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NOT FOR PUBLICATION

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

Carlos Omar Heredia-Nieblas,
Movant/Defendant,
v.
United States of America,
Respondent/Plaintiff.

No. CV-16-02615-PHX-SRB(BSB)
CR-15-00522-PHX-SRB
ORDER

Movant, Carlos Omar Heredia-Nieblas, filed a Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 on August 1, 2016. The United States filed its response in opposition on March 31, 2017 and Movant filed a reply on April 17, 2017.

The Magistrate Judge filed the Report and Recommendation on May 16, 2017 recommending that Grounds One, Two and Three be denied. The Report and Recommendation recommended that Ground Four be granted and the Clerk of Court directed to vacate and reenter the judgment entered on Defendant 7, 2015 in CR15-00522 to permit Defendant to file a notice of appeal and advise Defendant that he may seek the appointment of counsel on appeal.

1 In the Report and Recommendation, the Magistrate Judge advised the parties that
2 they had fourteen days from the date of service of a copy of the Report and
3 Recommendation within which to file specific written objections with the Court. The
4 time to file such objections has expired and no objections to the Report and
5 Recommendation have been filed.
6

7 The Court finds itself in agreement with the Report and Recommendation of the
8 Magistrate Judge.
9

10 **IT IS ORDERED** adopting the Report and Recommendation of the Magistrate
11 Judge as the Order of this Court.
12

13 **IT IS FURTHER ORDERED** denying Grounds One, Two and Three of
14 Movant's Motion to Vacate, Set Aside or Correct Sentence by a Person in Federal
15 Custody pursuant to 28 U.S.C. § 2255.
16

17 **IT IS FURTHER GRANTING** Ground Four of Movant's Motion to Vacate, Set
18 Aside or Correct Sentence by a Person in Federal Custody pursuant to 28 U.S.C. § 2255.
19

20 IT IS FURTHER ORDERED directing the Clerk of Court to vacate and reenter
21 the judgment entered on December 7, 2015 in CR15-00522-PHX-SRB to permit
22 Defendant to file a notice of appeal.


23 **IT IS FURTHER ORDERED** granting a Certificate of Appealability and leave
24 to proceed in forma pauperis on appeal because Movant has made a substantial showing
25 of the denial of a constitutional right.
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IT IS FURTHER ORDERED directing the Clerk to enter judgment accordingly.

Dated this 25th day of July, 2017.



Susan R. Bolton
United States District Judge