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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NOT FOR PUBLICATION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>JOSE MANUEL ARECHIGA-RAMIREZ,</p> <p>Defendant - Appellant.</p>
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No. 07-16939

D.C. Nos. CV-07-00057-LRH
CR-05-00033-1-LRH

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Larry R. Hicks, District Judge, Presiding

Submitted February 16, 2010**

Before: FERNANDEZ, GOULD, and M. SMITH, Circuit Judges.

Jose Manuel Arechiga-Ramirez appeals pro se from the district court's judgment denying his 28 U.S.C. § 2255 motion. We have jurisdiction pursuant to

* 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).

28 U.S.C. § 2253, and we affirm.

Arechiga-Ramirez contends that his appellate counsel was ineffective for failing to advise him of his right to petition the Supreme Court for a writ of certiorari. A federal defendant's right to effective assistance of counsel on appeal is grounded in the Due Process Clause of the Fifth Amendment. *See United States v. Baker*, 256 F.3d 855, 859 n.2 (9th Cir. 2001). The Supreme Court has held that this right does not extend to the filing of a petition for a writ of certiorari. *See Ross v. Moffitt*, 417 U.S. 600, 617-18 (1974); *see also Miller v. Keeney*, 882 F.2d 1428, 1433 (9th Cir. 1989) (recognizing that "the Supreme Court has interpreted the due process clause as not comprehending a right to counsel, and thus not including a right to the effective assistance of counsel, for the filing of certiorari petitions"). Counsel's failure to advise Arechiga-Ramirez regarding his right to file such a petition therefore did not violate his constitutional rights. Moreover, Arechiga-Ramirez has failed to demonstrate that he suffered any prejudice as a result.

We construe the additional arguments in the opening and reply briefs 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.