

APR 11 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE LUIS MEDINA ALVARADO,

Defendant - Appellant.

No. 10-16337

D.C. Nos. 3:08-cv-04557-CRB
3:01-cr-00419-CRB

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

Submitted April 5, 2011**

Before: B. FLETCHER, CLIFTON, and BEA, Circuit Judges.

Federal prisoner Jose Luis Medina Alvarado appeals pro se from the district court's order denying his 28 U.S.C. § 2255 habeas motion. We have jurisdiction under 28 U.S.C. § 2253, and we affirm.

Alvarado contends that his trial counsel was ineffective for failing accurately

* 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).

to advise him of his potential sentence if he was to plead guilty. As the district court noted, no plea offer was extended to Alvarado, and the sentence he received was close to, if not identical to, the Guidelines sentence that would have resulted from a plea. Accordingly, Alvarado cannot demonstrate prejudice because he has failed to show that there was a reasonable probability that the result of the proceeding would have been different. *See Strickland v. Washington*, 466 U.S. 668, 693-94 (1984); *see also United States v. Blaylock*, 20 F.3d 1458, 1466-67 (9th Cir. 1994). The district court did not abuse its discretion by concluding that an evidentiary hearing was not necessary to resolve this claim. *See Frazer v. United States*, 18 F.3d 778, 781 (9th Cir. 1994).

We construe Alvarado's additional arguments as a motion to expand the certificate of appealability. So construed, the motion 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).

AFFIRMED.