

1 NOT FOR PUBLICATION
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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 United States of America,
10 Plaintiff/Respondent,
11 v.
12 Sandra Marie Bowen,
13 Defendant/Movant.

No. CV11-02252-PHX-SRB
CR09-00679-PHX-SRB
ORDER

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15 Movant, Sandra Marie Bowen, filed an Amended Motion under 28 U.S.C. § 2255
16 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody on January 3,
17 2012. (Doc. 4) She raised two grounds. Movant alleged that her lawyer was ineffective
18 for failing to properly raise a Fourth Amendment issue under *Arizona v. Gant* and that her
19 lawyer was ineffective in failing to warn her about the deportation consequences of her
20 guilty plea and in failing to secure a plea agreement that would have avoided this
21 collateral consequence. The United States filed a Motion to Dismiss and Response in
22 Opposition to Movant's Motion to Vacate (Doc. 15) and Movant filed a Reply (Doc. 19).

23 On April 12, 2013, Movant filed a Motion for Return Seized Personal Property
24 (sic) (Doc. 20) requesting the return of items of personal property that were seized at the
25 time the vehicle she was riding in was stopped on June 1, 2009.

26 On May 15, 2013, the Magistrate Judge issued his Report and Recommendation
27 recommending that both motions be denied. (Doc. 21) With respect to Movant's § 2255
28 motion, the Magistrate Judge found both Movant had expressly waived her rights to file

1 this motion in her plea agreement and, on the merits, Movant had failed to establish
2 ineffective assistance of counsel. The Magistrate Judge also recommended denial of the
3 Motion to Return Seized Personal Property because Movant's plea agreement expressly
4 provided for the forfeiture of any property seized by the Government in the course of its
5 investigation and Movant expressly agreed to the forfeiture of these items in her plea
6 agreement and during her plea colloquy.

7 On June 6, 2013, Movant filed a document entitled "Petitioner Reply to
8 Government Rebuttal to Motion for Return of Personal Property" (Doc. 22) which the
9 Court has considered Movant's objections to the Report and Recommendation of the
10 Magistrate Judge. With respect to the recommendation that her Motion for return of
11 seized personal property should be denied, Movant argues that Special Agent Jose
12 Melendez had offered to return the personal property that was in the rental car on the date
13 of her arrest.

14 With respect to the recommendation for denial of her § 2255 motion, Movant
15 raises an entirely new argument of alleged ineffective assistance of counsel not raised in
16 her § 2255 motion. Movant now argues that she signed the plea agreement because she
17 thought it was for a 10 year prison term, if she did not sign it her son would get 30 years
18 in prison and she would get life, and she did not receive a two-level decrease in her
19 advisory guideline range under U.S.S.G §3E1.1(a) for acceptance of responsibility,
20 Movant argues that had she received that adjustment her sentence would have been 8
21 years less. None of the arguments in Movant's document entitled "Petitioner Reply to
22 Government Rebuttal to Motion for Return of Personal Property" address the Report and
23 Recommendation of the Magistrate Judge or object to any of the facts or legal
24 conclusions upon which the recommendation is based. Movant cannot raise new
25 arguments in her Objection not presented in her § 2255 motion. Even if the Court were
26 to consider these arguments they are plainly without merit.¹

27 ¹ Movant's advisory guideline range included a 3 level downward adjustment
28 under U.S.S.G. § 3E1.1(a) for acceptance of responsibility. Under the guidelines her total
offense level was 43 and her criminal history category was 1 resulting in a guideline

1 After review of the Motion, Response, Reply, the Magistrate Judge's Report and
2 Recommendation, and Movant's Objections, the Court finds that the Objections are
3 without merit. The Court agrees with the Report and Recommendation of the Magistrate
4 Judge. Therefore;

5 IT IS ORDERED overruling Movant's Objections contained in the document
6 entitled "Petitioner Reply to Government Rebuttal to Motion for Return of Personal
7 Property." (Doc. 22)

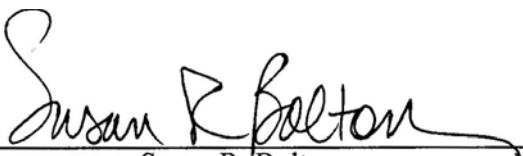
8 IT IS FURTHER ORDERED incorporating the Report and Recommendation of
9 the Magistrate Judge as the Order of this Court. (Doc. 21)

10 IT IS FURTHER ORDERED that Movant's Amended Motion to Vacate, Set
11 Aside or Correct Sentence by a Person in Federal Custody pursuant to 28 U.S.C. § 2255
12 is denied. (Doc. 4)

13 IT IS FURTHER ORDERED that Movant's Motion for Return of Seized Personal
14 Property is denied. (Doc. 20)

15 IT IS FURTHER ORDERED that a Certificate of Appealability and leave to
16 proceed *in forma pauperis* on appeal regarding the § 2255 motion is denied because
17 Movant has not made a substantial showing of the denial of a constitutional right.

18 Dated this 24th day of July, 2013.

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23 Susan R. Bolton
24 United States District Judge
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28 recommended sentence of life. Movant's actual sentence was 216 months.