

JAN 25 2010

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NOT FOR PUBLICATION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.

MANUEL NAVARRO,

Defendant - Appellant.

No. 05-55209

D.C. Nos. CV-03-01309-DOC
CR-02-00009-DOC

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
David O. Carter, District Judge, Presiding

Submitted January 11, 2010**

Before: BEEZER, TROTT, and BYBEE, Circuit Judges.

Federal prisoner Manuel Navarro appeals from the district court's order denying 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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Navarro contends that his trial attorney was ineffective for failing to advise him of his right to appeal. Because Navarro has not shown that a rational defendant would want to appeal, or that he reasonably demonstrated to counsel that he was interested in appealing, he has failed to show that he is entitled to relief. *See Roe v. Flores-Ortega*, 528 U.S. 470, 480 (2000); *see also Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

Navarro also contends that the district court erred by failing to hold an evidentiary hearing on this issue. Based on the record available to the district court, including trial counsel's declaration, and the transcripts of the plea colloquy and the October 7, 2002 hearing, the district court did not abuse its discretion in resolving Navarro's claims without holding a hearing. Where, as here, "the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief," an evidentiary hearing is not required. *See* 28 U.S.C. § 2255(b).

We construe Navarro's additional arguments as a motion to expand the certificate of appealability. So construed, the motion is denied. *See* 9th Cir. R. 22-1(e); *see also Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (per curiam).

AFFIRMED.