

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

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Danny Gabriel Velasco,  
Petitioner,  
v.  
United States of America,  
Respondent.

No. CV-15-01389-PHX-NVW (BSB)  
CR-08-00668-PHX-NVW

**ORDER AND  
DENIAL OF CERTIFICATE OF  
APPEALABILITY AND IN FORMA  
PAUPERIS STATUS**

Before the Court are Petitioner's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by Person in Federal Custody (Doc. 1), United States Magistrate Judge Bade's Report and Recommendation (Doc. 9) and Petitioner's Objections to the Magistrate's Report and Recommendation (Docs. 12, 17).

The Court has considered Petitioner's objections and reviewed the Report and Recommendation de novo. *See* Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1) (stating that the Court must make a de novo determination of those portions of the Report and Recommendation to which specific objections are made). The Court accepts the magistrate judge's recommended disposition within the meaning of Rule 72(b), Fed. R. Civ. P., and overrules Petitioner's objections. *See* 28 U.S.C. § 636(b)(1) (stating that the district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate").

The prior plea agreements or other documents Petitioner seeks could not affect his Petition. As a matter of law his prior convictions resulting in his mandatory minimum

1 sentence as an armed career criminal were all crimes of violence based on elements, not  
2 on the residual clause. Moreover, any challenge based on elements is long time barred.

3 IT IS THEREFORE ORDERED that the Report and Recommendation of  
4 Magistrate Judge Bade (Doc. 9) to deny Petitioner's motion under 28 U.S.C. § 2255 is  
5 accepted.

6 IT IS FURTHER ORDERED that Petitioner's Motion Under 28 U.S.C. § 2255 to  
7 Vacate, Set Aside or Correct Sentence by Person in Federal Custody (Doc. 1) is denied  
8 and dismissed.

9 IT IS FURTHER ORDERED that the Clerk of the Court shall enter judgment  
10 accordingly and terminate this action.

11 Having considered the issuance of a Certificate of Appealability from the order  
12 denying Petitioner's Motion Under 28 U.S.C. 28 U.S.C. § 2255 to Vacate, Set Aside or  
13 Correct Sentence by Person in Federal Custody the Court FINDS: Certificate of  
14 Appealability and leave to proceed in forma pauperis on appeal are denied because  
15 Movant has not made a substantial showing of the denial of a constitutional right.

16 Dated this 7th day of December, 2015.

17  
18  
19   
20 Neil V. Wake  
21 United States District Judge  
22  
23  
24  
25  
26  
27  
28