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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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United States of America,
Plaintiff/Respondent,

) No. CV-07-1160-PHX-GMS (DKD)
) No. CR-03-0075-PHX-GMS

10

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v.

ORDER

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Andrew V. Acosta,

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Defendant/Movant.

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Pending before the Court are Movant’s Motion to Vacate, Set Aside or Correct Sentence and United States Magistrate Judge David K. Duncan’s Report and Recommendation (“R&R”). Dkt. ## 1 and 7. The R&R recommends that the Court deny the motion because “[a] claim raised and rejected on direct appeal cannot form the basis for a section 2255 motion .” Dkt. # 7 at 4. The Magistrate Judge advised the parties that they had ten days to file objections to the R&R and that failure to file timely objections could be considered a waiver of the right to obtain review of the R&R. *Id.* at 6 (citing 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)).

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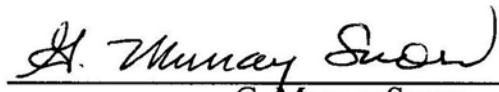
The parties did not file objections, which relieves the Court of its obligation to review the R&R. *See Reyna-Tapia*, 328 F.3d at 1121; *Thomas v. Arn*, 474 U.S. 140, 149 (1985) (“[Section 636(b)(1)] does not . . . require any review at all . . . of any issue that is not the subject of an objection.”); Fed. R. Civ. P. 72(b)(3) (“The district judge must

1 determine de novo any part of the magistrate judge's disposition that has been properly
2 objected to."). The Court has nonetheless reviewed the R&R and finds that it is well-
3 taken. The Court will accept the R&R and deny the motion. *See* 28 U.S.C. § 636(b)(1)
4 (stating that the district court "may accept, reject, or modify, in whole or in part, the
5 findings or recommendations made by the magistrate"); Fed. R. Civ. P. 72(b)(3) ("The
6 district judge may accept, reject, or modify the recommended disposition; receive further
7 evidence; or return the matter to the magistrate judge with instructions.").

8 **IT IS ORDERED:**

- 9 1. Magistrate Judge David K. Duncan's R&R (Dkt. # 7) is **accepted**.
10 2. Movant's Motion to Vacate, Set Aside or Correct Sentence (Dkt. #1) is
11 **denied**.
12 3. The Clerk of the Court shall **terminate** this action.

13 DATED this 22nd day of December, 2008.

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16 G. Murray Snow
17 United States District Judge
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