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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 United States of America,
10 Plaintiff/Respondent,

) No. CR 04-50178-PHX-MHM
) CV 09-01085-PHX-MHM

11 vs.

) **ORDER**

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13 Sky Gary Trammell,
14 Defendant/Movant.

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16 Movant, Sky Gary Trammell, filed a Motion to Vacate, Set Aside, or Correct Sentence
17 pursuant to 28 U.S.C. § 2255 on May 20 and May 21, 2009. Respondent filed its response
18 in opposition on September 8, 2009. Movant also filed a Motion to Terminate Supervised
19 Release for Breach of Contract and Petition for Writ of Habeas Corpus pursuant to § 2255
20 on November 23, 2009. Respondent filed its response in opposition on December 10, 2009.

21 The Magistrate Judge filed his Report and Recommendation on October 30, 2009
22 recommending that Movant’s Motion to Vacate, Set Aside, or Correct Sentence be denied.

23 In his Report and Recommendation the Magistrate Judge advised the parties that they
24 had 10 days from the date of service of a copy of the Report and Recommendation within
25 which to file specific written objections with the Court. The time to file such objections has
26 long since expired and no objections to the Report and Recommendation have been filed.
27 Failure to timely file objections to any factual or legal determination of the Magistrate Judge

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1 may be considered a waiver of a party's right to *de novo* consideration of the issues. *See*
2 *United States v. Reyna-Tapia* 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*).

3 After a complete and independent review of the issues presented, the Court finds itself
4 in agreement with the Report and Recommendation of the Magistrate Judge.

5 In addition, the Court finds that Movant's Motion to Terminate Supervised Release
6 for Breach of Contract and Petition for Writ of Habeas Corpus challenges the execution of
7 his sentence and is not cognizable under 28 U.S.C. § 2255. A petition for writ of habeas
8 corpus pursuant to 28 U.S.C. § 2241 is the appropriate method of challenging the execution
9 of a federal prison sentence. Thus, Movant's Motion to Terminate Supervised Release for
10 Breach of Contract and Petition for Writ of Habeas Corpus will be denied without prejudice.

11 Accordingly,

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 that Respondent's Motion to Vacate, Set Aside, or
15 Correct Sentence is denied. [Docs. 1 and 3].

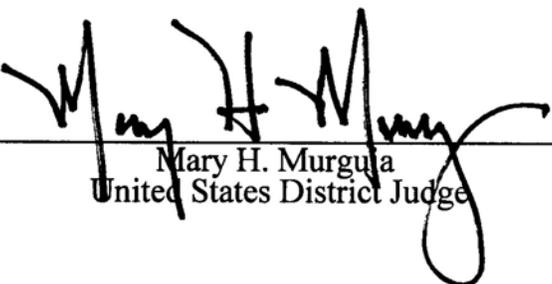
16 IT IS FURTHER ORDERED denying without prejudice Movant's Motion to
17 Terminate Supervised Release for Breach of Contract and Petition for Writ of Habeas Corpus
18 [Doc. 53]. The Court makes no ruling on the merits of said Motion.

19 IT IS FURTHER ORDERED denying without prejudice Movant's Request for Post
20 Conviction Court Appointed Attorney Necessary to Communicate with the Court [Doc. 55].
21 The Court makes no ruling on the merits of said Motion.

22 IT IS FURTHER ORDERED denying Movant's Certificate of Appealability and
23 Leave to Proceed In Forma Pauperis, as Movant has not made a substantial showing of the
24 denial of a constitutional right.

25 DATED this 26th day of January, 2010.

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Mary H. Murgula
United States District Judge