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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Patrick T. Buckner,

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No. CV 10-01799-PHX-FJM

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Defendant-Movant,

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CR 01-01104-01-PHX-FJM

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vs.

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ORDER

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United States of America,

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Plaintiff-Respondent.

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Petitioner filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255, which this court denied. (Doc. 32). The Clerk entered judgment dismissing defendant's action with prejudice. (Doc. 34). Defendant did not request a certificate of appealability. After he appealed, the United States Court of Appeals for the Ninth Circuit remanded the case for the limited purpose of granting or denying a certificate of appealability.

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In defendant's § 2255 motion, he argued that his convictions were contrary to Skilling v. United States, 130 S. Ct. 2896 (2010) and that he was denied the effective assistance of counsel. Adopting the Report and Recommendation of the United States Magistrate Judge, this court denied his motion. Defendant procedurally defaulted on his claim that honest services fraud did not encompass his convictions after Skilling and he did not show prejudice or actual innocence. Any error in jury instructions was harmless because the jury was instructed on a valid theory of guilt and sufficient evidence was presented to sustain a

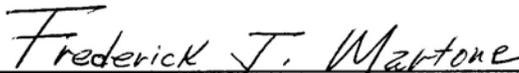
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1 conviction. Finally, the court denied relief based on two instances of purported ineffective
2 assistance of counsel. The first issue was disposed of on a previous direct appeal and
3 defendant failed to show prejudice resulting from counsel's actions under his second theory.

4 An appeal from the final order in a proceeding under § 2255 may not be taken unless
5 "the applicant has made a substantial showing of the denial of a constitutional right." 28
6 U.S.C. § 2253(c)(2). For claims rejected on the merits, the "petitioner must demonstrate that
7 reasonable jurists would find the district court's assessment of the constitutional claims
8 debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595, 1604 (2000).
9 For claims denied on procedural grounds, a certificate of appealability "should issue when
10 the prisoner shows, at least, that jurists of reason would find it debatable whether the petition
11 states a valid claim of the denial of a constitutional right and that jurists of reason would find
12 it debatable whether the district court was correct in its procedural ruling." Id. Petitioner has
13 not met either standard.

14 Petitioner has not made a substantial showing of the denial of a constitutional right.
15 Therefore, pursuant to 28 U.S.C. § 2253(c), **IT IS ORDERED DENYING** a certificate of
16 appealability.

17 DATED this 23rd day of July, 2012.

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 Frederick J. Martone
21 United States District Judge
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