

FEB 21 2017

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NOT FOR PUBLICATION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.

CORNELIO MATA ESPINOZA,

Defendant-Appellant.

No. 15-10472

D.C. No. 3:09-cr-00103-CRB

MEMORANDUM*

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

Submitted February 14, 2017**

Before: GOODWIN, FARRIS, and FERNANDEZ, Circuit Judges.

Cornelio Mata Espinoza appeals pro se from the district court's order denying Espinoza's motion to alter or amend the judgment denying his 28 U.S.C. § 2255 motion. We have jurisdiction under 28 U.S.C. § 1291. We affirm.

In his section 2255 motion, Espinoza contended that his trial counsel

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

rendered ineffective assistance by advising him to agree in his plea agreement that he was a career offender for purposes of U.S.S.G. § 4B1.1. The district court denied the motion on the ground that Espinoza's counsel was not ineffective for advising Espinoza to stipulate to being a career offender. Espinoza eventually filed a motion to alter or amend the district court judgment under Federal Rule of Civil Procedure 59(e). The district court did not abuse its discretion in denying Espinoza's motion because Espinoza failed to present newly discovered evidence or to demonstrate that the district court's conclusion that Espinoza had not suffered ineffective assistance was clearly erroneous, manifestly unjust, or undermined by an intervening change in controlling law. *See Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (setting forth standard of review and grounds for relief under Rule 59(e)).

AFFIRMED.