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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>SERGIO MANUEL CISNEROS,</p> <p>Defendant - Appellant.</p>
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No. 08-35377

D.C. Nos. 2:07-cv-03043-WFN
2:03-cr-02193-WFN

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Wm. Fremming Nielsen, District Judge, Presiding

Submitted December 15, 2009**

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Federal prisoner Sergio Manuel Cisneros appeals from the district court's order denying his motion for relief under 28 U.S.C. § 2255. 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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Cisneros contends that counsel was ineffective for failing to inform him about the government's plea offer. The district court's determination that counsel discussed the plea agreement with Cisneros was not clearly erroneous. *See United States v. Battles*, 362 F.3d 1195, 1196 (9th Cir. 2004). Accordingly, Cisneros has failed to show deficient performance or prejudice. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984); *United States v. Blaylock*, 20 F.3d 1458, 1466 (9th Cir. 1994).

Cisneros next contends that counsel was ineffective for failing to communicate with Cisneros about his case, rendering it impossible for him to make an intelligent decision regarding the plea offer. The district court found that counsel discussed the plea offer with Cisneros, informed Cisneros of the risks of rejecting it, and discussed the strength of the government's case with Cisneros. Counsel's communication with Cisneros did not fall outside "the wide range of reasonable professional assistance." *Strickland*, 466 U.S. at 689.

In any event, because Cisneros refused at the time to consider the government's offer, he has failed to demonstrate a reasonable probability that he would have timely accepted the government's offer. *See Hill v. Lockhart*, 474 U.S. 52, 59–60 (1985); *see also Jones v. Wood*, 114 F.3d 1002, 1012 (9th Cir. 1997)

(finding no prejudice where there was no “reasonable probability that at the time of the offer” the petitioner would have accepted government’s plea offer).

AFFIRMED.