

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

Nicholas John Rossi, Jr.,
Movant/Defendant,
vs.
United States of America,
Respondent/Plaintiff.

No. CV-16-04588-PHX-NVW (MHB)
CR-01-01110-1-PHX-NVW

ORDER

Pending before the court is the Report and Recommendation (“R&R”) of Magistrate Judge Michelle H. Burns (Doc. 14) regarding Movant’s Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 (Doc.3 at 20-32). The R&R recommends that the Motion be denied. The Magistrate Judge advised the parties that they had fourteen days to file objections to the R&R. (R&R at 14 (citing 28 U.S.C. § 636(b)(1); Rules 72, 6(a), 6(b)(b), Federal Rules of Civil Procedure. No objections were filed.

Because the parties did not file objections, the court need not review any of the Magistrate Judge’s determinations on dispositive matters. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003); *Thomas v. Arn*, 474 U.S. 140, 149 (1985) (“[Section 636(b)(1)] does not . . . require any review at all . . . of any issue that is not the subject of an objection.”). The absence of a timely objection also means that error may not be assigned on appeal to any defect in the rulings of the Magistrate Judge on any non-dispositive matters. Fed. R. Civ. P. 72(a) (“A

1 party may serve and file objections to the order within 14 days after being served with a
2 copy [of the magistrate's order]. A party may not assign as error a defect in the order not
3 timely objected to.”); *Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1174 (9th Cir.
4 1996); *Phillips v. GMC*, 289 F.3d 1117, 1120–21 (9th Cir. 2002).


5 Notwithstanding the absence of an objection, the court has reviewed the R&R and
6 finds that it is well taken. The court will accept the R&R and deny the Motion. *See* 28
7 U.S.C. § 636(b)(1) (stating that the district court “may accept, reject, or modify, in whole
8 or in part, the findings or recommendations made by the magistrate”).

9 IT IS THEREFORE ORDERED that Report and Recommendation of the
10 Magistrate Judge (Doc.14) is accepted.

11 IT IS FURTHER ORDERED that the Clerk of the Court enter judgment denying
12 and dismissing with prejudice Movant's Motion to Vacate, Set Aside or Correct
13 Sentence pursuant to 28 U.S.C. § 2255 (CVDoc. 3 at 20-32). The Clerk shall terminate
14 this action.

15 A request for a certificate of appealability will be denied because appellant has not
16 shown that “jurists of reason would find it debatable whether the petition states a valid
17 claim of the denial of a constitutional right and that jurists of reason would find it
18 debatable whether the district court was correct in its procedural ruling.” *Slack v.*
19 *McDaniel*, 529 U.S. 473, 484 (2000); see also 28 U.S.C. § 2253(c)(2); *Gonzalez v.*
20 *Thaler*, 132 S. Ct. 641, 648 (2012); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

21 Dated this 17th day of September, 2018.

22
23
24 
25 _____
26 Neil V. Wake
27 Senior United States District Judge
28