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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Latoya Nivea Morehead,
10 Movant/Defendant,

11 v.

12 USA,

13 Respondent/Plaintiff.
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CV-18-00055-PHX-JAT (JZB)
CR-12-01577-PHX-JAT

ORDER

15 Pending before the Court is the Report and Recommendation (“R&R”) from the
16 Magistrate Judge recommending that the Motion to Vacate, Set Aside, or Correct Sentence
17 filed pursuant to 28 U.S.C. § 2255 be denied (“Motion”). (Doc. 23). This Court “may
18 accept, reject, or modify, in whole or in part, the findings or recommendations made by the
19 magistrate judge.” 28 U.S.C. § 636(b)(1).

20 The R&R advised the parties that they had 14 days to file objections. (Doc. 23 at
21 20-21). Neither party filed objections.

22 Because neither party file objections, the Court hereby accepts the R&R except for
23 the recommendation on whether to grant a certificate of appealability, which will be
24 discussed below. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985) (finding that district courts
25 are not required to conduct “any review at all . . . of any issue that is not the subject of an
26 objection” (emphasis added)); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir.
27 2003) (*en banc*) (“statute makes it clear that the district judge must review the magistrate
28 judge’s findings and recommendations de novo if objection is made, but not otherwise”

1 (emphasis in original)); *see also Schmidt v. Johnstone*, 263 F.Supp.2d 1219, 1226 (D. Ariz.
2 2003).

3 After the R&R was issued, Movant filed two documents. One is motion for a
4 certificate of appealability and leave to proceed in forma pauperis on appeal. (Doc. 24).
5 This document makes substantive arguments regarding why Movant believes she should
6 be allowed to pursue an appeal. The second document is a motion for leave to appeal in
7 forma pauperis. (Doc. 25). This document outlines Movant's financial resources.

8 Although Movant did not caption her motion for certificate of appealability as an
9 objection to the R&R, the Court will nonetheless review that recommendation de novo. *See*
10 *Klamath Siskiyou Wildlands Ctr. v. U.S. Bureau of Land Mgmt.*, 589 F.3d 1027, 1032 (9th
11 Cir. 2009) (the district court "must review de novo the portions of the [Magistrate Judge's]
12 recommendations to which the parties object."). Movant argues that she should be granted
13 a certificate of appealability because the R&R made recommendations without conducting
14 an evidentiary hearing or permitting discovery. (Doc. 24 at 1).

15 Regarding the discovery issue, the undersigned ruled on that request (Doc. 4 at 2-3)
16 prior to the case being referred to the Magistrate Judge. This Court denied the request for
17 discovery without prejudice to re-urging the request after Respondent was served. (*Id.*).
18 Movant does not cite, and this Court has not located, any point in the record where she
19 renewed the request. Accordingly, this discovery request is not a basis to grant a certificate
20 of appealability because Movant did not timely re-urge the issue.

21 The Court has reviewed the request for an evidentiary hearing de novo. (*See* Doc.
22 23 at 20). Movant seeks an evidentiary hearing on her claim that her counsel was
23 ineffective. This Court agrees with the R&R that the record conclusively establishes that
24 Movant's counsel did not provide ineffective assistance and, therefore, no evidentiary
25 hearing is necessary to decide the Motion. Because both of Movant's arguments regarding
26 why she should receive a certificate of appealability fail, the Court will accept the
27 recommendation of the R&R that this Court deny a certificate of appealability.

28 Therefore,

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IT IS ORDERED that the Report and Recommendation (Doc. 23) is accepted and adopted; the Motion is denied, with prejudice, and the Clerk of the Court shall enter judgment accordingly.

IT IS FURTHER ORDERED that the motions for a certificate of appealability and leave to proceed in forma pauperis on appeal (Docs. 24 and 25) are denied. This Court denies issuance of a certificate of appealability and leave to appeal in forma pauperis.

Dated this 11th day of January, 2019.

