

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 9 2022

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 21-17117

Plaintiff-Appellee,

D.C. Nos. 3:20-cv-04497-WHO  
3:18-cr-00251-WHO-1

v.

JESUS GUADALUPE SALAZAR, AKA  
Jesus Guadalupe Torres,

MEMORANDUM\*

Defendant-Appellant.

Appeal from the United States District Court  
for the Northern District of California  
William Horsley Orrick, District Judge, Presiding

Submitted December 7, 2022\*\*  
San Francisco, California

Before: BRESS and VANDYKE, Circuit Judges, and RESTANI,\*\*\* Judge.

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\* 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).

\*\*\* The Honorable Jane A. Restani, Judge for the United States Court of International Trade, sitting by designation.

Jesus Guadalupe Salazar appeals the district court’s denial of his 28 U.S.C. § 2255 motion to correct his sentence, arguing ineffective assistance of counsel. He asserts his counsel failed to file an appeal of a gun enhancement applied to his sentence. We have jurisdiction under 28 U.S.C. § 1291, and we affirm. Because the parties are familiar with the history of this case, we need not recount it here.

We review *de novo* a district court’s decision to deny a 28 U.S.C. § 2255 motion raising a claim of ineffective assistance of counsel. *See United States v. Juliano*, 12 F.4th 937, 940 (9th Cir. 2021); *United States v. Roberts*, 5 F.3d 365, 370–72 (9th Cir. 1993). The district court’s factual findings are reviewed for clear error. *Roberts*, 5 F.3d at 368. There is no basis to conclude that counsel was ineffective. Salazar waived his opportunity for an evidentiary hearing in the district court proceedings below and provided no evidence to support his statement that he requested his counsel file an appeal of his sentencing hearing. His counsel, meanwhile, provided contemporaneous notes explicitly stating that Salazar did not want to file an appeal. Salazar’s argument is not convincing, nor does it overcome *Strickland* deference to counsel. *Strickland v. Washington*, 466 U.S. 668, 689–90 (1984) (“Judicial scrutiny of counsel’s performance must be highly deferential[,]” and “counsel is strongly presumed to have rendered adequate assistance.”). Salazar contends that his counsel’s in-court statements triggered a duty to file an appeal. But no language used in counsel’s oral advocacy triggered such a duty.

*Cf. Roe v. Flores-Ortega*, 528 U.S. 470, 477 (2000) (“[A] defendant who explicitly tells his attorney not to file an appeal plainly cannot later complain that, by following his instructions, his counsel performed deficiently.”).

**AFFIRMED.**