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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

United States of America,  
Plaintiff/Respondent,  
vs.  
Shawn Lorin Henderson,  
Defendant/Movant.

No. CV-16-08051-PCT-PGR (MHB)  
No. CR-12-08088-PCT-PGR

ORDER

Having reviewed *de novo* the Report and Recommendation of Magistrate Judge Burns in light of the movant's failure to object to the Report and Recommendation and the United States' partial objection to the Report and Recommendation (Doc. 11), the Court finds that the Magistrate Judge correctly concluded that the movant's motion, filed pursuant to 28 U.S.C. § 2255, must be dismissed with prejudice.<sup>1</sup>

<sup>1</sup>

The United States partially objects to the Report and Recommendation solely on the ground that it does not also recommend the dismissal of the movant's motion on three additional grounds raised by the United States in its response. Since the ground relied upon by the Magistrate Judge is by itself dispositive of the movant's motion, neither the Magistrate Judge nor the Court has any reason to reach the additional grounds and the Court overrules the United States' partial objection.

1 The movant raises a single claim in his motion, the gist of which is that his trial  
2 counsel provided ineffective assistance because she did not have his co-defendant  
3 testify at the movant's trial.<sup>2</sup> The Court agrees with the Magistrate Judge that this  
4 claim is meritless because the movant has neither alleged nor provided any  
5 evidence that his co-defendant would have voluntarily testified at the movant's trial,  
6 that any testimony on his part would have been favorable to the movant, or that any  
7 testimony on his part would have resulted in a different verdict for the movant.  
8 Therefore,

9 IT IS ORDERED that the Magistrate Judge's Report and Recommendation  
10 (Doc. 11) is accepted and adopted by the Court.

11 IT IS FURTHER ORDERED that the movant's Motion Under 28 U.S.C. § 2255  
12 to Vacate, Set Aside or Correct a Sentence by a Person in Federal Custody (Doc.  
13 1 in CV-16-08051 and Doc. 118 in CR-12-08088) is denied and that this action is  
14 dismissed with prejudice.

15 IT IS FURTHER ORDERED that a certificate appealability shall not issue and  
16 that leave to appeal *in forma pauperis* is denied because the movant has not made  
17 a substantial showing of the denial of a constitutional right.

18 IT IS FURTHER ORDERED that the Clerk of the Court shall enter judgment  
19 accordingly.

20 DATED this 13<sup>th</sup> day of February, 2017.

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23 Paul G. Rosenblatt  
United States District Judge

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26 At the time of the movant's trial, the co-defendant had already changed  
his plea to guilty and was awaiting sentencing.