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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NOT FOR PUBLICATION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 style="text-align: center;">Plaintiff - Appellee,</p> <p style="text-align: center;">v.</p> <p>LEONEL ERNESTO VILLASENOR,</p> <p style="text-align: center;">Defendant - Appellant.</p>

No. 08-17669

D.C. Nos. 4:08-cv-00180-DCB
4:03-cr-00717-DCB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David C. Bury, District Judge, Presiding

Submitted June 29, 2010**

Before: ALARCÓN, LEAVY, and GRABER, Circuit Judges.

Federal prisoner Leonel Ernesto Villasenor appeals pro se from the district court’s judgment denying his motion to vacate, set aside, or correct his sentence 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).

Villasenor contends that he received ineffective assistance of counsel because his counsel failed to advise him of the effect of his career offender status on his potential sentence before he rejected plea offers. The district court did not err by determining that Villasenor was advised of the effect on his sentence. Therefore, Villasenor's contention fails. *See Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *see also United States v. Leonti*, 326 F.3d 1111, 1120-22 (9th Cir. 2003).

Villasenor also contends that he received ineffective assistance because his counsel failed to challenge on direct appeal the denial of his motion to suppress certain statements. This contention fails because his counsel was not deficient in failing to challenge the denial of the motion, and Villasenor cannot demonstrate prejudice because this issue did not have a reasonable probability of prevailing on appeal. *See United States v. Baker*, 256 F.3d 855, 862-63 (9th Cir. 2001).

Contrary to Villasenor's contention, the district court did not abuse its discretion in denying his 28 U.S.C. § 2255 motion without an evidentiary hearing. *See Shah v. United States*, 878 F.2d 1156, 1160 (9th Cir. 1989).

AFFIRMED.