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**NOT FOR PUBLICATION**  
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Derrick L. McCreary,  
Movant,  
vs.  
United States of America,  
Respondent.

) No. CV-09-01023-PHX-FJM  
) No. CR-04-00313-PHX-FJM

**ORDER**

The court has before it Derrick McCreary’s motion to vacate, set aside, or correct the sentence pursuant to 28 U.S.C. § 2255 (doc. 4), respondent’s answer (doc. 11), movant’s reply (doc. 12), and a report and recommendation of the United States Magistrate Judge recommending that the motion be denied (doc 13). Neither party objected to the report and recommendation and the time for doing so has expired.

After review, we accept the recommended decision of the Magistrate Judge pursuant to Rule 8(b), Rules Governing § 2255 Cases. The motion to vacate, set aside, or correct the sentence is denied.

We must issue or deny a certificate of appealability. Rule 11(a), Rules Governing § 2255 Cases. Movant has not made a substantial showing of the denial of a constitutional right, the motion’s denial is justified by a plain procedural bar, and jurists of reason would

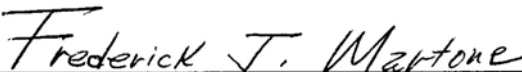
1 not find the procedural ruling debatable. Moreover, briefing on whether a certificate should  
2 issue would not be helpful. Thus, we deny a certificate of appealability.

3 Accordingly, **IT IS ORDERED DENYING** movant's motion to vacate, set aside, or  
4 correct the sentence (doc. 4).

5 **IT IS FURTHER ORDERED DENYING** a certificate of appealability.

6 DATED this 29<sup>th</sup> day of December, 2009.

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Frederick J. Martone  
United States District Judge