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

8 United States of America,)
9 Plaintiff/Respondent,)
10 v.)
11 Jesus A. Murrieta-Perez,)
12 Defendant/Movant.)

CIV 10-0614-PHX-PGR (DKD)
CR 08-1217-PHX-PGR

ORDER

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14 Currently before the Court is the Report and Recommendation (Doc. 7) of Magistrate
15 Judge Duncan, based on Jesus A. Murrieta-Perez’s Motion to Vacate, Set Aside, or Correct
16 Sentence. In his motion filed pursuant to 28 U.S.C. § 2255, Murrieta-Perez challenges his
17 conviction for Escape from a Federal Facility and this Court’s imposition of a 10-month term
18 of imprisonment. Murrieta-Perez argues that prior to sentencing, Mr. Diaz¹ incorrectly told
19 him that he would receive 54 months on the trafficking conviction (the case before Judge
20 Teilborg) to be served concurrent with a 10-month term on the escape conviction (the case
21 before this Court)(Doc. 22). Murrieta-Perez argues that he received ineffective assistance of
22 counsel because he was not properly advised of the sentence he would receive. He further
23 contends that because of the misinformation regarding the sentence, he maintains that he
24 was too late to timely file an appeal.

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26 ¹ In fact, Mr. Diaz was not Murrieta-Perez’s attorney on the escape charge, rather Mr.
27 Diaz represented him on the trafficking charge only. Murrieta-Perez was represented by S.
28 Magnus Eriksson on the escape charge, and he has made no claim of ineffective assistance
concerning Eriksson’s representation.

1 The Court agrees with Magistrate Judge Duncan's findings that Murrieta-Perez cannot
2 claim to have been misled while having acknowledged that he reviewed the Presentence
3 Report, having made no objection to it, having heard the arguments for and against
4 consecutive sentencing, and having informed this Court at sentencing that he understood the
5 Court's judgment and he did not dispute the consecutive nature of the sentence at the time
6 it was imposed. Additionally, Murrieta-Perez was informed prior to sentencing that this
7 Court had the discretion to impose either a concurrent or consecutive sentence. Finally, his
8 mistaken reference to Mr. Diaz as his attorney in the escape case, his lack of any allegation
9 of ineffective assistance against Mr. Eriksson, and the lack of any evidence of ineffective
10 assistance in the record, renders his claim without merit.

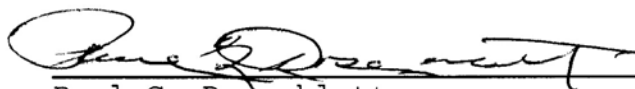
11 Therefore, having reviewed *de novo* the Report and Recommendation and no party
12 having filed any objection thereto,

13 IT IS HEREBY ORDERED that the Magistrate Judge's Report and Recommendation
14 **(Doc. 7)** is **ACCEPTED** and **ADOPTED** by the Court.

15 IT IS FURTHER ORDERED **DENYING** the Motion to Vacate, Set Aside, or Correct
16 Sentence. **(Doc. 1)**

17 IT IS FURTHER ORDERED **DENYING** a Certificate of Appealability and leave to
18 proceed *in forma pauperis* on appeal because Murrieta-Perez has not made a substantial
19 showing of the denial of a constitutional right.

20 DATED this 2nd day of November, 2010.

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23 Paul G. Rosenblatt
24 United States District Judge
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