

JUN 30 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GARY ALLEN FALCON,

Defendant - Appellant.

No. 08-30146

D.C. No. 4:07-cr-00112-SEH

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Montana  
Sam E. Haddon, District Judge, Presiding

Submitted June 16, 2009\*\*

Before: PAEZ, TALLMAN, and N.R. SMITH, Circuit Judges.

Gary Allen Falcon appeals from his jury-trial conviction for aggravated sexual abuse, in violation of 18 U.S.C. §§ 1153 and 2241(a), (c), and incest, in

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

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

violation of 18 U.S.C. § 1153 and M.C.A. § 45-5-507, and from his 360-month sentence. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Falcon contends that his former counsel was ineffective because counsel did not call his friends and family members to testify to his character at trial. We decline to review Falcon's ineffective assistance of counsel claim on direct appeal because "the record on appeal is [not] sufficiently developed to permit review and determination of the issue," and the legal representation was not so inadequate that it "obviously denie[d]" Falcon his Sixth Amendment right to counsel. *See United States v. McKenna*, 327 F.3d 830, 845 (9th Cir. 2003).

**AFFIRMED.**