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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Gentry Dee Deel,

10 Petitioner,

11 v.

12 United States of America,

13 Respondent.  
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No. CV-16-08136-PCT-GMS  
No. CR-06-01147-PCT-GMS

**ORDER**

15 Pending before the Court is Petitioner Gentry Dee Deel's Motion to Vacate, Set  
16 Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. On July 2, 2018, Magistrate  
17 Judge James Metcalf issued a Report and Recommendation ("R&R") which recommends  
18 that the motion be granted. (Doc. 43). Because intervening authority from the Ninth Circuit  
19 makes Deel's motion untimely, the Court must reject the R&R and deny Deel's Motion.

20 **DISCUSSION**

21 The Antiterrorism and Effective Death Penalty Act ("AEDPA") provides a one-year  
22 statute of limitations for petitions filed under 28 U.S.C. § 2255, which runs from the latest  
23 of four possible dates. Two of those dates are relevant to Deel's Motion. Typically, the  
24 one-year statute of limitations runs from "the date on which the judgment of conviction  
25 becomes final." *Id.* (f)(1). Because Deel's conviction became final in 2009, his current  
26 motion is not timely under that measure. But § 2255 also recognizes that the statute of  
27 limitations may also run from "the date on which the right asserted was initially recognized  
28 by the Supreme Court, if that right has been newly recognized by the Supreme Court and

1 made retroactively applicable to cases on collateral review.” *Id.* (f)(2). Deel argues that  
2 because the Supreme Court recently recognized a new right in *Johnson v. United States*,  
3 135 S. Ct. 2551 (2015), he may now bring his petition for relief under § 2255.

4 The Ninth Circuit’s recent decision in *United States v. Blackstone*, 903 F.3d 1020  
5 (9th Cir. 2018) controls the outcome of this case. There, the Ninth Circuit held that “[t]he  
6 Supreme Court has not recognized that § 924(c)’s residual clause is void for vagueness in  
7 violation of the Fifth Amendment.” *Id.* at 1028. Because that is the exact right that Deel  
8 seeks to assert here, the Court must deny his petition for relief under § 2255 as untimely.

9 And because the Ninth Circuit’s recent decision in *Blackstone* creates a plain  
10 procedural bar, the Court will not issue a certificate of appealability. *See Slack v.*  
11 *McDaniel*, 529 U.S. 473, 484 (2000) (“Where a plain procedural bar is present . . . a  
12 reasonable jurist could not conclude . . . that the petitioner should be allowed to proceed  
13 further.”)

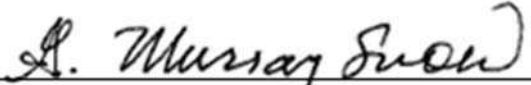
14 **IT IS THEREFORE ORDERED** that Magistrate Judge Metcalf’s R&R (Doc. 43)  
15 is rejected.

16 **IT IS FURTHER ORDERED** that Deel’s Motion to Vacate or Set Aside under  
17 § 2255 (Doc. 1) is **DENIED AND DISMISSED WITH PREJUDICE**.

18 **IT IS FUTRHER ORDERED** directing the Clerk of Court to terminate this action  
19 and enter judgment accordingly.

20 **IT IS FURTHER ORDERED** that pursuant to Rule 11(a) of the Rules Governing  
21 Section 2255 Cases, in the event Movant files an appeal, the Court declines to issue a  
22 certificate of appealability because reasonable jurists would not find the Court’s procedural  
23 ruling debatable. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

24 Dated this 12th day of February, 2019.

25  
26   
27 G. Murray Snow  
28 Chief United States District Judge