

APR 16 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>NEKO KIMON DEFTERIOS,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>UNITED STATES OF AMERICA,</p> <p>Defendant - Appellee.</p>
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No. 08-55098

D.C. Nos. CV-07-00914-JVS
CR-01-00127-JVS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
James V. Selna, District Judge, Presiding

Submitted April 5, 2010**

Before: RYMER, McKEOWN, and PAEZ, Circuit Judges.

Neko Kimon Defterios 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).

Defterios contends that he was denied effective assistance of counsel because his counsel in a previous matter failed to pursue a global resolution of that case and the instant case. The record reflects that during the relevant period, the instant case was only in the investigatory stage. The Sixth Amendment right to counsel “does not attach until a prosecution is commenced.” *United States v. Charley*, 396 F.3d 1074, 1082 (9th Cir. 2005) (quoting *McNeil v. Wisconsin*, 501 U.S. 171, 175 (1991)). Thus, Defterios’ claim of ineffective assistance of counsel fails. See *United States v. Zazzara*, 626 F.2d 135, 138 (9th Cir. 1980), *abrogated on other grounds as recognized in United States v. Pace*, 833 F.2d 1307, 1311-12 (1987).

AFFIRMED.