

JUL 29 2014

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>FERNANDO NELSON AYALA- RAMOS, a.k.a. Jose, a.k.a. Nelson Fernando Ramos-Ayala,</p> <p style="text-align: center;">Petitioner - Appellant,</p> <p style="text-align: center;">v.</p> <p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Respondent - Appellee.</p>

No. 11-56487

D.C. Nos. 2:10-cv-07648-PA
2:09-cr-00242-PA

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Submitted July 22, 2014**

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

Federal prisoner Fernando Nelson Ayala-Ramos appeals from the district court's order denying his 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence. We have jurisdiction under 28 U.S.C. § 2253. We review de novo

* 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).

the district court's denial of a section 2255 motion, *see United States v. Aguirre-Ganceda*, 592 F.3d 1043, 1045 (9th Cir. 2010), and we vacate and remand.

Ayala-Ramos contends that his counsel rendered ineffective assistance by failing to comply with instructions to file a notice of appeal. The government agrees that this claim is controlled by *United States v. Sandoval-Lopez*, 409 F.3d 1193, 1197-98 (9th Cir. 2005), which holds that when counsel fails to follow a client's instructions to file a notice of appeal, there is both deficient performance and prejudice. Accordingly, we vacate and remand to the district court for an evidentiary hearing to determine the veracity of Ayala-Ramos's allegation that counsel did not follow his instructions to file a notice of appeal. *See id.* at 1198. Alternatively, if the government does not object, the district court may vacate and reenter the judgment in Ayala-Ramos's criminal proceedings, allowing Ayala-Ramos to file a timely notice of appeal. *See id.*

VACATED and REMANDED with instructions.