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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NOT FOR PUBLICATION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>FRED ROBISON,</p> <p>Defendant - Appellant.</p>
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No. 09-10068

D.C. No. 2:05-CR-00170-JCM

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Nevada  
James C. Mahan, District Judge, Presiding

Submitted March 16, 2010\*\*

Before: SCHROEDER, PREGERSON, and RAWLINSON, Circuit Judges.

Fred Robison appeals from the 120-month sentence imposed following a guilty-plea conviction for conspiracy to possess with intent to distribute and to distribute a controlled substance, in violation of 21 U.S.C. § 846. We have

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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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Robison contends that trial counsel was ineffective for failing to further investigate whether he was eligible for safety-valve relief. The record in this case is sufficiently developed for us to determine that Robison did not receive ineffective assistance of counsel. *See United States v. Labrada-Bustamante*, 428 F.3d 1252, 1260-61 (9th Cir. 2005). Specifically, the record reflects that counsel investigated the validity of the prior conviction that made him ineligible for safety valve consideration, and undertook a great deal of effort to attack the conviction in state court. Because Robison fails to demonstrate that counsel's performance was deficient, his claim fails. *See Strickland v. Washington*, 466 U.S. 668, 687-90 (1984).

**AFFIRMED.**