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NOT FOR PUBLICATION

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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Victor Eugene Robbins, Sr.,

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No. CV-10-0453-PHX-FJM

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Petitioner,

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ORDER

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vs.

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Dennis Smith,

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Respondent.

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We have before us petitioner’s amended petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 (doc. 4), respondent’s response (doc. 11), and petitioner’s traverse (doc. 12). We also have before us the report and recommendation (doc. 13) of the United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Rule 72(b)(1), Fed. R. Civ. P. No objection to the report and recommendation was filed and the time for doing so has expired. See Fed. R. Civ. P. 72(b)(2).

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In his only ground for relief, petitioner contends that he was denied his right under the Second Chance Act, 42 U.S.C. § 17541(g)(1)(A), to have his request for participation in the elderly offender home detention pilot program considered by the Attorney General, and that the Attorney General has the discretion to waive the eligibility requirements for the program.

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The Magistrate Judge determined that petitioner is not eligible for the elderly offender pilot program, the waiver provision relied upon by petitioner does not authorize a waiver of

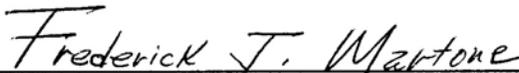
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1 the program's eligibility requirements, and the Bureau of Prisons was authorized to
2 determine petitioner's eligibility to participate in the program. We agree with each of these
3 conclusions and accordingly we accept the report and recommendation of the Magistrate
4 Judge pursuant to Rule 72(b), Fed. R. Civ. P.

5 **IT IS ORDERED DENYING AND DISMISSING WITH PREJUDICE** the
6 amended petition for writ of habeas corpus (doc. 4).

7 DATED this 23rd day of November, 2010.

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Frederick J. Martone
United States District Judge