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U.S. COURT OF APPEALS

Corrected 7/14/09

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERNEST WAYNE, a/k/a MIGUEL  
ANGEL CORRALIZA SANCHEZ,

Defendant - Appellant.

No. 07-55161

D.C. Nos. CV-05-07832-SVW  
CR-01-00959-SVW-14

MEMORANDUM \*

Appeal from the United States District Court  
for the Central District of California  
Stephen V. Wilson, District Judge, Presiding

Submitted June 16, 2009\*\*

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

Federal prisoner Ernest Wayne appeals from the district court's order denying his 28 U.S.C. § 2255 motion. We have jurisdiction pursuant to 28 U.S.C.

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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).

§ 2253. We review de novo. *See United States v. Rodrigues*, 347 F.3d 818, 823 (9th Cir. 2003). We reverse and remand for resentencing.

Wayne contends that he was deprived of effective assistance of counsel because his counsel failed to object to a career offender enhancement at sentencing and on appeal. Wayne's conviction under California Health & Safety Code § 11352 does not categorically qualify as a predicate conviction for a career offender enhancement, *see United States v. Kovac*, 367 F.3d 1116, 1119 (9th Cir. 2004), and the record does not contain the documentation required by *Shepard v. United States*, 544 U.S. 13, 24 (2005). In these circumstances, counsel's failure to object fell "below an objective standard of reasonableness." *See Strickland v. Washington*, 466 U.S. 668, 688 (1984). Moreover, Wayne has demonstrated a reasonable probability that the district court would not have applied the enhancement had Wayne's counsel objected.

**REVERSED and REMANDED.**