

JAN 26 2016

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NOT FOR PUBLICATION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.

GLENN STEVEN SCOTT,

Defendant - Appellant.

No. 14-35807

D.C. Nos. 6:09-cr-00025-CCL
6:12-cv-00103-CCL

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Charles C. Lovell, District Judge, Presiding

Submitted January 20, 2016**

Before: CANBY, TASHIMA, and NGUYEN, Circuit Judges.

Federal prisoner Glenn Steven Scott appeals pro se 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 the

* 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).

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.

Scott contends that his counsel rendered ineffective assistance by failing to follow his instructions to file a notice of appeal. The government concedes, and we agree, that the district court erred when it declined to hold an evidentiary hearing on the issue. *See United States v. Sandoval-Lopez*, 409 F.3d 1193, 1198 (9th Cir. 2005) (stating that an evidentiary hearing is required when a defendant alleges that his attorney refused to file a notice of appeal when ordered to do so).

We therefore remand to the district court for an evidentiary hearing to determine whether Scott instructed his attorney to file a notice of appeal. *See id.*

Alternatively, if the government does not object, the district court may vacate and reenter the judgment in Scott's criminal proceedings, allowing Scott to file a timely notice of appeal. *See id.*

VACATED and REMANDED.