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

United States of America,  
  
Plaintiff,  
  
v.  
  
Ray Charles Glass,  
  
Defendant/Movant.

No. CV 13-2507-PHX-DGC (SPL)  
CR 09-890-PHX-DGC

**ORDER**

On December 9, 2013, Movant Ray Charles Glass, who is confined in the United States Penitentiary-Tucson in Tucson, Arizona, filed a “Motion to Alter or Amend Judgment” pursuant to Federal Rule of Civil Procedure 15(e). In a December 30, 2013 Order, the Court noted that it appeared that Movant was attempting to collaterally attack his conviction and sentence pursuant to 28 U.S.C. § 2255. The Court granted Plaintiff 30 days to file either (1) a notice withdrawing the Motion to Alter or Amend Judgment or (2) an amended Motion to Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody pursuant to 28 U.S.C. § 2255. On January 28, 2014, Movant filed an Amended Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. The Court will summarily dismiss the Amended § 2255 Motion.

**I. Procedural History**

Pursuant to a plea agreement, Movant pled guilty to bank robbery, in violation of 18 U.S.C. § 2113(a). On March 1, 2010, the Court sentenced Movant to a 120-month term of imprisonment followed by 3 years on supervised release. Movant asserts two

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1 grounds for relief in his Amended § 2255 Petition. In both Grounds, Movant argues that  
2 the Court erred in relying on the Presentence Report to determine the appropriate  
3 sentence in Movant’s case.

## 4 **II. Summary Dismissal**

5 A district court must summarily dismiss a § 2255 application “[i]f it plainly  
6 appears from the motion, any attached exhibits, and the record of prior proceedings that  
7 the moving party is not entitled to relief.” Rule 4(b), Rules Governing Section 2255  
8 Proceedings for the United States District Courts. When this standard is satisfied, neither  
9 a hearing nor a response from the government is required. *See Marrow v. United States*,  
10 772 F.2d 525, 526 (9th Cir. 1985); *Baumann v. United States*, 692 F.2d 565, 571 (9th Cir.  
11 1982).

12 In this case, the record shows that summary dismissal under Rule 4(b) is warranted  
13 because Movant has waived the right to bring a § 2255 motion.

## 14 **III. Waiver**

15 Movant waived challenges to his sentence and his right to bring a § 2255 action.  
16 There are “strict standards for waiver of constitutional rights.” *United States v.*  
17 *Gonzalez-Flores*, 418 F.3d 1093, 1102 (9th Cir. 2005). It is impermissible to presume  
18 waiver from a silent record, and the Court must indulge every reasonable presumption  
19 against waiver of fundamental constitutional rights. *United States v. Hamilton*, 391 F.3d  
20 1066, 1071 (9th Cir. 2004) (citation omitted). In this action, Movant’s waiver was clear,  
21 express, and unequivocal.

22 Plea agreements are contractual in nature, and their plain language will generally  
23 be enforced if the agreement is clear and unambiguous on its face. *United States v.*  
24 *Harris*, 628 F.3d 1203, 1205 (9th Cir. 2011) (citations omitted). A defendant may waive  
25 the statutory right to bring a § 2255 action challenging the length of the sentence. *United*  
26 *States v. Pruitt*, 32 F.3d 431, 433 (9th Cir. 1994) (citing *United States v. Abarca*, 985  
27 F.2d 1012, 1014 (9th Cir. 1992)). The only claims that cannot be waived are claims that  
28 the waiver itself was involuntary or that ineffective assistance of counsel rendered the

1 waiver involuntary. *See Washington v. Lampert*, 422 F.3d 864, 871 (9th Cir. 2005)  
2 (holding that a plea agreement that waives the right to file a federal habeas petition  
3 pursuant to § 2254 is unenforceable with respect to an ineffective assistance of counsel  
4 claim that challenges the voluntariness of the waiver); *Pruitt*, 32 F.3d at 433 (expressing  
5 doubt that a plea agreement could waive a claim that counsel erroneously induced a  
6 defendant to plead guilty or accept a particular plea bargain); *Abarca*, 985 F.2d at 1014  
7 (expressly declining to hold that a waiver forecloses a claim of ineffective assistance or  
8 involuntariness of the waiver).

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

18 As part of Movant’s plea agreement, Movant made the following waiver:

19 Defendant hereby waives any right to raise on appeal or collaterally  
20 attack any matter pertaining to this prosecution and sentence if the  
21 sentence imposed is consistent with the terms of this agreement.

22 (Doc. 27). Movant indicated in the plea agreement that he had discussed the terms with  
23 his attorney, agreed to the terms and conditions, and entered into the plea voluntarily.  
24 (*Id.*). Moreover, during the November 18, 2009 Change of Plea Hearing, the following  
25 colloquy occurred between Movant and the Magistrate Judge:

26 The Magistrate Judge: “If however, [the district court judge]  
27 accepts this plea and sentences you consistent with all the  
28 terms of this agreement, after that you wouldn’t be permitted  
to withdraw from it and also, by the terms of your agreement,

