

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-4035

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ARTURO ABURTO SANCHEZ, a/k/a Gustavo,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Asheville. Martin K. Reidinger, District Judge. (1:14-cr-00100-MR-DLH-1)

Submitted: September 13, 2016

Decided: September 16, 2016

Before TRAXLER, AGEE, and THACKER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

David G. Belser, BELSER & PARKE, Asheville, North Carolina, for Appellant. Jill Westmoreland Rose, United States Attorney, Anthony J. Enright, Assistant United States Attorney, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Arturo Aburto Sanchez appeals his conviction for possession with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B) (2012). He argues that sentencing counsel rendered ineffective assistance in failing to object to one paragraph of the presentence report, ask for a variance, and present mitigating evidence that might have justified a variance. We affirm.

A prisoner "may raise a claim of ineffective assistance of counsel in the first instance on direct appeal if and only if it conclusively appears from the record that counsel did not provide effective assistance." United States v. Galloway, 749 F.3d 238, 241 (4th Cir. 2014) (alteration and ellipsis omitted). Absent such a showing, ineffective assistance claims should be raised in a motion brought pursuant to 28 U.S.C. § 2255 (2012), in order to permit sufficient development of the record. United States v. Baptiste, 596 F.3d 214, 216 n.1 (4th Cir. 2010). Because the record here does not conclusively establish the alleged grounds for Sanchez's claims, Sanchez does not meet this demanding standard. These claims should be raised, if at all, in a § 2255 motion.

Accordingly, because Sanchez raises no claims that can be resolved in this appeal, we dismiss the appeal. We dispense with oral argument because the facts and legal contentions are

adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED