

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 31 2009

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

THOMAS P. RANES,

Defendant - Appellant.

No. 08-30212

D.C. No. 3:06-cr-00041-RRB-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Alaska
Ralph R. Beistline, District Judge, Presiding

Argued and Submitted August 6, 2009
Anchorage, Alaska

Before: FARRIS, THOMPSON and RAWLINSON, Circuit Judges.

The defendant Thomas P. Ranes appeals the district court's denial of his motion to withdraw a guilty plea, and claims ineffective assistance of counsel.

The government argues that Ranes' appeal of the motion to withdraw is barred by a waiver in the plea agreement. An appellate waiver that "does not

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

specifically contemplate the possibility of an appeal based on the district court's denial of a motion to withdraw [a plea]" may nonetheless preclude such an appeal if its language is sufficiently broad. *United States v. Jeronimo*, 398 F.3d 1149, 1154 (9th Cir. 2005).

Ranes's plea agreement waived "the right to appeal the convictions resulting from the entry of guilty pleas." If his guilty plea were withdrawn, the resulting conviction would fail too, rendering the waiver meaningless. The waiver's language is broad enough to indicate that, by waiving the right to challenge the conviction, Raney also waived the right to challenge the denial of his motion to withdraw his guilty plea.

On direct review we decide ineffective assistance of counsel claims only "(1) when the record on appeal is sufficiently developed to permit review and determination of the issue, or (2) when the legal representation is so inadequate that it obviously denies a defendant his Sixth Amendment right to counsel." *United States v. Daychild*, 357 F.3d 1082, 1095 (9th Cir. 2004). Neither condition applies here. The record is inadequately developed with respect to Raney's attorney's competence, and there is no obvious flaw in his representation.

AFFIRMED.