

DEC 29 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NOT FOR PUBLICATION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>JAMES BROOMFIELD, a/k/a BISCUIT,</p> <p>Defendant - Appellant.</p>

No. 06-56585

D.C. Nos. CV-00-00165-CBM
CR-95-00165-CBM-02

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Consuelo B. Marshall, District Judge, Presiding

Submitted December 17, 2008**

Before: GOODWIN, TROTT and RYMER, Circuit Judges.

James Broomfield appeals pro se from the district court's order denying his 28 U.S.C. § 2255 motion. We have jurisdiction pursuant to 28 U.S.C. § 2253. We

* 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).

review de novo, *Sanchez v. United States*, 50 F.3d 1448, 1451 (9th Cir. 1995), and we affirm.

Broomfield contends that appellate counsel rendered ineffective assistance by failing to appeal the denial of his motion for appointment of an expert chemist. We conclude that counsel was not ineffective in failing to raise the denial of the motion, and that Broomfield cannot demonstrate prejudice by this omission because this claim did not have a reasonable probability of succeeding on appeal. *See Miller v. Keeney*, 882 F.2d 1428, 1433-35 (9th Cir. 1989).

AFFIRMED.