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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Jose Ramon Cebreros-Sanchez,

10 Petitioner,

11 v.

12 United States of America,

13 Respondent.
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No. CV-21-01799-PHX-DJH
No. CR-16-01202-PHX-DJH-1

ORDER

15 Before the Court is Petitioner Jose Ramon Cebreros-Sanchez’s Motion Under 28
16 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody
17 (the “§ 2255 Motion”) (Doc. 1) and the January 23, 2023, Report and Recommendation
18 (“R&R”) issued by Magistrate Judge Eileen S. Willett (Doc. 28). In her R&R, Judge
19 Willett recommends the § 2255 Motion be denied without an evidentiary hearing. (*Id.* at
20 20). She also recommends that a Certificate of Appealability and leave to proceed *in*
21 *forma pauperis* be denied because Petitioner has not made a substantial showing of the
22 denial of a constitutional right. (*Id.*)

23 On February 21, 2023, Petitioner filed a one-page objection to the R&R (Doc. 29)
24 in which he asserts that the R&R did not address one of the six grounds he raised in his
25 § 2255 Motion. Specifically, Petitioner says the R&R failed to address his argument that
26 his counsel’s performance was constitutionally deficient for failing to raise the argument
27 that the jury had not found drug quantities that impacted the statutory maximum and
28 mandatory minimum sentence that he received. (*Id.*) The Government filed a Response

1 to Petitioner’s objection (Doc. 30) that points out that the R&R addresses Petitioner’s
2 argument at length on pages 14–16.

3 The Court has reviewed the comprehensive R&R and agrees with the Government.
4 The R&R not only addresses Petitioner’s § 2255 argument, it makes a sound
5 recommendation as to why Petitioner’s trial and appellate counsel were not deficient in
6 failing to challenge the sentence on appeal. (See Doc. 28 at 15–16 (finding that the
7 Court’s sentence comported with the Sixth Amendment because “the jury in this case
8 found beyond a reasonable doubt that Count 1 involved more than 500 grams of
9 methamphetamine” and “the Court did not impose sentences on Counts 1 and 2 that
10 exceeded the statutory maximum”). The Court will, therefore, overrule Petitioner’s
11 objection, accept the R&R, and dismiss the Petition. See 28 U.S.C. § 636(b)(1) (“A
12 judge of the court may accept, reject, or modify, in whole or in part, the findings or
13 recommendations made by the magistrate judge.”); Fed.R.Civ.P. 72(b)(3) (same).

14 Accordingly,

15 **IT IS ORDERED** that Petitioner’s Motion for Ruling (Doc. 31) is **granted** as
16 stated herein. Magistrate Judge Willett’s R&R (Doc. 28) is **accepted** and **adopted** as the
17 Order of this Court.

18 **IT IS FURTHER ORDERED** that the Motion Under 28 U.S.C. § 2255 to
19 Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Doc. 1) is **denied**
20 and Petitioner’s request for an evidentiary hearing is denied. Any request for a
21 Certificate of Appealability and leave to proceed on appeal *in forma pauperis* is denied
22 because Petitioner has not made a substantial showing of the denial of a constitutional
23 right.

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IT IS FINALLY ORDERED that the Clerk of Court shall terminate this action and enter judgment accordingly.

Dated this 24th day of September, 2024.



Honorable Diane J. Humetewa
United States District Judge