

JUN 30 2015

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

NOE MUNGUIA-DIAZ, a.k.a. Juan
Ernesto Medina-Munguia,

Defendant - Appellant.

No. 14-30032

D.C. No. 4:13-cr-00080-TJH

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
Terry J. Hatter, Jr., District Judge, Presiding**

Submitted June 22, 2015***

Before: HAWKINS, GRABER, and W. FLETCHER, Circuit Judges.

Noe Munguia-Diaz appeals from the district court's judgment and challenges the 144-month sentence imposed following his bench-trial conviction

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable Terry J. Hatter, Jr., Senior United States District Judge for the Central District of California, sitting by designation.

*** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

for seven counts of distribution of methamphetamine, in violation of 21 U.S.C. § 841(a)(1); and two counts of unlawful possession of a firearm, in violation of 18 U.S.C. § 922(g)(5)(A). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Munguia-Diaz contends that but for ineffective assistance of counsel during the plea bargain stage, he would have entered a plea agreement and received a less severe sentence. We decline to consider Munguia-Diaz's claim of ineffective assistance on direct appeal because the record is not sufficiently developed to permit review, and counsel's representation was not so inadequate that it obviously denied Munguia-Diaz his Sixth Amendment right to counsel. *See United States v. Rahman*, 642 F.3d 1257, 1259-60 (9th Cir. 2011).

Munguia-Diaz also contends that his sentence should be vacated and the case remanded for resentencing in light of Amendment 782 to the Sentencing Guidelines. *See* 18 U.S.C. § 3582(c)(2). Because Munguia-Diaz's 144-month sentence is lower than the bottom of the new sentencing range, he is not eligible for a reduction. *See* U.S.S.G. § 1B1.10(b)(2)(A) (the court shall not reduce a defendant's term of imprisonment to a term that is less than the minimum of the amended guideline range).

AFFIRMED.