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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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

No. CV-09-1023-PHX-FJM  
CR-04-0313-PHX-FJM

**ORDER**

We now have before us petitioner’s second motion for reconsideration pursuant to Rule 60(b), Fed. R. Civ. P. (doc. 22). 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). On May 16, 2011, we denied petitioner’s first motion for reconsideration, concluding that petitioner had only repeated arguments that we had previously considered and rejected (doc. 21).

Once again petitioner asserts a claim of ineffective assistance of counsel for counsel’s failure to object to the sufficiency of the underlying indictment with respect to count 5. This argument has been considered and rejected twice by this court. See docs. 14 and 21. Petitioner has failed to satisfy the requisite showing for Rule 60(b) relief from judgment.

**IT IS ORDERED DENYING** petitioner’s motion for reconsideration (doc. 22). No further filings will be accepted in this closed case.

DATED this 29<sup>th</sup> day of January, 2013.

*Frederick J. Martone*  
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Frederick J. Martone  
United States District Judge