UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

v.

CR 13-3143 JCH
CV 16-967 JCH/GJF

RICHARD A. ARCHULETA,

Defendant-Movant.

ORDER ADOPTING PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

THIS MATTER is before the Court on review of the record. On August 26, 2016, Defendant-Movant Richard A. Archuleta ("Defendant") filed his "Motion Under 28 U.S.C. § 2255 to Vacate Sentence" ("Motion"). CV Doc. 1. The Government responded [CV Doc. 13] and Defendant replied. CV Doc. 16. Magistrate Judge Gregory Fouratt filed his Proposed Findings and Recommended Disposition ("PFRD") on June 28, 2017, recommending that the Motion be denied as Defendant had waived as part of his plea agreement the right to collaterally attack his conviction or sentence. CV Doc. 17. On its final page, the PFRD cautioned Defendant about the affirmative obligation to file objections to the PFRD within 14 days in order to preserve his right to further review. *Id.* at 25 (stating in bold-face that a "party must file any objections with the Clerk of the District Court within the fourteen-day period of that party wants to have appellate review of the proposed findings and recommended disposition. If no objections are filed, no appellate review will be allowed.").[1]

[1] The Court has confirmed that the PFRD was served on Defendant via first-class mail at Tucson USP. *See* CV Doc. 17 (notice of electronic filing indicating that PFRD was mailed to Richard A. Archuleta, #78389-051, USP Tucson, P.O. Box 24550, Tucson, AZ 85734). The Court has further confirmed via the Bureau of Prisons' inmate locator website that Defendant remains in custody at Tucson USP. Consequently, in the absence of any information to the contrary, the Court concludes that Defendant was properly served with the PFRD.

Because the PFRD was filed on June 28, 2017, Defendant had until July 12, 2017, by which to file his objections. Even as of the date of this Order, however, well in excess of the 14-day limitation, Defendant has failed to comply. The Tenth Circuit has held "that a party's objections to the magistrate judge's report and recommendation must be both timely and specific to preserve an issue for *de novo* review by the district court or for appellate review." *United States v. One Parcel of Real Property, With Buildings, Appurtenances, Improvements, and Contents, Known As: 2121 East 30th Street, Tulsa Okla.*, 73 F.3d 1057, 1059 (10th Cir. 1996). The Tenth Circuit, "like numerous other circuits, [has] adopted 'a firm waiver rule' that 'provides that the failure to make timely objections to the magistrate's findings or recommendations waives appellate review of both factual and legal questions.'" *Id.* at 1059 (citations omitted).

The Court has carefully reviewed the PFRD and the underlying briefing. The Court did not review the PFRD *de novo*, however, because neither party objected thereto. Rather, the Court reviewed Magistrate Judge Fouratt's findings and recommendations to determine if they are clearly erroneous, arbitrary, contrary to law, or an abuse of discretion. The Court determines that they are not. Accordingly, the Court will adopt the PFRD in its entirety.

In addition to adopting the PFRD, enforcing the collateral attack waiver, and denying the instant motion with prejudice, the Court also will deny a certificate of appealability. *See* Rule 11(a), Rules Governing Section 2255 Proceedings for the United States District Courts (2017). It is well-established that "[f]ailure of a [party] to object to a magistrate judge's recommendations results in a waiver of appellate review." *Fottler v. United States*, 73 F.3d 1064, 1065 (10th Cir. 1996). Defendant's status as a pro se litigant does not excuse his failure to comply because he was "properly informed of the consequences of his failure to object." *Id.*

Accordingly, **IT IS ORDERED** that the PFRD is **ADOPTED**, the Motion is **DENIED WITH PREJUDICE**, and a certificate of appealability is **DENIED**.

THE HONORABLE JUDITH C. HERRERA
UNITED STATES DISTRICT JUDGE