

APR 01 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NOT FOR PUBLICATION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.

TRACY ELDON LEWIS,

Defendant - Appellant.

No. 07-35769

D.C. Nos. CV-06-00056-CCL
CR-05-00007-CCL

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Charles C. Lovell, District Judge, Presiding

Submitted March 16, 2010**

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

Federal prisoner Tracy Eldon Lewis appeals from the district court's order denying his motion for relief under 28 U.S.C. § 2255. We have jurisdiction

* 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).

pursuant to 28 U.S.C. § 2253, and we vacate and remand for an evidentiary hearing.

Lewis contends that his counsel rendered ineffective assistance by failing to file a notice of appeal. The Government agrees this claim is controlled by *United States v. Sandoval-Lopez*, 409 F.3d 1193, 1197-98 (9th Cir. 2005), which holds that it is ineffective assistance of counsel to refuse to file a notice of appeal when requested, even if doing so is contrary to a plea agreement. Accordingly, we remand this claim to the district court for an evidentiary hearing as required by *Sandoval-Lopez*.

Lewis' motion to expand the certificate of appealability 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).

VACATED and REMANDED for an evidentiary hearing.