

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SC

WO

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

United States of America,)	No. CV 11-2149-PHX-DGC (JFM)
Plaintiff,)	No. CR 10-0753-PHX-DGC
v.)	ORDER
Eliseo Rufino Arriaga-Sanchez,)	
Defendant/Movant.)	

Movant Eliseo Rufino Arriaga-Sanchez, who is confined in the Eden Detention Center in Eden, Texas, has filed a *pro se* Amended Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody pursuant to 28 U.S.C. § 2255. The Court will summarily dismiss the motion.

I. Procedural History

Pursuant to a plea agreement, Movant pleaded guilty to illegal re-entry after deportation, in violation of 8 U.S.C. § 1326(a), (b)(1). The plea agreement provided for a sentencing range of 4 to 125 months depending on Movant’s criminal history. On October 25, 2010, the Court sentenced Movant to a 46-month term of imprisonment followed by three years on supervised release.

Movant seeks a reduction of his sentence. He argues that his equal protection rights are being violated because as a deportable alien, he is ineligible for a one-year sentence reduction for attending a drug treatment program during incarceration and for early release to a half-way house.

1 **II. Summary Dismissal**

2 A district court must summarily dismiss a § 2255 application “[i]f it plainly appears
3 from the motion, any attached exhibits, and the record of prior proceedings that the moving
4 party is not entitled to relief.” Rule 4(b), Rules Governing Section 2255 Proceedings for the
5 United States District Courts. When this standard is satisfied, neither a hearing nor a
6 response from the government is required. See Marrow v. United States, 772 F.2d 525, 526
7 (9th Cir. 1985); Baumann v. United States, 692 F.2d 565, 571 (9th Cir. 1982). In this case,
8 the record shows that summary dismissal under Rule 4(b) is warranted because Movant has
9 waived the right to bring a § 2255 motion.¹

10 **III. Waiver**

11 Movant has waived challenges to his sentence. The Ninth Circuit Court of Appeals
12 has found that there are “strict standards for waiver of constitutional rights.” United States
13 v. Gonzalez-Flores, 418 F.3d 1093, 1102 (9th Cir. 2005). It is impermissible to presume
14 waiver from a silent record, and the Court must indulge every reasonable presumption
15 against waiver of fundamental constitutional rights. United States v. Hamilton, 391 F.3d
16 1066, 1071 (9th Cir. 2004). In this action, Movant’s waiver was clear, express, and
17 unequivocal.

18 Plea agreements are contractual in nature, and their plain language will generally be
19 enforced if the agreement is clear and unambiguous on its face. United States v. Jeronimo,
20 398 F.3d 1149, 1153 (9th Cir. 2005). A defendant may waive the statutory right to bring a
21 § 2255 action challenging the length of his sentence. United States v. Pruitt, 32 F.3d 431,
22 433 (9th Cir. 1994); United States v. Abarca, 985 F.2d 1012, 1014 (9th Cir. 1992). The only
23 claims that cannot be waived are claims that the waiver itself was involuntary or that
24 ineffective assistance of counsel rendered the waiver involuntary. See Washington v.
25 Lampert, 422 F.3d 864, 871 (9th Cir. 2005) (holding that a plea agreement that waives the
26 right to file a federal habeas petition pursuant to § 2254 is unenforceable with respect to an

27
28 ¹ In addition, the Ninth Circuit explicitly rejected Movant’s equal protection argument
in McLean v. Crabtree, 173 F.3d 1176, 1185-86 (9th Cir. 1999).

1 ineffective assistance of counsel claim that challenges the voluntariness of the waiver); Pruitt,
2 32 F.3d at 433 (expressing doubt that a plea agreement could waive a claim that counsel
3 erroneously induced a defendant to plead guilty or accept a particular plea bargain); Abarca,
4 985 F.2d at 1014 (expressly declining to hold that a waiver forecloses a claim of ineffective
5 assistance or involuntariness of the waiver); see also Jeronimo, 398 F.3d at 1156 n.4
6 (declining to decide whether waiver of all statutory rights included claims implicating the
7 voluntariness of the waiver).

8 “Collateral attacks based on ineffective assistance of counsel claims that are
9 characterized as falling outside [the category of ineffective assistance of counsel claims
10 challenging the validity of the plea or the waiver] are waivable.” United States v.
11 Cockerham, 237 F.3d 1179, 1187 (10th Cir. 2001). See also Williams v. United States, 396
12 F.3d 1340, 1342 (11th Cir. 2005) (joining the Second, Fifth, Sixth, Seventh, and Tenth
13 Circuits in holding that “a valid sentence-appeal waiver, entered into voluntarily and
14 knowingly, pursuant to a plea agreement, precludes the defendant from attempting to attack,
15 in a collateral proceeding, the sentence through a claim of ineffective assistance of counsel
16 during sentencing.”).

17 As part of his plea agreement, Movant made the following waiver:

18 Providing the defendant’s sentence is consistent with this agreement,
19 the **defendant waives** (1) any and all motions, defenses, probable cause
20 determinations, and objections that the defendant could assert to the
21 indictment or information; and (2) **any right to file an appeal, any collateral**
22 **attack, and any other writ or motion that challenges the conviction, an**
23 **order of restitution or forfeiture, the entry of judgment against the**
24 **defendant, or any aspect of defendant’s sentence, including the manner in**
25 **which the sentence is determined, including but not limited to any appeals**
26 **under 18 U.S.C. § 3742 and motions under 28 U.S.C. §§ 2241 and 2255.**
27 **The defendant acknowledges that if the Court has sentenced the**
28 **defendant according to the terms of this agreement, this waiver shall**
result in the dismissal of any appeal, collateral attack, or other motion the
defendant might file challenging the conviction, order of restitution or
forfeiture, or sentence in this case.

(Doc. 18) (emphasis added). Movant indicated in his plea agreement that he had discussed
the terms with his attorney, agreed to the terms and conditions, and entered into the plea
voluntarily. (Id. at 5-6, 7-8.)

1 Movant's assertions in his § 2255 motion all pertain to sentencing and not to the
2 voluntariness of the waiver. Movant expressly waived issues regarding the imposition of
3 sentence and expressly waived the right to bring a § 2255 motion. The Court accepted his
4 plea as voluntarily made. Consequently, the Court finds that Movant waived the sentencing
5 issues raised in his § 2255 motion. Thus, the Court will summarily dismiss the motion.
6 Accordingly,

7 **IT IS ORDERED:**

8 (1) The Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C.
9 § 2255 (Doc. 22 in CR10-0753-PHX-DGC) is **denied** and the civil action opened in
10 connection with this amended Motion (CV11-2149-PHX-DGC (JFM)) is **dismissed with**
11 **prejudice**. The Clerk of Court must enter judgment accordingly.

12 (2) Pursuant to Rule 11(a) of the Rules Governing Section 2255 Cases, in the event
13 Movant files an appeal, the Court declines to issue a certificate of appealability because
14 reasonable jurists would not find the Court's procedural ruling debatable. See Slack v.
15 McDaniel, 529 U.S. 473, 484 (2000).

16 DATED this 17th day of April, 2012.

17
18
19 

20 _____
21 David G. Campbell
22 United States District Judge
23
24
25
26
27
28