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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Derrick L. McCreary,

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No. CV 09-1023-PHX-FJM

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Petitioner,

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CR 04-313-03-PHX-FJM

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vs.

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ORDER

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United States of America,

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Respondent.

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The court has before it petitioner's motion for reconsideration (doc. 16) and respondent's amended response (doc. 20). Petitioner did not file a reply.

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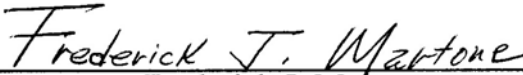
On December 29, 2009, we issued an order accepting the magistrate judge's recommendation that we deny petitioner's motion to vacate, set aside, or correct the sentence pursuant to 28 U.S.C. § 2255 (doc. 14). We also denied a Certificate of Appealability. Petitioner now requests reconsideration and relief from that judgment under Rule 60(b)(6), Fed.R.Civ.P. He contends once again that count five of his superseding indictment failed to charge a federal crime or offense under 18 U.S.C. § 924(c)(1)(A) and that he was denied effective assistance of counsel. Petitioner already raised these objections in his § 2255 motion and we rejected them. We rejected petitioner's claims concerning count five because he defaulted on them when he did not raise them on direct appeal. We rejected the ineffective assistance of counsel claim because counsel was not ineffective and even if he

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1 was, petitioner failed to show that he was prejudiced by any alleged failure of counsel.
2 Petitioner does not raise any new arguments in this motion for reconsideration that have not
3 already been considered and denied.

4 Accordingly, **IT IS ORDERED DENYING** petitioner's motion for reconsideration
5 (doc. 16).

6 DATED this 16th day of May, 2011.

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10 Frederick J. Martone
11 United States District Judge
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