

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 12 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ADAM JOHN SORTINI,

Defendant - Appellant.

No. 09-10514

D.C. No. 1:06-cr-00100-OWW-1

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Oliver W. Wanger, Senior District Judge, Presiding

Submitted January 10, 2011**
San Francisco, California

Before: WALLACE, NOONAN, and SILVERMAN, Circuit Judges.

Adam Sortini (“Sortini”) was convicted of 17 counts of mail fraud, and one count of health care fraud. He moved for a new trial, arguing his attorney was

* 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).

ineffective in both pretrial preparation and at trial. He appeals the district court's denial of that motion.

This case does not present a record regarding trial preparation that is sufficiently developed for us to decide whether Sortini's attorney rendered ineffective pretrial assistance. *See United States v. Sager*, 227 F.3d 1138, 1149 (9th Cir. 2000).

With regard to trial performance, the evidence against Sortini was so overwhelming that he cannot show that counsel's performance could have prejudiced him. *See, e.g., Allen v. Woodford*, 395 F.3d 979, 1002 (9th Cir. 2005). Because Sortini is required to show both deficient performance and prejudice in order to prevail on his ineffective assistance claim, this shortcoming is fatal. *See Strickland v. Washington*, 446 U.S. 668, 697 (1984).

AFFIRMED.