

JAN 06 2010

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NOT FOR PUBLICATION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>FRANK NICHOLAS PELLEGRINO,</p> <p>Defendant - Appellant.</p>

No. 08-10500

D.C. No. 2:03-cr-00804-DGC

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David G. Campbell, District Judge, Presiding

Submitted December 15, 2009**

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Frank Nicholas Pellegrino appeals from the 120-month sentence imposed following his guilty-plea conviction for conspiracy to possess with intent to distribute 1000 kilograms or more of marijuana and conspiracy to commit money

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

laundering, in violation of 18 U.S.C. § 1956(a)(1)(A)(i), (h), and 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(vii), and 846. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Pellegrino contends the district court erred by determining that the ten-year statutory minimum sentence under § 841(b)(1)(A) trumped the sentencing principles set forth in 18 U.S.C. § 3553(a). Pellegrino waived this contention by agreeing to a ten-year statutory minimum sentence, and declining the district court's invitation to prepare supplemental briefing on the issue. *See United States v. Olano*, 507 U.S. 725, 733 (1993).

AFFIRMED.