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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>EARL JOSEPH,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>UNITED STATES OF AMERICA,</p> <p>Respondent - Appellee.</p>
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No. 13-16760

D.C. Nos. 5:08-cv-04607-RMW  
00-cr-20217-RMW

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Ronald M. Whyte, District Judge, Presiding

Submitted July 22, 2014\*\*

Before: GOODWIN, CANBY, and CALLAHAN, Circuit Judges.

Federal prisoner Earl Joseph appeals pro se from the district court's judgment denying his 28 U.S.C. § 2255 motion. We have jurisdiction under 28 U.S.C. § 2253, and we affirm.

Joseph contends that he was entitled to an evidentiary hearing on his claim

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\* 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).

that his convictions are based on perjured testimony. We review the district court's denial of an evidentiary hearing for abuse of discretion, *see United States v. Rodrigues*, 347 F.3d 818, 823 (9th Cir. 2003), and its factual findings for clear error, *see United States v. Zuno-Arce*, 339 F.3d 886, 888 (9th Cir. 2003). The district court properly denied Joseph's claim without an evidentiary hearing because the record shows that the district court did not clearly err in any of its factual findings and the record was sufficiently developed for the court to conclude that the claim lacked merit. *See United States v. Mejia-Mesa*, 153 F.3d 925, 931 (9th Cir. 1998) (no evidentiary hearing is required if, in light of the record, the movant's allegations are "palpably incredible or patently frivolous").

We construe Joseph'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); *Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (per curiam).

**AFFIRMED.**