

1 NOT FOR PUBLICATION  
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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Keith Edwin Lowery, Jr.,  
10 Movant/Defendant,  
11 v.  
12 United States of America,  
13 Respondent/Plaintiff.  
14

No. CV-16-01808-PHX-SRB(FJM)  
CR-09-01516-PHX-SRB  
**ORDER**

15 Movant, Keith Edwin Lowery, filed a Motion to Vacate, Set Aside, or Correct  
16 Sentence pursuant to 28 U.S.C. § 2255 on June 8, 2016. The United States filed its  
17 response in opposition on August 12, 2016. On September 16, 2016, Movant filed a  
18 reply.  
19

20 The Magistrate Judge filed his original Report and Recommendation on February  
21 1, 2017, recommending that Movant's Motion to Vacate, Set Aside, or Correct Sentence  
22 be granted. On March 8, 2017, this Court referred the matter back to the Magistrate Judge  
23 for further briefing and consideration in light of the Supreme Court's decision in *Beckles*  
24 *v. United States*, 137 S.Ct 886 (2017). The Magistrate Judge filed his Amended Report  
25 and Recommendation on May 3, 2017, changing his prior recommendation in light of  
26 *Beckles*. The Amended Report and Recommendation recommended that the Motion to  
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1 Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 be denied. In the  
2 Amended Report and Recommendation, the Magistrate Judge advised the parties that  
3 they had fourteen days from the date of service of a copy of the Amended Report and  
4 Recommendation within which to file specific written objections with the Court. The  
5 time to file such objections has expired and no objections to the Amended Report and  
6 Recommendation have been filed.  
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9 The Court finds itself in agreement with the Amended Report and  
10 Recommendation of the Magistrate Judge.


11 **IT IS ORDERED** adopting the Amended Report and Recommendation of the  
12 Magistrate Judge as the Order of this Court.  
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14 **IT IS FURTHER ORDERED** denying Movant's Motion to Vacate, Set Aside or  
15 Correct Sentence by a Person in Federal Custody pursuant to 28 U.S.C. § 2255.  
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17 **IT IS FURTHER ORDERED** denying a Certificate of Appealability and leave to  
18 proceed in forma pauperis on appeal because Movant has not made a substantial showing  
19 of the denial of a constitutional right.  
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21 **IT IS FURTHER ORDERED** directing the Clerk to enter judgment accordingly.  
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23 Dated this 30th day of May, 2017.  
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26   
27 Susan R. Bolton  
United States District Judge  
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