

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NOT FOR PUBLICATION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.

SERGIO ZAVALA-CERVANTEZ,

Defendant - Appellant.

No. 08-30041

D.C. No. CR-06-00016-RHW

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Robert H. Whaley, District Judge, Presiding

Submitted December 15, 2009**

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

Sergio Zavala-Cervantez appeals from the 143-month sentence imposed following his guilty-plea conviction for distribution of methamphetamine, 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), (b). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Zavala-Cervantez contends that he received ineffective assistance of counsel at sentencing because his trial counsel failed to advocate for a 90-month sentence, despite having negotiated the right to argue for such a sentence in his plea agreement. We will not address this claim on direct appeal because it is not one of “the unusual cases[] (1) where the record on appeal is sufficiently developed to permit determination of the issue, or (2) where the legal representation is so inadequate that it obviously denies a defendant his Sixth Amendment right to counsel.” *United States v. Jeronimo*, 398 F.3d 1149, 1155-56 (9th Cir. 2005); *see also United States v. Benford*, 574 F.3d 1228, 1231 (9th Cir. 2009).

AFFIRMED.