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NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

vs.

Juan Arambulo-Sanchez,

Defendant.

) No. CV08-0883-PHX-SRB
) CR06-0381-PXH-SRB
) **ORDER**

Defendant signed a plea agreement and pled guilty to Possessing a Firearm in Connection with a Crime of Violence. He was sentenced within the plea agreement’s stipulations to 72 months in prison on November 13, 2006. On May 7, 2008 he filed the pending Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody raising four claims. The Government responded in opposition on August 18, 2008 arguing that the motion was untimely because it was filed long after expiration of the one-year statute of limitations established in 28 U.S.C. § 2255. Alternatively, the Government argued that Defendant had validly waived his rights to collaterally attack his conviction in his plea agreement. Defendant did not file a reply.

On February 26, 2009, the Magistrate Judge issued his Report and Recommendation recommending that the Defendant’s motion be denied as untimely or alternatively on the merits. Defendant filed an objection to the Report and Recommendation on March 9, 2009.

1 In his objection, Defendant claims that the statute of limitations should be tolled and his
2 motion be considered timely because his lawyer failed to file a Notice of Appeal. Defendant
3 states “There is no question that a competent attorney would have done otherwise, and his
4 failure and incompetency was prejudicial and greatly affected the outcome of the period to
5 file.” Yet Defendant fails to explain how his counsel’s failure to follow his alleged
6 instruction to appeal within 10 days of the November 13, 2006 conviction prevented his
7 filing of the present motion until May of 2008. Neither in his motion nor in his objection has
8 Defendant demonstrated that extraordinary circumstances beyond his control made it
9 impossible to file his motion within the statute of limitations. *United States v. Battles*, 362
10 F.3d 1195, 1197 (9th Cir. 2004). Defendant’s motion will be denied as untimely. Even if
11 timely the Court agrees with the Magistrate Judge that Defendant’s claims are without merit.

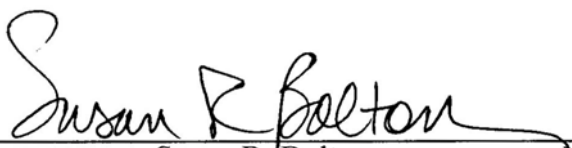
12 IT IS ORDERED adopting the Report and Recommendation of the Magistrate Judge
13 as the order of this Court.

14 IT IS FURTHER ORDERED overruling Defendant’s objections to the Report and
15 Recommendation.

16 IT IS FURTHER ORDERED denying Defendant’s Motion Under 28 U.S.C. § 2255
17 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody.

18 IT IS FURTHER ORDERED directing the Clerk to enter judgment accordingly.
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20 DATED this 27th day of March, 2009.

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23 _____
24 Susan R. Bolton
25 United States District Judge
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