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E-Filed on: 7/29/10

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiffs,
v.
GAMALIEL QUEVEDO,
Defendant.

Case No. CR-04-20174-RMW
(Related to C-06-06605-RMW)
ORDER SUMMARILY DENYING MOTION
UNDER § 2255

On October 24, 2006 Gamaliel Quevedo filed a Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by Person in Federal Custody. He was sentenced on April 11, 2006 following his plea to distribution of 50 grams or more of methamphetamine pursuant to a plea agreement. The plea agreement gave up the right to appeal but left open defendant's right to argue for a minor role adjustment at sentencing. Defendant lost that argument at the sentencing hearing and thus the court found that no Guideline point adjustment was appropriate. Defendant now argues in his § 2255 petition that his counsel was ineffective for not explaining that his plea agreement gave up his right to appeal the court's decision on the minor role adjustment.

The motion has no merit and is summarily denied. The plea agreement which defendant signed is clear as to the waiver of appeal and that defendant only reserves the right to argue the minor role adjustment. More importantly, there are no facts which suggest that defendant would have received a more favorable sentence if he had not entered into his plea agreement or if his plea

1 agreement had allowed an appeal on the minor role adjustment. In light of the facts stipulated to in
2 the plea agreement, the court 's decision denying the minor role adjustment would undoubtedly have
3 been affirmed on appeal.

4 The motion is summarily denied and the clerk may close the file.

5 DATED: 7/29/10

Ronald M Whyte

RONALD M. WHYTE
United States District Judge

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