

1 NOT FOR PUBLICATION  
2  
3  
4  
5

6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Eddie Lee Hatch,

10 Petitioner,

11 v.

12 United States of America,

13 Respondent.

No. CV-16-02041-PHX-JJT (MHB)

CR 02-01016-PHX-JJT

**ORDER**

14 At issue is the Report and Recommendation (Doc. 22) (“R&R”) entered in matter  
15 16-CV-2041 by Magistrate Judge Michelle H. Burns recommending that Mr. Hatch’s  
16 2255 Motion be denied and dismissed with prejudice in both matters 16-CV-2041 and  
17 02-CR-1016. The time for Mr. Hatch to file objections to the R&R elapsed early  
18 September 2017. No objections were filed by that deadline or thereafter. The Court thus  
19 may accept the R&R without further review. *See United States v. Reyna-Tapia*, 328 F.3d  
20 1114, 1121 (9th Cir. 2003).

21 Even if the Court conducted a review into the merits of the R&R, it would, and it  
22 does, adopt the R&R in its entirety in this case. Judge Burns correctly concluded that  
23 pursuant to the Supreme Court’s decision in *Beckles v. United States*, 137 S. Ct. 886, 892  
24 (2017), the residual clause in the advisory guidelines is not subject to a void-for-  
25 vagueness challenge under the Fifth Amendment Due Process Clause. Thus, Mr. Hatch’s  
26 Petition, filed pursuant to *Johnson v. United States*, 135 S. Ct. 2551 (2015), must be  
27 dismissed with prejudice.  
28

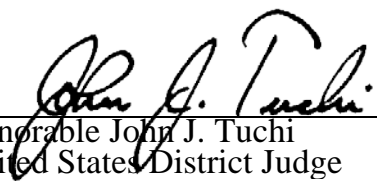
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IT IS ORDERED adopting in whole the R&R (Doc. 22) prepared by Judge Burns in this matter.

IT IS FURTHER ORDERED denying and dismissing the Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255 found at Doc. 1 in this matter, 16-CV-2041, and at Doc. 76 in the related matter 02-CR-1016-PHX-JJT.

IT IS FURTHER ORDERED denying a Certificate of Appealability and leave to proceed *in forma pauperis* upon a finding that Mr. Hatch has not made a substantial showing of the denial of a Constitutional right.

Dated this 6th day of November, 2017.

  
\_\_\_\_\_  
Honorable John J. Tuchi  
United States District Judge