

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 06 2009

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FERENCE B. LANG,

Defendant - Appellant.

No. 07-17125

D.C. Nos. CV-00-00895-DLJ
CR-93-00472-DLJ

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
D. Lowell Jensen, District Judge, Presiding

Submitted June 16, 2009**

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

Ference B. Lang appeals from the district court's order denying his 28 U.S.C. § 2255 habeas 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 denies petitioner's request for oral argument. *See* Fed. R. App. P. 34(a)(2).

Lang contends that he received ineffective assistance of counsel at trial. This contention fails because Lang has not shown a reasonable probability that, but for counsel's conduct, the result of the trial would have been different. *See Strickland v. Washington*, 466 U.S. 688 (1984); *United States v. Sanchez-Cervantes*, 282 F.3d 664, 671-72 (9th Cir. 2002).

Lang also contends that his constitutional rights were violated because facts that increased the maximum penalty were neither alleged in the indictment nor proved beyond a reasonable doubt. As Lang concedes, this contention is foreclosed. *See Sanchez-Cervantes*, 282 F.3d at 671.

AFFIRMED.