FILED

NOT FOR PUBLICATION

JAN 05 2011

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

D.C. Nos. 2:07-cv-06246-RMT

2:01-cr-00564-RMT

v.

ARMANDO GARCIA RICO,

MEMORANDUM*

No. 08-55885

Defendant - Appellant.

Appeal from the United States District Court for the Central District of California Robert M. Takasugi, District Judge, Presiding

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and CLIFTON, Circuit Judges.

Federal prisoner Armando Garcia Rico appeals from the district court's denial of his 28 U.S.C. § 2255 motion for relief. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

^{*} 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).

Rico contends that his trial counsel was ineffective for failing to appeal the district court's sentence following a limited remand under *United States v*.

Ameline, 409 F.3d 1073 (9th Cir. 2005) (en banc). Counsel here did not have a constitutionally imposed duty to consult with Rico about an appeal and therefore did not provide ineffective assistance by not filing an appeal. See Roe v.

Flores-Ortega, 528 U.S. 470, 480 (2000).

Rico's motion to supplement the record is denied. *See* Fed. R. App. P. 10(e); *Morrison v. Hall*, 261 F.3d 896, 900 n.4 (9th Cir. 2001).

AFFIRMED.

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