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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAJINDER SINGH JOHAL,

Petitioner - Appellant,

v.

UNITED STATES OF AMERICA,

Respondent - Appellee.

No. 09-35407

D.C. No. 2:08-cv-01075-RSL

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Robert S. Lasnik, Chief District Judge, Presiding

Submitted May 25, 2010**

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

Federal prisoner Rajinder Singh Johal appeals pro se from the district court's order denying his motion under 28 U.S.C. § 2255. We have jurisdiction under 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).

Johal contends that he is entitled to a sentencing reduction under *United States v. Santos*, 553 U.S. 507 (2008), because the district court enhanced his sentence based upon the gross receipts rather than the net profits of his money laundering offense. This contention is foreclosed because no merger problem of the kind posed in *Santos* exists in this case. See *United States v. Van Alstyne*, 584 F.3d 803, 814-17 (9th Cir. 2009) (reasoning that, under 18 U.S.C. § 1956 and the relevant Guidelines, “‘proceeds’ means ‘profits’ where viewing ‘proceeds’ as ‘receipts’ would present a ‘merger’ problem of the kind that troubled the plurality and concurrence in *Santos*”).

Johal also contends that the district court erred by resolving his section 2255 motion without holding an evidentiary hearing. This contention lacks merit. See *United States v. Johnson*, 988 F.2d 941, 945 (9th Cir. 1993) (“Merely conclusory statements in a § 2255 motion are not enough to require a hearing.”) (internal quotation marks and citations omitted).

Because we affirm on the merits, we do not address the Government’s untimeliness and procedural bar arguments.

Johal’s motion for expedited appeal is granted.

AFFIRMED.