

MAR 08 2010

MOLLY C. DWYER, CLERK
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NOT FOR PUBLICATION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>OMAR LIZARRAGA-CEDANO,</p> <p>Defendant - Appellant.</p>

No. 07-35846

D.C. Nos. CR-04-00015-FVS
CV-06-00276-FVS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Fred L. Van Sickle, District Judge, Presiding

Submitted February 16, 2010**

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

Federal prisoner Omar Lizarraga-Cedano appeals pro se 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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Lizarraga-Cedano contends that counsel was ineffective for failing to adequately challenge 1) the probation officer's recommended 2-level increase to the offense level; 2) the sufficiency of the evidence supporting his conspiracy conviction; and 3) the sufficiency of the evidence supporting his possession conviction.

Each of these contentions lacks merit because Lizarraga-Cedano has failed to demonstrate a reasonable probability that the outcome of trial would have been different, but for counsel's alleged errors. *See Strickland v. Washington*, 466 U.S. 668, 694, 697 (1984).

We construe appellant'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.