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

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9 Paul Richard Butts,  
10 Plaintiff/Respondent,  
11 vs.  
12 United States of America,  
13 Defendant/Movant.

No. CR05-1127 PHX DGC  
CV10-2104-PHX-DGC

**ORDER**

14  
15 Petitioner Paul Richard Butts moves to vacate, set aside, or correct his sentence  
16 under 28 U.S.C. § 2255. Doc. 1. Magistrate Judge David K. Duncan filed a Report and  
17 Recommendation (“R&R”) that habeas relief and a certificate of appealability (“COA”)  
18 be denied. Doc. 14. Petitioner objects to the R&R’s findings and moves for a COA.  
19 Docs. 17, 18. Petitioner does not request oral argument. Docs. 17, 18. For the reasons  
20 that follow, the Court will accept the R&R and deny the motions.

21 The Court may accept, reject, or modify, in whole or in part, the findings or  
22 recommendations made by a magistrate judge in a habeas case. *See* 28 U.S.C.  
23 § 636(b)(1). The Court must undertake *de novo* review of those portions of the R&R to  
24 which specific objections are made. *See* § 636(b)(1)(c); Fed. R. Civ. P. 72(b); *United*  
25 *States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

26 Petitioner was convicted in federal court of possessing and distributing child  
27 pornography, and was sentenced to imprisonment for 28 years and 4 months. Doc. 14 at  
28 2. On direct appeal, Petitioner argued that the trial court improperly denied his motion to

1 suppress evidence. *Id.* at 2:7-9 (citing *United States v. Butts*, 2009 WL 4884356 (9th Cir.  
2 2009)). The Ninth Circuit affirmed the trial court after *de novo* review. *Id.* Petitioner  
3 seeks to relitigate the matter by arguing, as his first ground for habeas relief, that the  
4 district judge violated his right to equal protection. *Id.* The R&R concluded that the  
5 matter cannot be relitigated on habeas review. *Id.* As to Petitioner’s second ground for  
6 relief – ineffective assistance of counsel at trial and on appeal – the R&R concluded that  
7 Petitioner failed to establish deficient performance and prejudice under *Strickland v.*  
8 *Washington*, 466 U.S. 668 (1984). Doc. 14 at 2. Petitioner objects that the R&R’s  
9 findings were frivolous and failed to respond to his arguments. Doc. 17. Although the  
10 objection is somewhat general, the Court will engage in *de novo* review of the R&R.

11 *United States v. Scrivner* held that an issue raised and decided on direct appeal is  
12 binding on an appellate panel’s review of denial of habeas relief. 189 F.3d 825, 828 (9th  
13 Cir. 1999). *Scrivner* was decided under the “law of the case” doctrine. *Id.* The court  
14 also noted, in the context of a § 2255 petition, that Ninth Circuit law precludes  
15 relitigation of a matter adversely decided on direct appeal from a federal conviction. *Id.*  
16 at n.1 (citing *United States v. Redd*, 759 F.2d 699, 701 (9th Cir. 1985), and *United States*  
17 *v. Currie*, 589 F.2d 993, 995 (9th Cir. 1979)). *Redd* and *Currie* clearly hold that matters  
18 decided on direct appeal in a federal conviction cannot be collaterally attacked in a  
19 subsequent § 2255 proceeding. *Redd*, 759 F.2d at 701 (noting that petitioner “raised this  
20 precise claim in his direct appeal, [that] this court expressly rejected it[, and that] this  
21 claim cannot be the basis of a § 2255 motion” (citing *Egger v. United States*, 509 F.2d  
22 745, 748 (9th Cir. 1975))); *Currie*, 589 F.2d at 995 (noting that “[i]ssues disposed of on a  
23 previous direct appeal are not reviewable in a subsequent § 2255 proceeding” (citing  
24 *Odom v. United States*, 455 F.2d 159, 160 (9th Cir. 1972))).

25 Petitioner argues that the trial court’s failure to suppress evidence violated his  
26 constitutional rights. Doc. 17. Petitioner raised this issue on direct appeal, and the Ninth  
27 Circuit ruled against him. Petitioner cites no retroactive change in the law. *E.g.*, *Redd*,  
28 759 F.2d at 701; *Currie*, 589 F.2d at 995.

