

AUG 06 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>GARY PATRICK CALLAHAN,</p> <p>Defendant - Appellant.</p>

No. 06-15321

D.C. Nos. CV-97-00515-RGS
CR-89-00178-RGS

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Roger G. Strand, District Judge, Presiding

Submitted July 22, 2008**

Before: B. FLETCHER, THOMAS and WARDLAW, Circuit Judges.

Gary Patrick Callahan appeals pro se from the district court’s judgment, following this court’s remand for an evidentiary hearing, denying his 28 U.S.C. § 2255 motion. 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 finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Callahan contends that his trial counsel was ineffective because counsel failed to investigate and make known to the jury a sexual relationship between Callahan's girlfriend and a prosecution witness. The district court did not err in concluding that trial counsel was aware of this evidence and that the decision not to present the evidence was not objectively unreasonable. *See Babbitt v. Calderon*, 151 F.3d 1170, 1174 (9th Cir. 1998). Accordingly, the district court did not err in determining that counsel was not constitutionally ineffective. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984).

To the extent that Callahan raises other contentions not certified on appeal, we construe his contentions as a motion to expand the certificate of appealability, and we deny the motion. *See* 9th Cir. R. 22-1(e); *Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (per curiam).

All other pending motions are dismissed as moot.

AFFIRMED.