

MAY 23 2008

MOLLY C. DWYER, CLERK  
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NOT FOR PUBLICATION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>HECTOR ACOSTA,</p> <p>Defendant - Appellant.</p>
---

No. 05-50378

D.C. No. CR-04-00645-JFW-1

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
John F. Walter, District Judge, Presiding

Submitted May 20, 2008\*\*

Before: PREGERSON, TASHIMA, and GOULD, Circuit Judges.

Hector Acosta appeals from his guilty-plea conviction for conspiracy to distribute and to possess with intent to distribute methamphetamine, in violation of

---

\* 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).

21 U.S.C. § 846, and possession with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841(a)(1). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Acosta contends that his counsel was ineffective because he failed to inform Acosta that the government had offered a plea agreement that contained a departure provision pursuant to U.S.S.G. § 5K1.1. As a preliminary matter, we conclude that any defect in Acosta's notice of appeal does not affect our jurisdiction. *See United States v. Belgarde*, 300 F.3d 1177, 1180 (9th Cir. 2002). However, we decline to review Acosta's ineffective assistance of counsel claim on direct appeal because "the record on appeal is [not] sufficiently developed to permit determination of the issue," and Acosta does not contend that his legal representation was so inadequate that it "obviously denie[d]" him his Sixth Amendment right to counsel. *See United States v. Jeronimo*, 398 F.3d 1149, 1156 (9th Cir. 2005). We further decline Acosta's request to remand for an evidentiary hearing to develop the record.

**AFFIRMED.**