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NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,)	No. CR04-50178-PHX-SRB
)	CV12-00576-PHX-SRB
Plaintiff/Respondent,)	ORDER
vs.)	
)	
Sky Gary Trammell,)	
)	
Defendant/Movant.)	

Defendant/Movant Sky Gary Trammell (Trammell) filed his pro se Motion to Vacate, Set Aside or Correct Sentence Pursuant to 22 U.S.C. § 2255 on March 19, 2012. The Government filed its response in opposition on April 30, 2012 arguing that the Motion to Vacate should be denied because it was a second/successive Petition for which Trammell failed to obtain proper appellate approval as required by 28 U.S.C. § 2255(h). Trammell filed a reply entitled "Defendant's Response to Government's Response to Defendant's Motion to Vacate Set Aside or Correct Sentence" on May 21, 2012.

In the Magistrate Judge's Report and Recommendation the Magistrate Judge sets out the procedural history of this case. In 2001 Trammell was convicted in the District of Oregon after pleading guilty of one count of tax evasion and one count of mail fraud. After serving his term of imprisonment Trammell began serving a 36 month period of supervised release in 2004. On December 15, 2004 Trammell's supervision was transferred from Oregon to the

1 District of Arizona. After his supervised release was revoked and he was ordered to serve
2 four months in prison, Trammell failed to self-surrender for his prison sentence. Upon his
3 apprehension Trammell was charged and eventually pled guilty to a single count of failing
4 to surrender. US v. Trammell, 2:09CR0026-PHX-SRB. While in prison on his new offense
5 and for his earlier supervised release violation, Trammell filed a §2255 motion challenging
6 his Oregon conviction. That petition was ultimately denied in January 2010.

7 Trammell's present Motion to Vacate was filed after revocations of supervised release
8 in his Arizona conviction, 2:09CR0026-PHX-SRB, Doc.78, and in his Oregon conviction
9 2:04-50178, Doc. 88. In this pending motion he again attacks his underlying conviction for
10 tax evasion and mail fraud.

11 In his Report and Recommendation the Magistrate Judge found that because Trammel
12 previously challenged his conviction in a § 2255 action the pending Motion to Vacate is a
13 second or successive motion for which Trammell failed to seek certification from the
14 appropriate Circuit Court of Appeals before filing as required by 28 U.S.C. § 2255(h)
15 rendering this Court without jurisdiction to consider the motion. The Magistrate Judge also
16 noted that the motion would be timely if it had sought relief from the 2011 revocation of
17 supervised release but the motion failed to allege any basis for relief from the 2011
18 revocation. The Magistrate Judge recommended that Trammell's Motion to Vacate, Set
19 Aside or Correct Sentence be denied.

20 On June 13, 2012 Trammell timely filed a document entitled "Response to Report and
21 Recommendation by Magistrate." That response requested that the Court consider his earlier
22 reply entitled, "Response to the Government's Response to Defendant's Motion to Vacate Set
23 Aside or Correct Sentence" as his response to the Report and Recommendation of the
24 Magistrate Judge. There is nothing in that response that addresses this Court's jurisdiction
25 over this second or successive Motion to Vacate or suggests that the Court has any power to
26 consider it. Trammell also does not assert that he raised any claim for relief from the 2011
27 revocation of supervised release.

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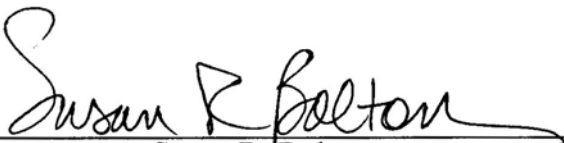
1 IT IS ORDERED overruling Trammell's Response to Report and Recommendation
2 by Magistrate. (Doc. 7)

3 IT IS FURTHER ORDERED adopting the Report and Recommendation of the
4 Magistrate Judge as the Order of this Court. (Doc. 6)

5 IT IS FURTHER ORDERED denying Trammell's Motion to Vacate, Set Aside or
6 Correct Sentence by a Person in Federal Custody because it is a second or successive petition
7 over which this Court lacks jurisdiction.

8 IT IS FURTHER ORDERED that a Certificate of Appealability and leave to proceed
9 *in forma pauperis* on appeal be **denied** because denial of the Petition is justified by a plain
10 procedural bar and jurists of reason would not find the ruling debatable.

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12 DATED this 3rd day of July, 2012.

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16 Susan R. Bolton
17 United States District Judge
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