5th Cir. 1980). The present case should be dismissed.

RECOMMENDATION

It is therefore recommended that the motion be dismissed without prejudice. Fed. R. Civ. Proc. 41(b); Rule 41, Local Rules for the Eastern District of Texas.

Within fourteen (14) days after service of the magistrate judge's report, any party must serve and file specific written objections to the findings and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1)(C). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific.

Failure to file specific, written objections will bar the party from appealing the unobjected-to factual findings and legal conclusions of the magistrate judge that are accepted by the district court, except upon grounds of plain error, provided that the party has been served with notice that such consequences will result from a failure to object *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*), *superceded by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

SIGNED this 20th day of April, 2016.

Don D. Bush

DON D. BUSH
UNITED STATES MAGISTRATE JUDGE