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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff/Respondent,

v.

Johnny Orsinger,

Defendant/Movant.

No. CV-13-08159-PCT-NVW

No. CR-01-01062-03-PCT-NVW

ORDER

Pending before the Court is the Report and Recommendation (“R&R”) of Magistrate Judge Lawrence O. Anderson (Doc. 9) regarding Defendant Johnny Orsinger’s Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 (Doc. 1). The R&R recommends that the Motion be granted and that Movant be resentenced in accordance with *Miller v. Alabama*, __ U.S. __, 132 S. Ct. 2455 (2012).

The United States filed a Response in which it agreed to the resentencing of Defendant pursuant to *Miller v. Alabama*. (Doc. 8.) The Court will accept the R&R and grant the Motion. *See* 28 U.S.C. § 636(b)(1) (stating that the district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate”).

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IT IS THEREFORE ORDERED that the Report and Recommendation of the Magistrate Judge (Doc. 9) is accepted and Defendant Johnny Orsinger's Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 (Doc. 1) is granted.

IT IS FURTHER ORDERED that Defendant Johnny Orsinger be resentenced in accordance with *Miller v. Alabama*, __ U.S. __, 132 S. Ct. 2455 (2012).

IT IS FURTHER ORDERED setting a hearing and resentencing in CR-01-01062-03-PCT-NVW, for October 27, 2014, at 2:30 p.m., in Courtroom 504, 401 W. Washington Street, Phoenix, Arizona 85003. The Probation Department shall prepare an updated presentence investigation report.

Dated this 19th day of June, 2014.



Neil V. Wake
United States District Judge