

JAN 14 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LANCE MATTHEW MALONE,

Defendant - Appellant.

No. 07-10193

D.C. No. CR-03-00500-LRH

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Nevada  
Larry R. Hicks, District Judge, Presiding

Submitted December 17, 2008\*\*

Before: GOODWIN, TROTT, and RYMER, Circuit Judges.

Lance Matthew Malone appeals from the 72-month sentence imposed following his guilty-plea conviction for RICO conspiracy, in violation of 18 U.S.C.

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\* 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).

§ 1962(d). We have jurisdiction under 28 U.S.C. § 1291, and we dismiss the appeal.

Malone contends that the appeal waiver in his plea agreement does not preclude this appeal because his sentence resulted from an upward departure and the language of the agreement explicitly reserved his right to appeal in the event of a departure. Because the district court did not depart from the Guidelines range, this contention fails. Accordingly, we enforce the appeal waiver, and dismiss the appeal. *See United States v. Nguyen*, 235 F.3d 1179, 1182 (9th Cir. 2000).

**DISMISSED.**