

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 17 2021

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 20-10402

Plaintiff-Appellee,

D.C. No.

v.

1:19-cr-00211-DAD-SKO-1

FRANCISCO JAVIER OCHOA-ANAYA,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of California
Dale A. Drozd, District Judge, Presiding

Submitted September 14, 2021**

Before: PAEZ, NGUYEN, and OWENS, Circuit Judges.

Francisco Javier Ochoa-Anaya appeals from the district court's judgment and challenges the 312-month sentence imposed following his guilty-plea conviction for conspiracy to distribute a controlled substance, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), and 846, and possession of firearms in furtherance

* 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). Ochoa-Anaya's request for oral argument is, therefore, denied.

of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Ochoa-Anaya contends that his counsel rendered ineffective assistance by failing to challenge adequately his two-level Guidelines enhancement for using a personal relationship to involve another person in drug trafficking, pursuant to U.S.S.G. § 2D1.1(b)(16)(A). We decline to consider this claim on direct appeal because the record is insufficiently developed and it is not obvious that Ochoa-Anaya was denied his Sixth Amendment right to counsel. *See United States v. Rahman*, 642 F.3d 1257, 1259-60 (9th Cir. 2011). Ochoa-Anaya may raise this claim in a 28 U.S.C. § 2255 proceeding. *See id.* at 1260.

AFFIRMED.