

JAN 11 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

NICHOLAS RAPIER,

Defendant - Appellant.

No. 08-10573

D.C. No. 2:06-cr-00476-MCE

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, District Judge, Presiding

Submitted December 15, 2009**

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

Nicholas Rapier appeals from the 188-month sentence imposed following his guilty-plea conviction for distribution of at least 5 grams of cocaine base, in

* 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).

violation of 21 U.S.C. § 841(a)(1). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Rapier contends that the district court erred at sentencing by ignoring mitigating factors that it was required to consider under 18 U.S.C. § 3553(a), and that the sentence imposed is unreasonable. We are precluded from reaching the merits of this claim by the valid appeal waiver. *See United States v. Bibler*, 495 F.3d 621, 624 (9th Cir. 2007).

AFFIRMED.