

1 **WO**

2
3
4
5
6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 Domingo Agustin Simon,
10 Petitioner,
11 v.
12 United States,
13 Respondent.

No. CV16-2715 PHX DGC
ORDER

14 Pending before the Court is Movant's 28 U.S.C. § 2255 motion to vacate, set aside,
15 or correct his sentence, filed on August 10, 2016 (Doc. 1), and Magistrate Judge Eileen
16 Willett's Report and Recommendation ("October 5 R&R"), recommending that the Court
17 deny the motion. Doc. 18. The Court previously accepted the October 5 R&R on
18 November 7, 2017, after Movant failed to file an objection. Doc. 19. Movant then filed a
19 motion to vacate the Court's November 7 judgment, stating that he never received a copy
20 of the October 5 R&R. Doc. 21 at 4. Movant also requested leave to amend his § 2255
21 motion. Doc. 21. The Magistrate issued a second R&R ("July 20 R&R") recommending
22 that both motions be denied. Doc. 32.

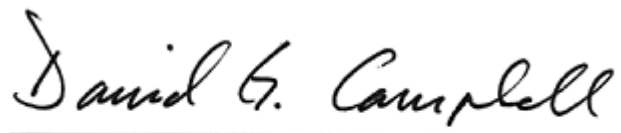
23 On August 20, 2018 Movant filed an objection to the July 20 R&R, asserting that
24 he did not receive a copy of Judge Willett's October 5 R&R. Doc. 21 at 2,4. On November
25 28, 2018, the Court vacated its November 7 order and instructed the Clerk of Court to
26 resend Movant a copy of the October 5 R&R. Doc.41 at 3-4. Per the Court's order, Movant
27 could file an objection that only addressed the October 5 R&R's findings and conclusions.
28 *Id.* at 4. The Court denied Movant's request to amend his § 2255 motion as untimely. *Id.*

1 The Court sent the documents to Movant's new address, as identified in notices
2 provided by the Government and Movant. *See* Docs. 42, 45, 46. Movant was directed to
3 file his objection by February 28, 2019. Movant has failed to file an objection, which
4 relieves the Court of its obligation to review the R&R. *See* 28 U.S.C. § 636(b)(1); Fed. R.
5 Civ. P. 72(b)(3); *Thomas v. Arn*, 474 U.S. 149 (1985). The Court will therefore accept the
6 October 5 R&R and deny the motion.

7 **IT IS ORDERED:**

- 8 1. Magistrate Judge Eileen Willet's October 5 R&R (Doc. 15) is **accepted**.
- 9 2. The motion to vacate sentence (Doc. 1) is **denied**.
- 10 3. A certificate of appealability and leave to proceed in forma pauperis on
11 appeal are **denied**.
- 12 4. The Clerk **shall terminate** this action.

13 Dated this 6th day of March, 2019.

14
15 

16
17 David G. Campbell
18 Senior United States District Judge
19
20
21
22
23
24
25
26
27
28