

APR 29 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHN HARRELL,

Defendant - Appellant.

No. 08-50011

D.C. No. CR-03-00850-W-3

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Thomas J. Whelan, District Judge, Presiding

Argued and Submitted April 15, 2009
Pasadena, California

Before: KOZINSKI, Chief Judge, PREGERSON, Circuit Judge, and QUIST,**
District Judge.

Defendant John Harrell appeals the district court's denial of his motion to
withdraw his guilty pleas. We affirm.

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable Gordon J. Quist, United States District Judge for the
Western District of Michigan, sitting by designation.

1. We review for abuse of discretion the district court's denial of Harrell's motion to withdraw his guilty pleas based on ineffective assistance of counsel. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1117 (9th Cir. 2003). The district court did not abuse its discretion when it determined on the basis of a declaration by Harrell's former attorney and on the basis of documentary evidence presented by Harrell that Harrell's former attorney did not render deficient representation.

2. We review Harrell's due process argument de novo. *See United States v. Larson*, 495 F.3d 1094, 1101 (9th Cir. 2007). The district court did not violate Harrell's due process rights by refusing to allow Harrell to cross-examine his former attorney, whose sole testimony was that his declaration should be considered signed under penalty of perjury. The district court decided the motion without hearing any oral testimony from witnesses.

AFFIRMED.