

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 01 2009

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DENNIS RAY PENFIELD,

Defendant - Appellant.

No. 07-35799

D.C. Nos. CV-07-00209-JLQ
CR-04-00165-JLQ

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Justin L. Quackenbush, Senior District Judge, Presiding

Submitted June 16, 2009**

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

Federal prisoner Dennis Ray Penfield appeals from the district court's denial of his 28 U.S.C. § 2255 motion. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

* 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).

Penfield contends that the district court erred when it denied his request for substitution of counsel. Because the district court “conduct[ed] an inquiry adequate to create a sufficient basis for reaching an informed decision” and any conflict between Penfield and his attorney did not prevent effective assistance, Penfield’s contention fails. *United States v. Cassel*, 408 F.3d 622, 637-38 (9th Cir. 2005).

Penfield also contends that his trial counsel provided ineffective assistance pursuant to *Strickland v. Washington*, 466 U.S. 668 (1984), when it misinformed him regarding the mandatory minimum sentence. Because Penfield has failed to show “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different[,]” Penfield’s contention fails. *Id.* at 694.

AFFIRMED.